



Memo

Welfare of today's chicken and that of the 'Chicken of Tomorrow'

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In a nutshell

In January 2015, the Netherlands Authority for Consumers and Markets (ACM) decided that a planned agreement between producers, traders, and retailers about minimum requirements regarding the welfare of chickens, which they dubbed 'the Chicken of Tomorrow', did not qualify for the exemption from the cartel prohibition (Section 6, paragraph 3 of the Dutch Competition Act). This red flag sparked off a broader debate about the question of whether or not antitrust enforcement is an impediment to the realization of socially desired sustainability benefits.

This debate is still ongoing, and, in that context, ACM has published its draft Guidelines regarding Sustainability Agreements for public consultation. One of the key questions in the debate is under what circumstances an anticompetitive agreement is considered necessary for realizing a concrete sustainability benefit.

With this study, ACM wishes to contribute to the debate by looking back on the developments with regard to chicken welfare since 2014. The blocked agreement was aimed at establishing a minimum level of chicken welfare in 2020. In the study, it is concluded that the welfare conditions of the current selection of chicken meat sold in Dutch supermarkets more than exceeds the minimum requirements of the Chicken of Tomorrow. Fresh meat from chicken that were raised under conditions that the Chicken of Tomorrow wanted to abolish can almost no longer be found in Dutch supermarkets. Supermarkets offer differentiated levels of animal welfare, based on welfare classifications of their own, and also based on market-wide labels using three different levels. Consumers pay more for higher levels of animal welfare.

This success can be attributed to the actions of different market participants in the supply chain and non-governmental organizations without making use of the exemption from the cartel prohibition. This development suggests that the planned anticompetitive agreement was not necessary to realize the improvement in animal welfare that was envisaged in 2013.

In 2014, ACM studied the consumers' willingness to pay for the Chicken of Tomorrow (this was one of the reasons for the rejection of the plans), which indicated that consumers found the planned improvement in chicken welfare to be too little compared with the expected price increase. Now it turns out that consumers are willing to pay more than the price increase that was projected for the Chicken of Tomorrow, for an improvement in welfare that goes further than the Chicken-of-Tomorrow requirements. Poultry farmers, supermarkets, and the Dutch Society for the Protection of Animals (in Dutch: *De Dierenbescherming*) have thus been able to take bigger steps towards animal-welfare improvement without making an anticompetitive agreement, which arguably has resulted in a more positive balance between cost increases and animal-welfare improvements than the Chicken-of-Tomorrow arrangements would have had. This shows that a third party with an independent certification label can be an effective alternative to an agreement.

1 Introduction

Societal attention to animal welfare

In February 2013, poultry farmers, broiler meat processors, and retailers reached an agreement regarding the selling of sustainable chicken meat, which they dubbed the ‘Chicken of Tomorrow’. With this plan, the industry wanted to take concrete steps to fulfill the ambition of enhancing sustainability and animal welfare in the poultry-farming industry. The agreement involved a set of minimum requirements that applied to the production of chicken-meat products that are sold by Dutch supermarkets. At the time, the goal was, by 2020, to have all the chicken meat that is sold in Dutch supermarkets comply with these requirements. Prices were not part of the agreement.

ACM believed that the arrangements did not meet the statutory exemption criteria of Section 6, paragraph 3 of the Dutch Competition Act. In January 2015, ACM presented its analysis of the arrangements, and came to the conclusion that the arrangements regarding the Chicken of Tomorrow did not qualify for the exemption.

Debate on the role of competition, improvements are realized anyway

The analysis attracted heavy criticism and critical comments from sector organizations, policymakers, and public interest groups. Yet it also garnered support from unexpected corners, such as Dutch animal-rights organization Stichting Wakker Dier that concurred with the ACM’s analysis that the improvements in animal welfare were too small, implying there was potential for bigger steps. The Dutch legislature started thinking about amending Dutch competition law. In addition, ACM’s analysis became a subject of discussion in the Dutch and international antitrust world. Even today, ACM’s position in the ‘Chicken of Tomorrow’ case is still often cited as an obstacle to initiatives of companies that aim to realize a more sustainable production process.

About the methodology used in this memo

The question is whether ACM’s position really did impede the transition to chicken meat produced under more animal-friendly conditions. The answer to this question helps, to a significant degree, shape the thinking about the functioning and application of the exemption criteria laid down in Section 6, paragraph 3 of the Dutch Competition Act. After all, one of the criteria for an exemption is that the restriction of competition is necessary for the realization of the sustainability benefits (in this case: animal welfare).

This memo contributes to the discussion by taking stock of the welfare of chickens that are sold in Dutch supermarkets since 2014. The degree to which the ambitions have been achieved without making any anticompetitive arrangements is an indication of the degree to which those arrangements were necessary for realizing the ambitions.

It should be noted that this is an indication with several provisos. First, this analysis does not include a comparison of poultry meat production in the actual and the hypothetical scenarios. The actual scenario was that ACM in January 2015 issued a negative decision. A hypothetical scenario could be that ACM in

January 2015 came to the conclusion that the minimum requirements that the 'Chicken of Tomorrow' needs to meet *do* qualify for an exemption from the cartel prohibition. It is not possible to make an estimate of the hypothetical scenario. Therefore, it cannot be ruled out that, had ACM given the green light, chicken welfare could have improved sooner or to a more considerable extent between 2015 and 2020.

Second, it remains a question whether ACM's analysis of January 2015 actually *did* have a deterrent effect on supermarkets and other companies in the production chain so that they were able to determine their strategies with regard to chicken welfare completely independently. After all, it is conceivable that, despite ACM's decision, market participants followed the 'Chicken of Tomorrow' arrangements (or the spirit thereof) or, in any case, that these arrangements were a focal point for their actions.

The necessity of the restriction of competition

Given the abovementioned factors, and seeing today that the animal-welfare objectives of the Chicken-of-Tomorrow initiative have been realized (even more than realized), we cannot conclude beyond any reasonable doubt that the 2013 agreement was indeed not necessary. Other factors that were uncertain in 2013 could have given a boost to the transition towards more animal-friendly chicken meat. Examples thereof include a significant shift in consumer preferences, new or amended regulations, technological developments in the sector or the entry of new competitors. In this context, it should be noted that the Dutch Society for the Protection of Animals in 2014 had, for a number of years, already been using its own star-rating system, called the Better Life label (in Dutch: Beter Leven Kenmerk, or BLK), so that potential boost provided by the BLK system *was* known.

The results should therefore be interpreted with some caution, and the establishment that the improvements as intended by the 'Chicken of Tomorrow' initiative have been realized without any anticompetitive arrangements, does not mean that other animal welfare or sustainability improvements can also be realized without any anticompetitive arrangements. But the study shows that a cautious approach towards claims that such agreements are indeed necessary is warranted.

Structure

This memo is structured as follows:

- In chapter 2, we compare the animal-welfare features laid down in the 'Chicken of Tomorrow' agreement with the features of the current selection of chicken meat in Dutch supermarkets;
- In chapter 3, we take a closer look at the trends and developments since 2014 on the basis of data from GfK Consumer Panel;
- We come to a conclusion in chapter 4.

2 Features of chicken meat currently on offer in Dutch supermarkets

Today in the Netherlands, there are approximately 600 companies that raise broiler chickens, and more than half of the production in the Netherlands is exported. In terms of chicken welfare, there is a difference between the chickens sold in Dutch supermarkets, and those for the export and food service industry. The chickens for the export and food service industry (approximately 65-70% of the chickens) come from a common, fast-growing breed. The chickens in the supermarkets lived according to a 'concept' that is based on, at least, a slow-growing breed.ⁱ

This memo identifies several, select features of the welfare of chickens in Dutch supermarkets in order to be able to assess whether the criteria that were drawn up in 2013 have been met. In that context, only the features that were part of the 'Chicken of Tomorrow' are examined. A more thorough analysis of the distress and welfare of broiler chickens including the underlying causes can be found in WUR (2018).ⁱⁱ Box 1 presents the minimum criteria that the parties to the 'Chicken of Tomorrow' agreement had envisaged. Strict enforcement of compliance with statutory standards is not a new criterion, and will be left outside the scope of this memo. The type of soy that is used for animal feed is unrelated to animal welfare, and is not identified as a cause of distress in WUR (2018), and will therefore also be left out of the scope of this memo. This leaves us with six criteria for the comparison (in bold).

Box 1: animal-welfare criteria for 'Chicken of Tomorrow'

- **Fewer chickens per square meter.** A 10% reduction of the occupancy rate from 42 to 38 kilos per square meter, which, in practice, means from 21 to 19 chickens per square meter;
- **Lifespan of the chicken** 45 days
- **A breed with a slower growth rate** The introduction of a new, slower growing chicken breed for the basic chicken meat varieties. This chicken will have a lower growth rate of, at the most, 50 grams/day;
- **Litter materials and distraction materials** Good litter materials (more straw) and additional distraction materials;
- Strict enforcement of compliance with legal animal welfare standards.
- **Continuous darkness** In the barns, it will be dark for at least six consecutive hours, allowing the chickens to have a natural circadian rhythm;
- **Reduction of the use of antibiotics** Reduction of the use of antibiotics by setting stricter requirements. Antibiotics are only used if animal welfare is at issue;
- 100% use of RTRS-soy in animal feed.

Source: ACM's analysis of the sustainability arrangements concerning the 'Chicken of Tomorrow', 26 January 2015, reference: ACM/DM/2014/206028. The animal-welfare criterion 'lifespan in days' is not mentioned in that analysis but it was mentioned in the study 'Economic effects of the 'Chicken of Tomorrow'' with reference 2014-01, which was published at the same time.

The chicken meat currently on offer in supermarkets uses two methods for indicating welfare features: market-wide certification labels, and supermarket concepts.¹

Market-wide certification labels

First, there are two market-wide labels, which are “the Better Life Label” (BLK, three levels) and Biologisch (literally: “Organic”). Chicken with one or more BLK stars and chicken with the Organic label more than meet the criteria of the ‘Chicken of Tomorrow’: they have more space (almost twice as much as for organic chicken), live longer (lifespan of Organic is at least 25 days longer), and they have a better light-dark rhythm, see Table 2.

Table 2: Chicken of Tomorrow versus market-wide labels

Label	Chickens per m ²	Lifespan (days)	Slower growing breed	Distraction materials	Light-dark rhythm	Limited use of antibiotics ²
Chicken of Tomorrow ⁱⁱⁱ	19	45	✓	✓	6 hours of continuous darkness	✓
1 BLK-star ^{iv}	12	56	✓	✓	8 hours of continuous darkness and daylight	✓
2 BLK-stars	13	56	✓	✓	8 hours of continuous darkness and daylight	✓
3 BLK-stars	11	70	✓	✓	8 hours of continuous darkness and daylight	✓
Organic ^v	10	70 for slower growing breed, otherwise 81	No, but longer lifespan ³	✓	8 hours of continuous darkness and daylight	✓

Source: see endnotes

Chicken-welfare concepts of individual supermarkets

Second, there are chicken-welfare concepts that vary per supermarket. Examples include the “AH Chicken”

¹ There is some overlap though. The lowest variety at Albert Heijn, for example, is called the ‘AH Chicken’ (‘AH Kip’) and that variety does not have either a BLK or Organic label. The next variety, which is called ‘AH Free-run Chicken’ (‘AH Scharrelkip’), has one BLK-star, followed by the ‘AH Excellent Free-run Chicken’ (‘AH Excellent Scharrelkip’) with two BLK-stars. The highest variety is the ‘AH Organic Chicken’ (‘AH Biologische kip’) that has the Organic label, and has three BLK-stars.

² Since 1 March 2014, there have been more stringent rules in place for the use of antibiotics in broiler chickens in the Dutch poultry-farming industry. Since then, antibiotics have been given the so-called UDD status (which means that only veterinarians are allowed to prescribe and administer antibiotics). See <https://wetten.overheid.nl/BWBR0032626/2016-03-01#Bijlage9> (in Dutch).

³ An organic chicken does not necessarily have to come from a slower-growing breed. However, organic poultry farmers preferably do choose a slower-growing, more robust breed. In addition, the organic broiler chickens have twice the amount of time to grow. Organic chickens of non-slower growing breeds have a minimum slaughter age of 81 days. See <https://www.skal.nl/certificeren/veehouderij/pluimvee/huisvesting> (in Dutch) and <https://www.biomijnatuur.be/producten/kippenvlees> (in Dutch).

“AH Kip”) of Albert Heijn, the “New Standard Chicken” (de “Nieuwe Standaard Kip”) of Jumbo and the “Better Chicken” (“Betere Kip”) of Boon’s Markt. Table 3 shows the result of a survey in June 2020 among supermarkets in the Netherlands. These supermarkets represent 97% of the market in 2019 according to research firm Nielsen.

Table 3 shows that all supermarket-concept chickens have more room in the barns, and that all supermarkets use slower-growing breeds, as a result of which the lifespan is realized that had already been envisaged in the ‘Chicken of Tomorrow’ agreement.⁴ The requirements regarding distraction materials are also met, although this aspect is unknown for Nettorama chickens. Furthermore, the light-dark rhythm is interpreted differently by animal-rights organization Stichting Wakker Dier and the supermarkets Albert Heijn and Plus.

Table 3: Chicken of Tomorrow versus chicken-welfare concepts of individual supermarkets

Supermarket concept ^{vi}	Chickens per m ²	Lifespan (days)	Slower growing breed	Distraction materials	Continuous darkness ⁵	Limited use of antibiotics ⁶
Chicken of Tomorrow	19	45	✓	✓	6 hours	✓
AH Chicken / AH Kip (Albert Heijn ^{vii}) ⁷	15-16	49	✓	✓	Unknown	✓
New Standard Chicken / Nieuwe Standaard Kip (Jumbo ^{viii})	13.5	49	✓	✓	✓	✓
In-between Chicken / Tussekip (Lidl ^{ix})	15	Unknown	✓	✓	✓	✓
Chicken with Plume guarantee / Kip met Pluimgarantie (COOP, Spar, Hoogvliet en Jan Linders ^x)	17	45	✓	✓	✓	✓
New PLUS Chicken / Nieuwe PLUS Kip (Plus ^{xi})	15.5	46	✓	✓	Unknown	✓
Aldi Chicken / Aldi Kip (Aldi ^{xii})	15	Unknown	✓	✓	✓	✓

⁴ Lifespan is closely linked to the breed that is used. The ambitions of the ‘Chicken of Tomorrow’ agreement primarily involved the slower-growing breed. For three supermarkets, their chickens’ lifespan is unknown. However, as they use a slower-growing breed, it is plausible that the lifespan is at least 45 days.

⁵ In the case of Albert Heijn and Plus, the retailers themselves have indicated that their chicken, AH kip and Nieuwe Plus kip respectively, have a regular light-dark rhythm in the barns. However, according to animal-rights organization Wakker Dier, these chickens do not get a passing mark for the daylight requirements. Deen Supermarkets has not given a statement regarding the light-dark rhythm of their chickens, but, according to Wakker Dier, there is no daylight in the barns. The other supermarkets say that their chickens have natural circadian rhythms in the barns, without giving a statement regarding the number of hours of continuous darkness. WUR (2018) states that, for supermarket concepts, the number of continuous darkness is at least 6.

⁶ Some supermarkets do not publish any data about the use of antibiotics. On the basis of WUR (2018) and the stricter regulations as of March 1, 2014, we assume that those supermarkets, too, meet the minimum requirement.

⁷ Animal-rights organization Wakker Dier says that, for the AH Kip, 16 chicken per square meter live in a barn, and that this occupancy rate offers too little room, and is harmful for chickens. The organization thus assumes that supermarket chain Albert Heijn has a higher occupancy rate than Albert Heijn themselves assumes.

Slower Growing Breed / Trager Groeiend Ras (Dirk van den Broek and DekaMarkt ^{xiii})	10% more space (+/- 16)	45	✓	✓	✓	✓
Standard Chicken / Standaard Kip (Deen ^{xiv})	10% more space (+/- 16)	45	✓	✓	No	✓
Chicken delicious / Kip Lekker* (Nettorama ^{xv})	15	46	✓	Unknown ⁸	✓	✓
Slower Growing Breed / Langzamer Groeiend Ras ⁹ (Poesz ^{xvi})	16	Unknown	✓	✓	✓	✓
Better Chicken / Betere Kip (Boon's Markt ^{xvii})	13.5	49	✓	✓	✓	✓

Source: see endnotes. The supermarket concepts have been sorted in descending order based on the market share of the supermarket(s) in 2019 as calculated by research firm Nielsen.

* Translator's note: 'Kip Lekker' is a play on words in Dutch. 'Kiplekker' is an idiomatic expression for 'as fit as a fiddle'. Written as two words, it literally means 'Chicken delicious'.

Conclusions regarding current requirements for chicken welfare

On the basis of this stock-taking exercise regarding chicken-welfare standards, it can be concluded that, except for a few exceptions and unknowns, the fresh chicken products that are currently offered by the supermarkets meet (or more than meet) the minimum requirements of the 'Chicken of Tomorrow' agreement. Jumbo's chicken, for example, has more space, and lives longer than the Chicken of Tomorrow. Albert Heijn's chicken, too, lives longer and in a larger barn, compared with the 'Chicken of Tomorrow'.

In addition to the chicken-welfare concepts of the individual supermarkets themselves (that do not meet the conditions of the market-wide label), supermarkets also sell chickens that are branded with both their individual concept and a market-wide label (BLK star varieties or Organic). With regard to the latter, Table 2 already showed that those products more than meet the animal-welfare requirements of 'Chicken of Tomorrow'. It should also be noted that the welfare requirements of the market-wide labels are, as far as we are aware of, stricter than those of the supermarket concepts that do not qualify for one of the market-wide labels.

The conclusion that the supermarket chicken more than meets the requirements of the 'Chicken of Tomorrow' is also supported by a study of Wageningen University & Research (WUR, 2018). In that study, broiler-chicken distress has been examined in detail, and compared with 2011. It found major improvements (because of market concepts, the 2012 Broiler Chicken Decision (in Dutch: *het Vleeskuikenbesluit van 2012*) and the policy to reduce the use of antibiotics). The Chicken of Tomorrow is also mentioned in this study:

⁸ In the case of Nettorama, it is not entirely clear what the status of the distraction materials in the barns is. A news item of local station Omroep Brabant of December 2015 reported that there are plans to implement improvements to the living conditions in the barns, but that this will cost time.

⁹ Poesz meets the requirements but also notes that it is not always possible to offer chickens from a slower-growing breed because of limited availability.

“Although ACM (the Netherlands Authority for Consumers and Markets) indicated afterwards that the arrangements did not meet the exemption criteria laid down in the Dutch Competition Act, all Dutch supermarket chains, over the course of 2016 and 2017, have replaced the regular chicken variety with a new variety. The specifications, the transition period, and the naming vary per supermarket chain. Jumbo unveiled the New Standard Chicken (in Dutch: Nieuwe Standaard Kip of NSK), and Albert Heijn introduced the Good Nest Chicken (in Dutch: Goed Nest Kip). In 2018, almost the entire range of chicken products in the fresh section in Dutch supermarkets was replaced with a variety of the slower-growing chicken.” (WUR, 2018).*

**Translator’s note: this is a play on words in Dutch, as ‘coming from a good nest’ means ‘coming from a good family’.*

However, the study also stated that the circumstances of supermarket concepts are still insufficient for avoiding distress among chickens resulting from too high occupancy rates.

3 Trends and developments since 2014

This chapter offers an overview of the trends and developments related to chicken meat in Dutch supermarkets between 2014 and 2019, so since ACM decided that the welfare benefits of the Chicken of Tomorrow agreement were insufficient, and did not offset the projected price increase.

Chicken-welfare categories

In 2007, the Dutch Society for the Protection of Animals introduced the Better Life Label (in Dutch: Beter Leven Keurmerk or BLK) with a star system for broiler chickens. Figure 1 shows the trends in purchases in supermarkets since 2014, which are based on the GfK Consumer Panel.¹⁰ This data set does not contain any data from 2013 or earlier.

There are five levels of animal-welfare in the data:¹¹

1. 1 BLK-star;
2. 2 BLK-stars;
3. 3 BLK-stars (also Organic);
4. other Organic (without a BLK-star);
5. Other chicken.

The last category (5. Other chicken) has no BLK-stars or Organic label, and contains the supermarket concepts in Table 3. A classification along individual supermarkets within this category is not possible on the basis of the available data.

Volume trends of fresh chicken

In Figure 1, the first four categories have been included, marked as BLK/Organic. Figure 1 shows that the total volume of chicken purchased in supermarkets rose in the period 2014-2019.¹² The volume of chicken with a BLK/Organic label has increased more than the total volume has; its share doubled from 11% in 2014 to 21% in 2018.¹³ This relative increase means that fresh chicken meat that is sold in Dutch supermarkets is produced under more animal-friendly conditions.

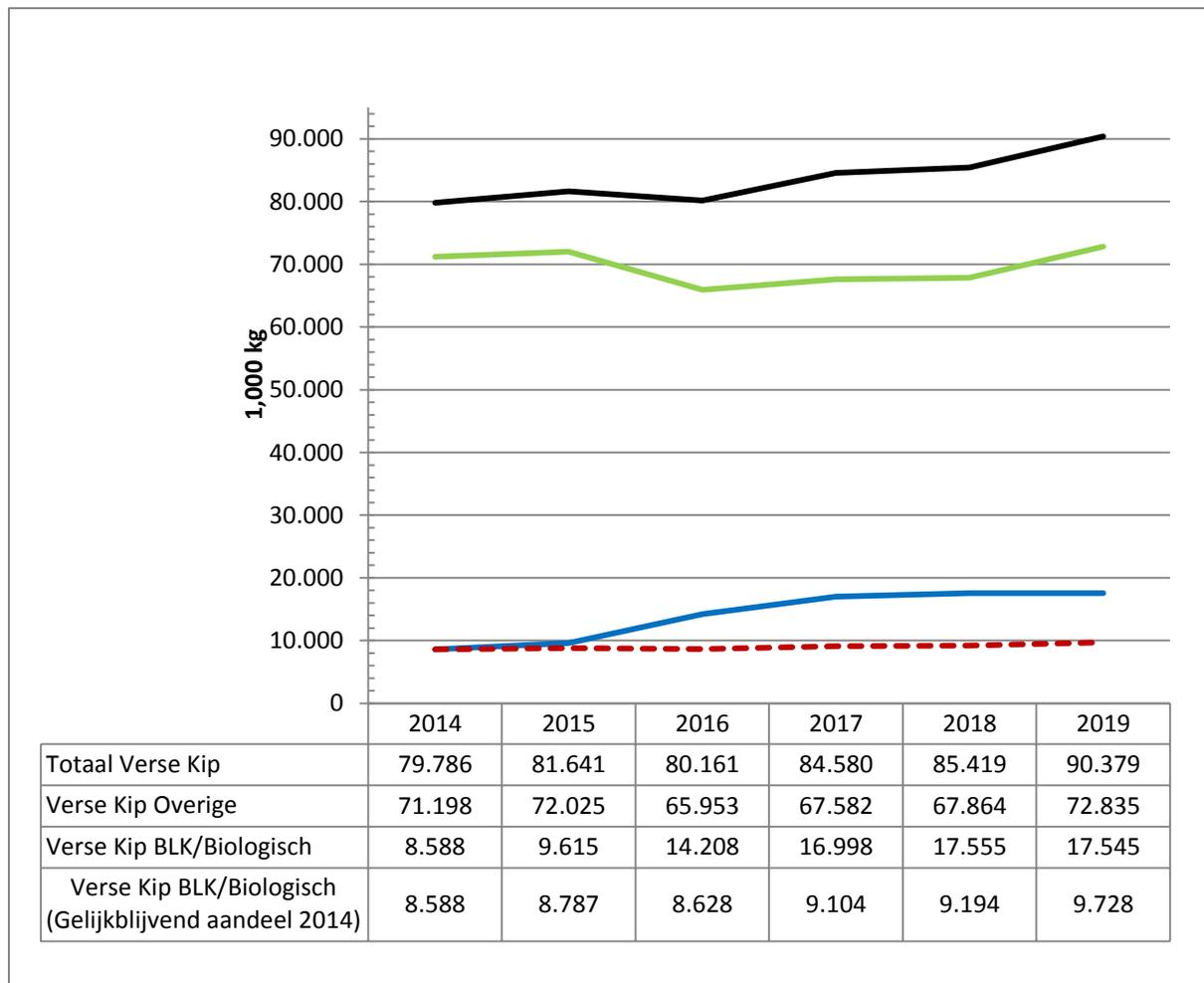
¹⁰ The GfK Consumer Panel consists of 6,000 Dutch households. Panel members register their purchases of Fast Moving Consumer Goods in the Netherlands. This data offers information such as the number of buyers, the purchase frequency, the average price and volumes.

¹¹ Fresh chicken has the following classifications: fresh chicken filet (also with the five subcategories) and other fresh chicken products (with the subcategories Better Life / Beter Leven, Organic / Biologisch and Other / overig).

¹² The total volume of consumer fresh chicken does not always increase compared with the previous year. In 2016, there was a slight decrease. One possible explanation for that decrease is the 2016 outbreak of avian flu in the Netherlands.

¹³ The biggest increase occurred between 2015 and 2016 (from 11.79% to 17.76%). One possible explanation could be the 2016 outbreak of avian flu. Following that outbreak, there may have been reports in the media with images of chicken barns that were cleared out. For the period of 2015-2016, that may explain a decrease in the total volume and an increase in BLK/Organic: animal welfare became more important. However, there has not been a relapse in the share of BLK/Organic after the avian flu outbreak. In 2017 and 2018, the increase continued. In 2019, the percentage of BLK/Organic drops to 19.4 % for the first time ever. One possible explanation for the absence of a relapse is the improvement in the quality of the GfK Consumer Panel in 2017.

Figure 1: Volume of fresh chicken sold in supermarkets

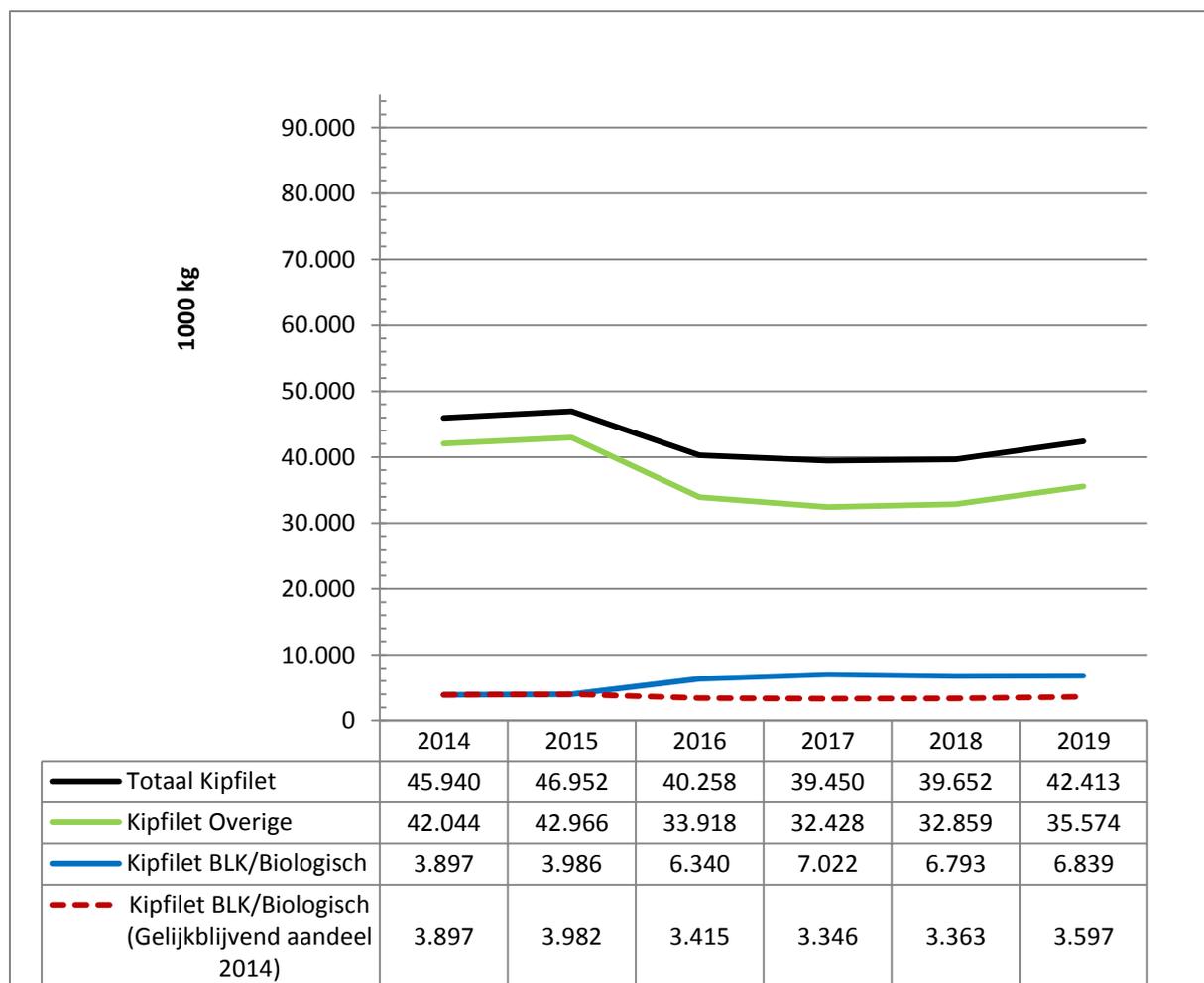


Source: GfK Consumer Panel, edited by ACM. The red dotted line indicates the volume of fresh chicken BLK/Organic under the assumption that the share that was achieved in 2014 has remained constant since. This fixed share, multiplied by the total, results in the red dotted line.

Volume trends of fresh chicken filet

Within the product group of fresh chicken, the GfK Consumer Panel makes a distinction between chicken filet and other fresh chicken. Chicken filet makes up approximately 50% of the total consumed volume in kilograms. Figure 2 shows that chicken filet with a BLK/Organic label has grown (an increase of approximately 70%), the consumption of chicken filet without such a label actually dropped by approximately 20% in absolute terms, based on a comparison between the periods 2018-2019 and 2014-2015. In chicken filet, the shift from 'other Chicken' to BLK/Organic is more pronounced than that in other fresh chicken products.

Figure 2: Volume of fresh chicken filet sold in supermarkets



Source: GfK Consumer Panel, edited by ACM.

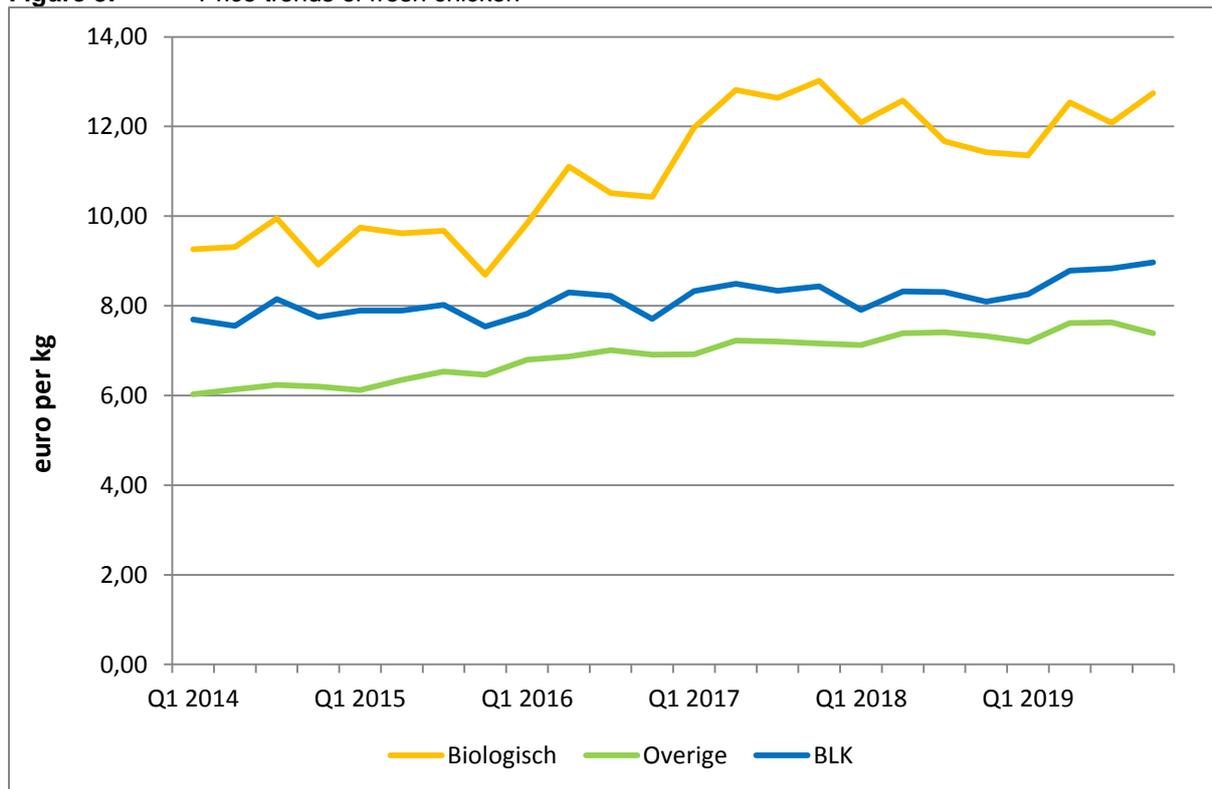
The increased popularity of chicken with a BLK/Organic label and the decrease in the consumption of chicken filet without a market-wide label suggest an improvement in animal-welfare conditions of fresh chicken sold in Dutch supermarkets.

Price trends of fresh chicken

One key aspect in the discussion about improvements in animal-welfare conditions is the costs that such improvements carry for producers and other companies up and down the production chain. The next question is to what extent those costs can be recouped by an increased willingness to pay among consumers. In that context, the strategies of competitors are also often taken into account.

That is why figure 3 shows the trend of the average price per kilo on the basis of the GfK Consumer Panel.

Figure 3: Price trends of fresh chicken



Source: GfK Consumer Panel, edited by ACM.

A clear order can be seen between the three levels of animal-welfare requirements: consumers pay for chicken products with a higher certification level. If we take a closer look at chicken filet (see Annex), we can see the following. In the period of 2014, the price difference between 1 BLK-star and 'other Chicken' chicken filet was on average (unweighted) €2.60 per kilo (almost 40% more expensive than chicken filet without a star) and, in 2019, was on average (unweighted) €2.36 per kilo (28% more expensive).

The majority of chicken consumption consists of 1 BLK- star and other Chicken (the combined share hovers around 96%). Finally, figure 4 thus also zooms in on the trends in price and volume per quarter for these two categories of fresh chicken (as index with 2004Q1 as basis). The rise of BLK is abundantly clear: volumes have almost trebled. The volume of chicken without a label is almost at 2014 levels. The chicken without a label has risen in price faster than the chicken with 1 BLK-star. In the final quarter of 2019, the price difference was €1.07 and, in the prior quarters, was around €0.70. In 2014, the price difference was still around €1.32 per kilo of fresh chicken (so chicken filet and other chicken products).

4 Conclusion

The trends and developments since 2014 have shown that, without any horizontal agreements among competitors, major improvements have been realized with regard to chicken welfare. These improvements more than exceed the planned arrangements of the 'Chicken of Tomorrow' initiative. Consumers are prepared to pay extra for chicken meat that has been produced under higher animal-welfare conditions.

These results suggest that it was not necessary for the sector to conclude an anticompetitive agreement regarding the welfare features of chicken meat. The animal-welfare conditions of the chicken meat that is sold in Dutch supermarkets have evolved in a positive direction that goes further than the ambitions in the original plans of the Chicken of Tomorrow. These improvements have been realized by the sector, the Dutch Society for the Protection of Animals and other independent organizations, without making an anticompetitive agreement.

It should be noted that the analysis in this memo is limited in scope, and does not consist of a comprehensive ex-post analysis. For example, no assessment was made of whether the factors that were unknown to the initiative's participants in 2013 have led to a boost in animal welfare. It is of importance that, in 2013, the rise of the Better Life Label (Beter Leven Keurmerk) had already been set in motion, and that, according to our assessment, no regulations have been passed between 2013 and today that people did not anticipate in 2013. A further study could examine additional determinants so that a better understanding can be obtained of the causes behind the growth in animal-welfare conditions under which the chicken meat that is sold in Dutch supermarkets is produced.

In 2014, ACM came to the conclusion that the cost-benefit analysis of the improvements in the 'Chicken of Tomorrow' agreement was unfavorable.¹⁴ In this analysis, the improvements in animal-welfare conditions have been expressed in euros using a Choice-Experiment method. The improvements in the Chicken of Tomorrow were limited, and did not offset the price increase that the experts projected. The study also showed that consumers were indeed willing to pay, especially for more significant leaps in animal-welfare conditions. For example, the study revealed that consumers were particularly prepared to pay for free-range systems and for pre-slaughter anesthesia. They additionally value what other consumers do (a higher number of consumers that purchase chicken meat produced under animal-friendly conditions increases the willingness to pay), government regulation, and oversight that has been set up collectively.

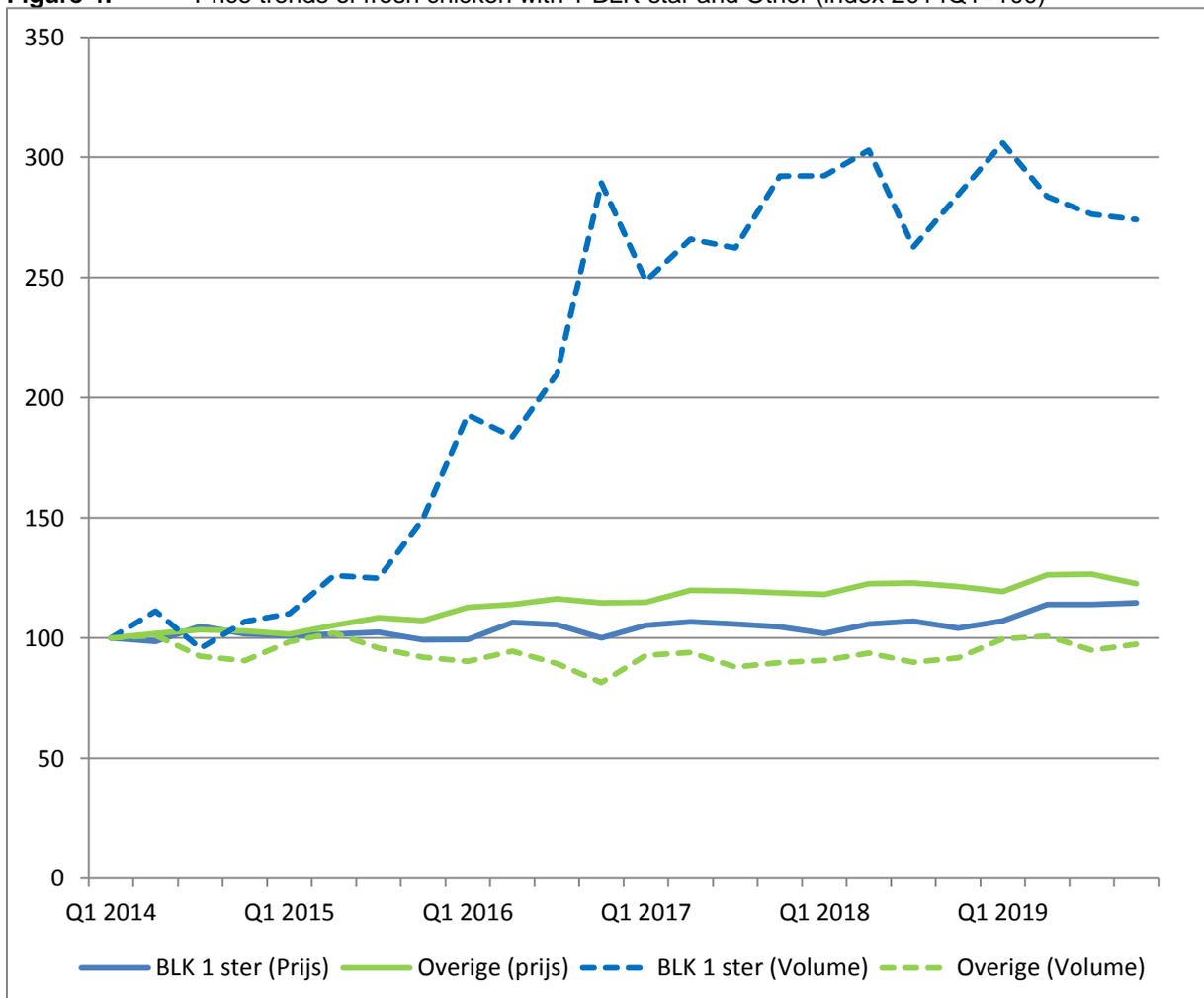
One notable finding in the 2014 study is the high willingness to pay for chickens with 1 BLK-star and organic chicken meat. This estimated willingness to pay was significantly above the prices that consumers were actually paying for BLK at the time. The 2015 ACM analysis noted that the dynamics in this market create an environment allowing supermarkets to differentiate themselves further from their competitors based on chicken welfare, and where the BLK label has the potential to grow even further. The high willingness to pay among consumers for chicken welfare, found in the 2014 study into the Chicken of Tomorrow, suggested a potential for better marketing and education. That is why ACM did not find it plausible that the third exemption criterion of the cartel prohibition had been met (necessity and proportionality).

¹⁴ See: https://www.acm.nl/sites/default/files/old_publication/publicaties/13759_onderzoek-acm-naar-de-economische-effecten-van-de-kip-van-morgen.pdf

The results suggest that, in competing with each other, supermarkets have been able to realize an animal-welfare improvement that has made a bigger impact in terms of animal welfare and which has a more favorable outcome when comparing the expected cost increase and the price increase for consumers. Therefore, it seems highly likely that an anticompetitive agreement was not necessary, because, apparently, supermarkets were already stimulated enough individually to improve chicken welfare.

Two insights offer potential leads for new cases. First, the 2014 study revealed that consumers were willing to pay more for animal welfare if the improvement was large enough and if there was either market-wide oversight or independent oversight. Second, the Dutch Society for the Protection of Animals played the role of an independent, trustworthy intermediary, who was able to win over a lot of market participants in participating in a market-wide label (which was the Better Life Label / Beter Leven Keurmerk). This illustrates that a third party with a label can be an effective alternative for an anticompetitive agreement.

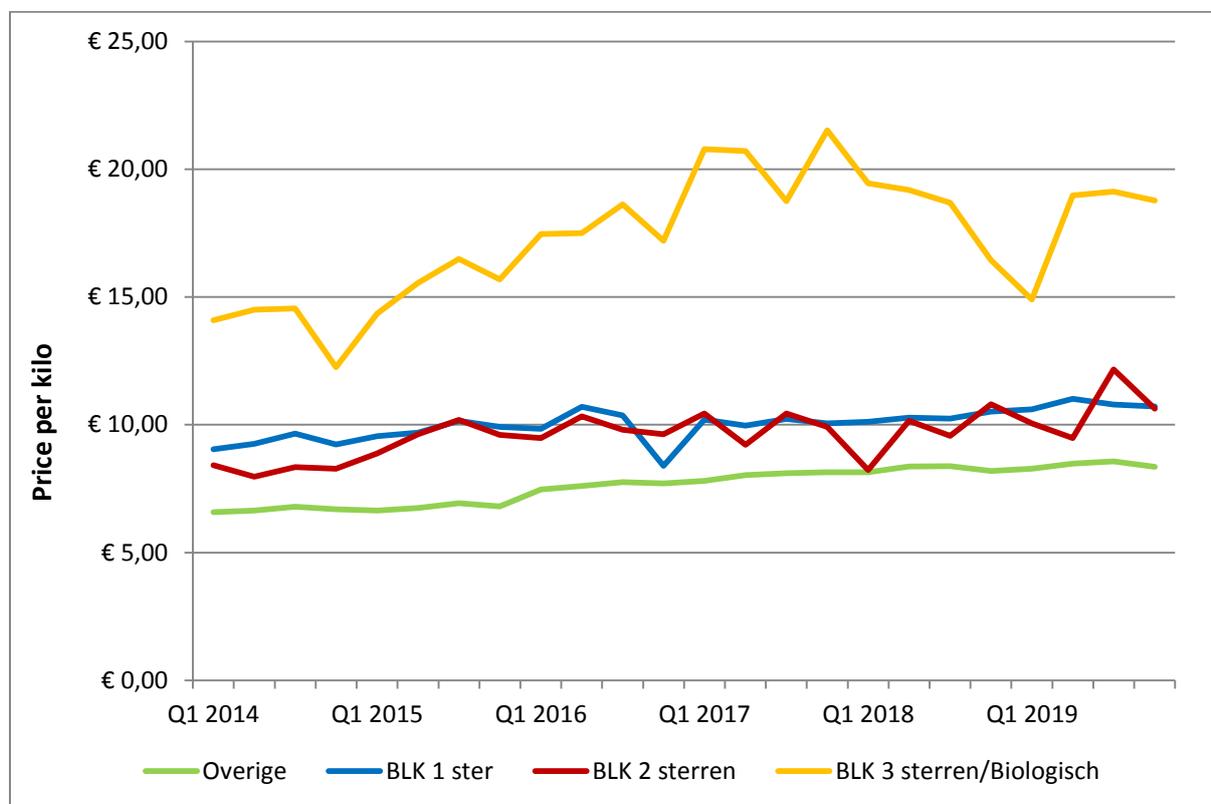
Figure 4: Price trends of fresh chicken with 1 BLK-star and Other (index 2014Q1=100)



Source: GfK Consumer Panel, edited by ACM.

Annex

Figure 5: Price trends of fresh chicken filet



Source: GfK Consumer Panel, edited by ACM. The category Organic Other has not been included in the table. This category consists of organic chicken filet with 1 BLK-star, 2 BLK-stars or no BLK-label. Out of the total volume of fresh chicken filet, it represents merely a small share between 0.5 and 2.5%.

ⁱ WUR Agrimatie pluimveehouderij, 29-Jun-2020, see:

<https://www.agrimatie.nl/SectorResultaat.aspx?subpubID=2232§orID=2249&themaID=3596>, visited on 7 July 2020.

ⁱⁱ Wageningen University & Research, "Update Ongeriefanalyse Voorlopige deelrapportage onderdeel vleeskuikens", May 2018.

ⁱⁱⁱ ACM/DM/2014/206028

^{iv} <https://beterleven.dierenbescherming.nl/over-het-keurmerk/wat-is-beter-leven/> visited on 7 July 2020

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