



**Summary and update on Anti-trust process of the
Common Code for the Coffee Community with the respective US and EU authorities**

The Common Code for the Coffee Community (4C) Association aims at achieving sustainability in the green coffee chain through continuous improvements of the social, environmental and economic practices of the production, post-harvest processing and trading of mainstream coffee. Being a membership association, 4C is building on participatory and transparent governance. Its members represent all relevant stakeholder groups of the sector and, through their membership, cooperate for the benefit of the entire sector.

The positive impacts of 4C are expected to include quality improvements for coffee produced according to the defined 4C baseline standards, through labor and environmental standards, best production and processing practices and information on market developments. By providing a baseline for sustainability in mainstream coffee, with objective and verifiable standards, 4C is procompetitively contributing to creating a level playing field.

Development of the Common Code documents

Antitrust compliance mechanisms have been addressed in all relevant documents of the 4C Association, stating that the initiative “shall be conducted in a manner that is entirely consistent with...the antitrust laws of the United States and the European Union...”. By accepting the so called Rules of Participation, members specifically commit to not use any 4C activity for the purpose of “boycotting” or seeking “agreement on product pricing/marketing or promotion of products.” In addition, member’s representatives participating in the 4C Association shall not have direct involvement in consumer product marketing and pricing decisions.

Through the entire process of the development phase of the concept and mechanism of 4C, the Secretariat was always in contact with legal counsel. Public institutions constitute a very neutral platform for approaching the antitrust authorities. Therefore, GTZ (German Technical Cooperation Agency) and project partner of the 4C Initiative had already approached the Bundeskartellamt in June 2004 to provide information on the project and get feedback on compliance against anti-trust regulations in Europe.

During the second project phase (January 2005 –December 2006) the issues of anti-trust compliance became even more relevant.

At the 5th meeting of the Steering Committee in Arusha, Tanzania, from 5-8 April 2005, Richard Kibble, at that time legal counsel of Nestlé and coordinator of the participating manufacturer’s companies lawyers, gave a presentation on the relevant antitrust regulations for the Common Code for the Coffee Community in general and the Rules for Participation in particular. The key antitrust concerns with initiatives such as the Common Code for the Coffee Community were considered to be price fixing, collective boycott, exchange of confidential information, etc and more generally any direct or indirect behaviors or activities that adversely affect competition.

Rules of Participation

After the 5th meeting of the Steering Committee in Arusha in April 2005, a task force on the Rules of Participation met several times with stakeholders and anti-trust lawyers to elaborate a joint proposal.



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At the 6th meeting in Salvador da Bahia, Brasil, from 20–22 September 2005, the Steering Committee made some modifications and agreed on this version of the Rules of Participation as final draft.

In November 2005, the German Federal Ministry of Economics and Technology (BMW_i) requested the German anti-trust authority (Bundeskartellamt) to comment on the Rules of Participation.

According to the feedback obtained, further modifications were incorporated after approval from the 4C Steering Committee and the final version was agreed in January 2006.

Anti-trust check with respective authorities

At the its 7th meeting in Egmond, the Netherlands, from 21-23 March 2006, the Steering Committee confirmed the next steps for an informal and formal approach in the USA and EU. On behalf of the initiative, the German BMW_i shared this document with the European Union's Direction General on Competition to receive comments concerning compliance with competition regulations in the European Union.

In March 2006 DG Competition sent a feedback to BMW_i which was positive in general.

In parallel, frequent phone conferences with the Rapporteurs, the involved companies' lawyers and the MU took place to identify the way forward once all other relevant documents were ready:

- In the USA 4C would aim to start a formal "Business Letter Review" process with the Federal Trade Commission through Howrey law firm on behalf of the 4C initiative and coordinated by GTZ. Seco announced its commitment to cover the costs for this legal assistance in the USA, provided that an approach to the Swiss Antitrust authorities would be included.
- In the European Union there is no formal procedure for such an anti-trust check comparable to the USA. Thus, a personal meeting with officials of DG Competition should be arranged in coordination with the anti-trust experts of Shearman law firm as a contribution from the 4C Civil Society group (namely OXFAM).

In June 2006 the Terms of Reference for Howrey were agreed upon with the Rapporteurs of the 4C Steering Committee and GTZ. Contact between Shearman and Howrey for a coordination of both approaches was established.

In August 2006, the Secretariat provided both lawyers with a comprehensive collection of important background material to support the argumentation on behalf of the Common Code for the Coffee Community. This list included e.g. (full list available from the 4C Secretariat on request):

- ICO: ICC 87-6, Speech Dr. Uschi Eid, Parliamentary State Secretary, Federal Ministry for Economic Cooperation and Development (Germany), on the attached project to the Council on 27 September 2002.
- Declaration issued in Cartagena, Colombia, on 19 September 2003 at the 40th anniversary of the International Coffee Organization by ICO member countries
- European Parliament resolution on the crisis in the international coffee market, 92 /PE 330.845 (April 2003) P5_TA-PROV(2003)0189:
- European Commission: law to promote socially responsible production, 2000
- 107th CONGRESS, 2nd Session, H. RESOLUTION 604: Expressing the sense of the House of Representatives that the United States should adopt a global strategy to respond to the current coffee crisis, and for other purposes. November 13, 2002
- U.S. Senate Resolution 368 to "adopt a global strategy to respond to the current coffee crisis."
- OXFAM: Mugged, 2002



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- OXFAM Briefing Paper 36: Europe and the Coffee Crisis - A Plan for Action, February 2003
- IISD: Synopsis Report: Sustainability in the Coffee Sector: Exploring Opportunities for International Cooperation Towards an Integrated Approach, Feb 17th and 18th, 2003
- ECF Comments to Oxfam briefing paper "Europe and the coffee crisis – a plan for action", May 2003
- European Commission: Working Group on General Food Law and Traceability, Frequently Asked Questions about Regulation (EC) N° 178/2002.
- U.S. Food and Drug Administration: Draft Guidance for Industry and FDA Staff for Records Access Authority Provided in Title III, Subtitle A, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002
- Etc.

Process and status of approach to the FTC

In September 2006, the FTC chairman's office did receive a draft letter.

In parallel, at its 8th meeting in Montreux, Switzerland, from 4-6 October 2006, the Steering Committee agreed on and finalized all relevant documents for the future Common Code for the Coffee Community Association. The objective of the ambitious roadmap was accomplished on 1 December 2006 with the founding of the 4C Association with 37 founding members from all stakeholder groups.

On 19 December 2006, the 4C Secretariat received an update from Howrey, stating that FTC Staff had drafted a positive advisory opinion regarding the transaction which should be discussed in a subsequent meeting. However, process was expected to be very slow due to the November and December holidays in the USA, thus feedback from the Commission was to be expected in early January.

On 24 January 2007, the 4C Secretariat was informed by Howrey about the positive news that FTC now wanted to finalize the process on 4C very quickly.

On 1 February 2007, a personal meeting took place at FTC, where Howrey presented a summary of the main points on 4C. The meeting went well and the FTC asked have a letter submitted summarizing their substantive position for submission to the FTC. Subsequently, there was continuous contact to coordinate the process.

On 5 March the 4C Secretariat had a meeting in person at Howrey's in Washington D.C. to finalize the letter and to agree upon next steps.

On 6 March, Howrey's letter on the Common Code for the Coffee Community was officially submitted to the FTC.

Result of approach to the FTC

On 4 April, the FTC responded in its "coffee letter" that the Bureau of Competition "has no present intention to recommend to the FTC that it challenge any stakeholder within its jurisdiction because of the stakeholders' agreement to the principles and terms of the Code."

This means that based on the Business Review Letter of the FTC, there are no concerns on anti-trust violation via the Common Code for the Coffee Community Association.

Parallel to the official approach in the USA the Shearman law firm has been informed about the process and the letter for following up again in the EU once FTC has given a final feedback. A meeting is expected to take place in summer 2007.



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On 17-20 April Howrey participated in the General Assembly meeting in London, 2007, to present an update report on the anti-trust status and to introduce guidelines to reflect the procompetitive character of 4C in the mechanisms of the 4C Association.