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# Cooperation in the energy crisis - *Sugar gas shortage case*

20<sup>th</sup> April 2023

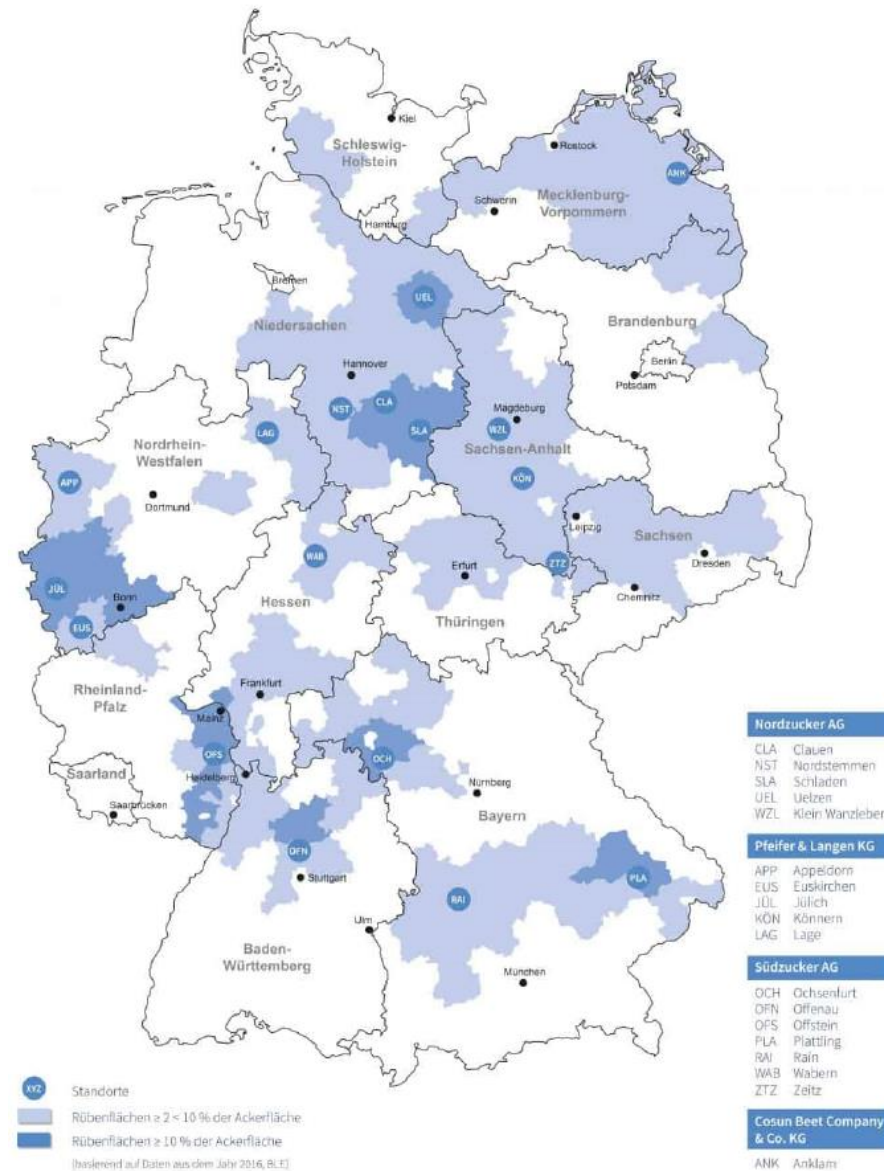
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# Topic overview

- Background
- The concrete cooperation
- Art. 101 TFEU assessment
- Rationale for toleration

# Background

- Sugar production in Germany in the hand of 4 producers (Nordzucker, Südzucker, Pfeifer & Langen and Cosun Beet)
- The 18 sugar factories run by the four companies are for the most part powered by natural gas. Lion's share of Germany's gas imports come from Russia
- Anticompetitive market sharing agreement of the German sugar producers was one of the most highly fined cartels in Germany (280 Mio. Euro in 2014)



## Usual timeline of the yearly harvesting and processing season

- Harvest of the sugar beets starts in **September** depending on the weather conditions of the year
- Processing begins with the arrival of the harvested beets
- Processing of the sugar beets usually lasts til the **end of January/beginning of February**
- Processing of the beets can **solely be prolonged til the end of March/beginning of April** before they are too rotten

## Concern

- **Possible gas bottlenecks** as a result of Russia's decreasing supply with natural gas
- Some of the sugar plants in Germany are **entirely dependent on natural gas** as a production input for the processing from sugar beets into sugar
- **Industry switched from fossils to natural gas** to reduce CO2 emissions
- **German Energy Regulator** could cause gas supply shortages for the German sugar industry as it could **grant priority to other essential industries with strategic importance for their gas supply** and **cap gas for sugar producers**

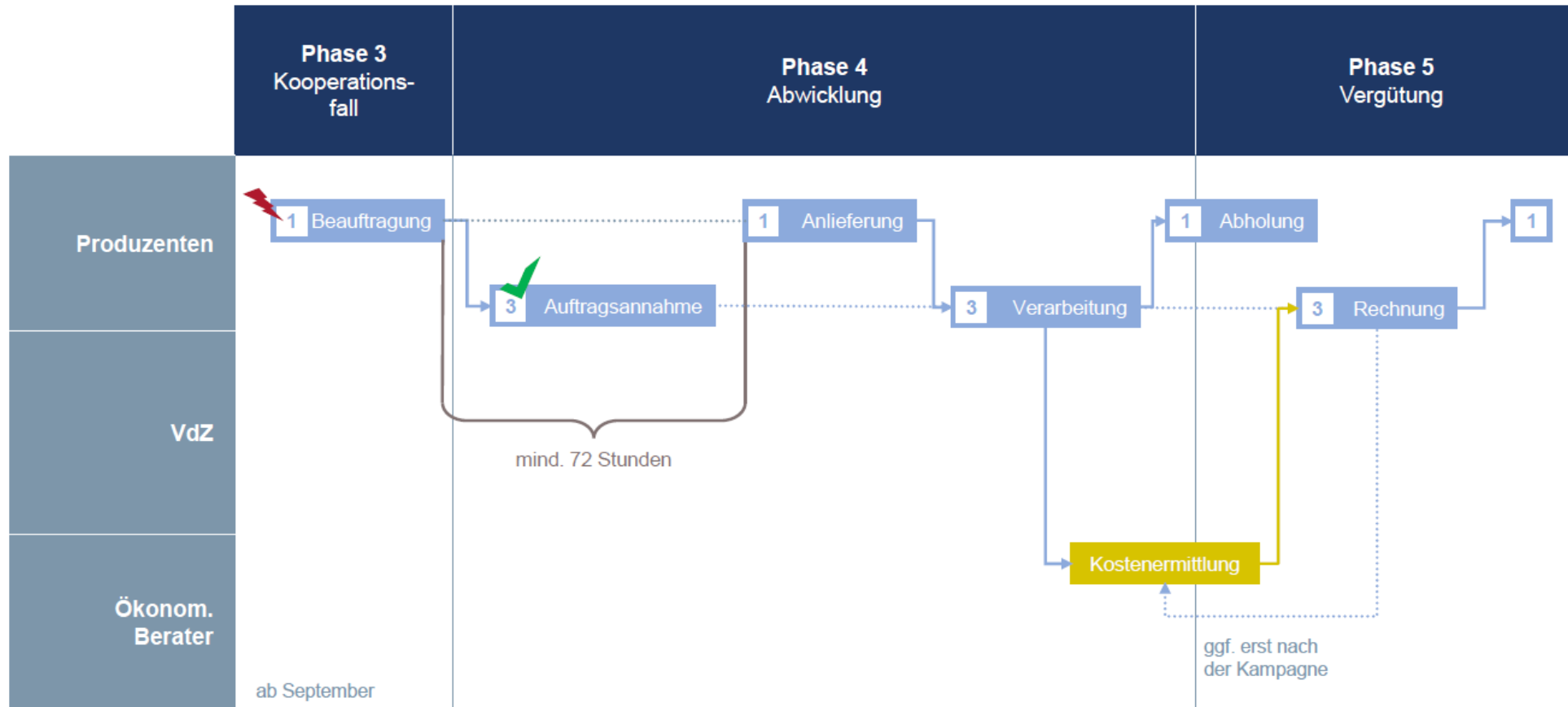
## Precautionary measure to prepare for a gas shortage

- The business association of the sugar industry obtains information from the sugar companies about the **free processing capacities available at the individual factories**
- Continuous capacity monitoring to determine which capacities can be made available on a voluntary basis
- Free production capacities are to be made available on a **bilateral basis** within the framework of the cooperation only if energy management measures **imposed by the government** lead to a reduced or suspended gas supply and, as a result, to production stoppages at one of the factories
- However, the companies must **first use all free production capacities available to them at their own factories in Germany and Europe** and try to process the sugar beets at one of their other factories not powered by gas, provided that this is economically feasible

## The compensation mechanism

- The processing is to **be billed on the basis of the production costs**, which are obtained from the sugar companies bilaterally – and in confidence – **by an independent economic consultant**
- Economic consultant communicates the processing costs to the company as a **total amount**
- Neither the **specific calculation method nor the data** used are passed on to the sugar companies
- The company delivering the beets will collect its production share from the processor without delay at its own expense, **without the processor gaining knowledge of the further use of the processed sugar and the subsequent supply streams**

## Illustration of the crucial steps of the cooperation





## Restriction of competition under Art. 101 (1) TFEU

- The cooperation aims at mitigating the individual consequences of a gas shortage for the sugar producers thereby reduces the differences among the German sugar producers (**dependency on natural gas of the different producers differs significantly**)
- Gas dependency of domestic producers **not identical to neighboring producers** (e.g. Poland)
- Stabilizes the German sugar producers and **reduces the incentives for deviation** among them

## Restriction of competition under Art. 101 (1) TFEU

- **No material concerns** regarding the preparatory information exchange on free capacities and the follow-on compensation
- Differences in procurement, volatility of fuel costs and the additional costs incurred due to the sugar factories' longer running times, **the specific production costs cannot be determined by the receiving producer**
- Processing of third-party beets and the proportionate provision of corresponding sugar quantities in the context of this cooperation will **not lead to the disclosure of secret information on customer relations either**
- **Information exchange** reduced to the bare minimum

## Exemption under Art. 101 (3) TFEU?

- Due to the **imminent start of the harvesting campaign the authority had no time to carry out an in-depth investigation in that regard**
- Cooperation aims at **decreasing the impact of a gas shortage on sugar prices**
- Difficult to assess whether sugar shortages along the value chain could be **compensated via market entry**
- Assessment of Art. 101 (3) TFEU **left open**
- **Margin of discretion used for non-intervention** for the current sugar campaign

## Bundeskartellamt decided to tolerate the cooperation

- A lack of gas would lead to production stoppages with serious consequences as large parts of the beet harvest would then be likely to rot
- Availability of the base product sugar affects the entire value chain
- **One-time temporary cooperation project** to deal with possible gas supply shortages that **could not be anticipated by the German producers** at the beginning of the planning for this year's sugar campaign and is **contractually limited to this sugar campaign**
- **Differences in national energy responses** to Ukraine crisis – cooperation will **only** be fully activated in the event of state-intervention in gas market
- **Singularity of the toleration corresponds to the singularity of the cooperation** in the given framework against the special emergency situation
- **No cooperation case** so far (limited application scope)



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# Thank you for your attention!

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