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**Sent by email (to <[confidential] >)**

The Hague, 4 July 2024

Our reference : ACM/UIT/621991  
Your reference : 46722033 Vereniging Coffee Capsules Recycling Nederland (KCR-NL)  
Subject : ACM/24/189472 Informal guidance regarding the 'recycling of coffee capsules' initiative

Dear [confidential],

The Royal Dutch association for coffee and tea companies (its full Dutch name: *De Koninklijke Nederlandse Vereniging voor Koffie en Thee*) (the Association) works together with coffee producers to recycle coffee capsules. The goal of this collaboration is to increase the recycling percentages of aluminum and plastic coffee capsules (the Initiative). The Association wishes to implement the Initiative through an association that is to be created for the purpose of this collaboration, called *Vereniging Coffee capsules Recycling Nederland* (KCR-NL).

You have indicated that the Initiative is allowed under the competition rules. On behalf of the Association, you have asked the Netherlands Authority for Consumers and Markets (ACM) whether it can follow that conclusion.<sup>1</sup> ACM has informally assessed the Initiative in accordance with its Policy Rule regarding ACM's oversight over sustainability agreements (the Policy Rule).<sup>2</sup> On the basis of the information submitted to it, ACM, at the moment, does not see a risk of an appreciable restriction of competition as a result of the Initiative. For example, no exchange of competition-sensitive information takes place, and all competitors and all waste-processing companies are able to participate in the Initiative. In addition, there is no risk of a price increase. ACM does have one point of attention for the Association, which is to ensure that the Initiative has no negative effect on investments in making coffee capsules more sustainable in ways other than through recycling.

In the below sections, ACM will first provide a summary of the Initiative, after which ACM will explain its informal assessment of the Initiative.

## The Initiative: promoting the recycling of coffee capsules

### *Background of the Initiative, and the capsule producers involved*

Most coffee capsules are made from aluminum or plastic.<sup>3</sup> A large share of all capsules is discarded with the residual waste, and is subsequently incinerated. Some of the coffee capsules are recycled. This takes place, for example, through the mail, in Nespresso stores, and stores of Dutch retail chain Blokker.<sup>4</sup> At the

<sup>1</sup> Email with request for an informal assessment, dated 4 December 2023 with reference ACM/IN/826154.

<sup>2</sup> ACM, 4 October 2023, Policy Rule regarding ACM's oversight over sustainability agreements, see: <https://www.acm.nl/en/publications/policy-rule-acms-oversight-sustainability-agreements>

<sup>3</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.1.

<sup>4</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.2.

moment, the estimated recycling percentage of aluminum capsules is 25% and that of plastic capsules 5%.<sup>5</sup> The Association finds that recycling is currently not (sufficiently) getting off the ground, whereas, according to the Association, the recycling of coffee capsules does contribute towards a circular economy.<sup>6</sup>

In order to promote the recycling of aluminum and plastic coffee capsules, the Association came up with the Initiative and created the KCR-NL. The following producers of coffee capsules are currently involved in the Initiative: brand owners JACOBS DOUWE EGBERTS NL B.V., Nestlé Nederland B.V., Nespresso Nederland B.V. and Simon Lévelt B.V., and the private-label producers Ahold Delhaize Coffee Company B.V., Beyers Koffie B.V., CAPPAC B.V., Euro Caps B.V. and UCC Coffee Benelux B.V. Combined, these producers represent roughly 90% of the production of coffee capsules on the Dutch market.

#### *More coffee capsules recycled as a result of improved sorting*

The Initiative basically means that KCR-NL makes arrangements with waste-processing companies. One key element of those arrangements is that KCR-NL will invest in technologies (such as sorting machines) that will make it easier for waste-processing companies to pick out coffee capsules from the residual waste. Waste-processing companies sort the coffee capsules, and subsequently transport these capsules to the location where they will be recycled.

The waste-processing company monitors how many capsules are sorted and submitted for recycling.<sup>7</sup> The revenues from, for example, the sale of sorted capsules go to the waste-processing company. KCR-NL shares in the investment costs and the costs that the waste-processing company incurs for the monitoring activities. The exact contribution of KCR-NL is subject to negotiations between KCR-NL and the individual waste-processing companies. The goal is to reach individual agreements with each of the waste-processing companies.

#### *Phased approach due to fragmented waste-collection landscape in the Netherlands*

For a proper understanding of the idea behind the Initiative, it is important to explain how waste is collected in the Netherlands. At the moment, two waste-collection systems exist in the Netherlands.

- In some municipalities, waste is separated at source (or source separation). This means that residents discard their plastics, metals, and beverage cartons (PMD waste) separate from their other household waste. Residual waste that is not separated goes straight to incineration plants. Roughly 69% of the total number of coffee capsules on the Dutch market that ends up in the residual waste stream, comes from municipalities that use source separation.<sup>8</sup>
- In other municipalities, post-collection separation takes place. This means that residents do not separate their PMD waste from the other household waste streams. After collection, the PMD waste is separated from the other household waste streams through a mechanical sorting process. In this way, it is possible to recover materials before the residual waste is incinerated. This concerns roughly 31% of the total number of coffee capsules on the Dutch market.<sup>9</sup>
- Some municipalities use a combination of both systems.

The Initiative consists of two phases. The first phase is the recycling of coffee capsules from the waste streams of municipalities that use post-collection separation. KCR-NL expects that execution of the first phase will lead to a recycling percentage of 25% for aluminum coffee capsules and 20% for plastic coffee capsules, excluding any private recycling initiatives.<sup>10</sup> The expected recycling percentages vary per type of material, because the sorting methods are different. In the second phase of the Initiative, coffee capsules from the waste streams of municipalities that use source separation are included as well.<sup>11</sup> The Association

<sup>5</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.2.

<sup>6</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.4.

<sup>7</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.1.

<sup>8</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.2.

<sup>9</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.2.

<sup>10</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, Annex 1, p.14.

<sup>11</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.3.

has worked out only the first phase. Therefore, the second phase falls outside the scope of this informal assessment.

#### *Reasons for collaborating*

According to the Association, a collaboration between producers of coffee capsules is needed for several reasons. For example, waste-processing companies themselves do not invest (or only do so to a limited extent) in the required sorting machines, because coffee capsules make up only a fraction of the total waste stream (<1%). As a result, the producers individually have less strong positions vis-à-vis the waste-processing companies. In addition, no solution is possible where only a producer's own coffee capsules are targeted, because sorting machines cannot filter by specific brands. Sorting machines only filter by material. As a consequence, other producers, by definition, are free-riding on any investments made by a coffee producer. Furthermore, according to the Association, the participating producers also take responsibility as an industry for the negative effects of their capsules on climate.<sup>12</sup>

## ACM's informal assessment: restriction of competition is not plausible

The collaboration between the producers of coffee capsules is an agreement between competitors. As such, the cartel prohibition applies. According to the Association, the Initiative has a potential cross-border effect.<sup>13</sup> That is why the European competition rules apply to the Initiative, too.<sup>14</sup>

ACM has assessed whether the Initiative is a sustainability agreement, and whether there is a risk of an appreciable restriction of competition.

#### *Sustainability agreement*

The goal of the Initiative is to promote the recycling of plastic and aluminum coffee capsules. In that way, the coffee producers wish to limit the harmful effects of the production of coffee capsules on the environment and climate. As long as producers of coffee capsules are free to produce aluminum and plastic coffee capsules, the Association argues that the Initiative contributes to a circular economy.<sup>15</sup> At the moment, producers have that freedom. In 2022, the European Commission put forward a proposal to amend the rules on packaging and packaging waste.<sup>16</sup> Part of the proposal was a requirement to make coffee capsules compostable. The latest status of the proposal is that coffee capsules should not be mandatorily compostable, but should be recyclable.<sup>17</sup> Taking the current circumstances into consideration, ACM comes to the conclusion that the Initiative is a sustainability agreement.

#### *Potential anticompetitive risks*

On the basis of the above, ACM assumes that the Initiative's goal is to promote sustainability, and not to restrict competition. According to the Association, the Initiative does not have that effect either. On the basis of the information submitted by the Association, ACM follows that conclusion. In that context, ACM finds the following circumstances to be of importance, which are applicable at the time of this assessment:

- i. There is no exchange of competition-sensitive information;
- ii. There is no risk of a potential exclusion of competing producers of coffee capsules;

<sup>12</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.3 and.4; Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.1.

<sup>13</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.9.

<sup>14</sup> Article 101 of the Treaty on the Functioning of the European Union.

<sup>15</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.3.

<sup>16</sup> Proposal for a Regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, Article 8 paragraph 1 in conjunction with Article 3 paragraph 1 under f), See: [EUR-Lex - 52022PC0677 - EN - EUR-Lex \(europa.eu\)](#).

<sup>17</sup> On March 15, 2024, the European Council and the European Parliament reached a provisional agreement on the proposal, see [Packaging: Council and Parliament strike a deal to make packaging more sustainable and reduce packaging waste in the EU - Consilium \(europa.eu\)](#). See also Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.3.

- iii. There is no risk of a potential exclusion of individual waste-processing companies;
- iv. There is no risk of a price increase; and
- v. There is no risk of impediments to innovations.

ACM does see the latter risk (impediment to innovations) as a point of attention for the Association and its members. ACM will explain this below.

*(i) No exchange of competition-sensitive information*

Members of KCR-NL pay a financial fee commensurate to the degree to which they bring coffee capsules to the market. This means proportional to their market shares of coffee capsules. The financial fee is set by the general assembly on the recommendation of the board of KCR-NL. This board (currently) consists of three representatives of members.<sup>18</sup> The financial fee is calculated using data that is one year old. However, it cannot be completely ruled out that the exchange of this data may have a competitive restrictive effect.<sup>19</sup>

There is a risk that members gain insight into this information from each other, because, for the determination of the financial fee, market shares are shared. To be on the safe side, KCR-NL has therefore taken measures so that the market shares are not exchanged among members. For example, an external service provider calculates the fees, and also draws up the invoice for each member. Members submit the relevant information in connection therewith to them. The service provider subsequently sends the invoices to the independent secretary of KCR-NL. This secretary does not sit on the board, and is bound to a confidentiality agreement. The secretary then sends the invoices, and handles the payments of the members. The financial fees are wired to a separate account to which the board has no access. The board of KCR-NL does not ask or compel the secretary in any way whatsoever to grant it access (directly or indirectly) to the amounts of the financial fees.<sup>20</sup> On the basis of their own invoices, members cannot deduce any market shares of competitors, because KCR-NL has too many members for anyone to be able to do so. Due to these measures, members and board members do not gain insight into potentially competition-sensitive information, according to the Association.<sup>21</sup>

On the basis of the above, ACM agrees with the Association that sufficient safeguards are in place to prevent the exchange of competition-sensitive information among the participating producers when determining the financial fees.

*(ii) No risk of potential exclusion of competing producers of coffee capsules*

There is a potential risk that KCR-NL does not allow competing producers of coffee capsules to participate in the Initiative. According to the Association, this is merely a theoretical risk.

All producers of coffee capsules, including producers of, for example, bioplastic capsules, who want to recycle their capsules, can participate in the Initiative.<sup>22</sup> That is also the only criterion that the board uses for admitting new members: that members produce coffee capsules. According to the Association, virtually all producers of coffee capsules are currently members of KCR-NL. Moreover, KCR-NL has, according to the Association, no incentive to exclude competing producers of coffee capsules. After all, admitting new members will lead to lower costs for existing members, because the costs will be shared by more members. In addition, the Association indicates that KCR-NL membership is not needed to benefit from the improved recycling resulting from the Initiative. This is because the sorting machines of waste-processing companies cannot distinguish between coffee capsules of members and non-members.<sup>23</sup>

<sup>18</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.5-6. Additional information of the Association, dated 4 June 2024 with reference ACM/IN/877003, p.3.

<sup>19</sup> Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, recital 90. See: [EUR-Lex - 52011XC0114\(04\) - EN - EUR-Lex \(europa.eu\)](#).

<sup>20</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.6. Minutes of discussion of 11 December 2023 with reference ACM/UIT/610334, p. 4. Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.8.

<sup>21</sup> Minutes of discussion of 11 December 2023 with reference ACM/UIT/610334, p.4. Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.8.

<sup>22</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.8.

<sup>23</sup> Self-assessment of the Association of 4 December 2023 with reference ACM/IN/826154, p.11.

ACM agrees with the Association that, at the moment, there is no risk of exclusion of competing producers.

*(iii) No risk of potential exclusion of individual waste-processing companies*

There is a potential risk that individual waste-processing companies are put at a competitive disadvantage if they are excluded. The Association indicates that this is not the case. KCR-NL has no interest in excluding waste-processing companies. In fact, that would undermine the efforts of reaching the envisaged goal, which is to increase the number of coffee capsules that are recycled. For that reason, KCR-NL is in contact with all waste-processing companies that carry out the post-collection separation for municipalities. In addition, receiving a financial contribution from the Association (or not) does not have any appreciable anticompetitive effect on the waste-processing companies themselves. For example, it is not necessary for a waste-processing company to receive financial contributions by KCR-NL in order to carry out its activities in a competitive manner, according to the Association.

ACM agrees with the Association that, because of said reasons, there is no risk of exclusion of individual waste-processing companies, and of a restriction of competition between individual waste-processing companies.

*(iv) No risk of a price increase*

When implementing the Initiative, KCR-NL and, by extension, its members will incur costs. In that context, there is a risk that KCR-NL members pass on the cost increase to consumers, and that they make arrangements about this. ACM has asked the Association questions about this. The Association believes that there is no risk of a joint price increase, for the following reasons.

First, the investment costs are but a fraction of the total costs. The Association indicates that the investment costs come down to a cost increase per member of approximately EUR [confidential] per 1,000 coffee capsules, so EUR [confidential] per capsule. At a retail price of, for example, EUR 3.99 for 10 coffee capsules, the fee for KCR-NL is [confidential]% of the retail price.<sup>24</sup> That amount is so low that, according to the Association, the likelihood of a price increase is negligible. Second, the Association indicates that each member decides for itself whether or not it passes on the cost increase to consumers. The participating producers do not make arrangements about this, and do not exchange any information about this either. Third, the Association doubts whether individual participating producers will be able to pass on the cost increase. According to the Association, the coffee-capsule producers compete fiercely on price.<sup>25</sup>

Taking into consideration the above, ACM agrees with the Association that there is no risk of a price increase.

*(v) No risk of impediment to innovations*

The Initiative offers sustainability benefits because of higher levels of recycling than is currently the case. At the same time, the Initiative should not be seen as the upper limit of what is feasible within the context of the efforts to make coffee capsules more sustainable. ACM finds it important that producers continue to have incentives to invest in possibly more-sustainable options. That is why ACM has asked the Association as to whether the Initiative may impede innovations.<sup>26</sup>

The Association has indicated that the Initiative does not act as an impediment to sustainable (or more-sustainable) alternatives. Members are free to choose alternative packaging materials. The Association additionally points out that there is no minimum percentage or minimum volume of plastic or aluminum capsules for participating in the Initiative. KCR-NL members are free to take other sustainable (or more-sustainable) steps. For example, several KCR-NL members currently already produce compostable coffee

<sup>24</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.6.

<sup>25</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.5; Additional information of the Association, dated 4 June with reference ACM/IN/877003, p.3.

<sup>26</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.1-5.

capsules, and several other members have announced to introduce compostable coffee capsules. In addition, the Association indicates that explorations are underway to see if coffee-capsule recycling technologies can be improved.<sup>27</sup>

On the basis of this information, ACM agrees with the Association that, at the moment, there is no risk of impeding innovation with regard to the recycling of coffee capsules.

In that context, ACM notes that, at the moment, current insights and developments regarding sustainable coffee capsules are not unequivocal, and are subject to change. The Association argues, for example, that there is no academic consensus on what packaging material is the most sustainable. With regard to compostable capsules, the Association says that such capsules currently also end up in the residual waste.<sup>28</sup> A study by Wageningen University & Research confirms this.<sup>29</sup>

ACM gives the Association a point for attention, which is to ensure that the Initiative has no negative effect on investments in making coffee capsules more sustainable in ways other than through recycling. ACM finds it important that producers of coffee capsules continue to keep a close watch on the relevant trends and developments in sustainability. ACM in the future may ask KCR-NL and/or her members for information about innovations and the latest developments in this area.

## Conclusion

On the basis of the information submitted by the Association, ACM comes to the conclusion that it is plausible that, at the moment, the Initiative does not carry a risk of an appreciable restriction of competition. That is why ACM will not conduct a (further) investigation into the Initiative. ACM points out that this is an informal assessment. ACM assumes that the information submitted by the Association is correct, and did not conduct an investigation of its own.

ACM may decide to investigate the Initiative in greater detail at some point in the future, for example, if ACM receives a complaint about the Initiative. After such an investigation, ACM may come to the conclusion that the Initiative is, in fact, at odds with the competition rules. In that case, ACM will not impose a fine if the Association did inform ACM in good faith, and if the Association cooperates with the subsequent adjustment process to bring the Initiative in line with said rules.<sup>30</sup>

Kind regards,

The Netherlands Authority for Consumers and Markets,  
On its behalf,

Remko Bos  
Director  
Competition Department

<sup>27</sup> Self-assessment of the Association, dated 4 December 2023 with reference ACM/IN/826154, p.5. Additional information of the Association, dated 4 June 2024 with reference ACM/IN/877003, p.3.

<sup>28</sup> Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.4.

<sup>29</sup> Report of Wageningen University & Research: Sustainability Assessment of Different Types of Coffee Capsules, p.7. See: <https://research.wur.nl/en/publications/sustainability-assessment-of-different-types-of-coffee-capsules>. Additional information of the Association, dated 18 April 2024 with reference ACM/IN/876839, p.4.

<sup>30</sup> Policy Rule, recital 40.