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Summary

This dissertation proposes and develops a legal framework for a competition complaint as a means of addressing the enforcement deficit in animal welfare law within the livestock sector. With the proposed competition complaint, companies, in their capacity as competitors, are enabled to enforce animal welfare law against co-competitors who gain an “advantage through breach of law”. The subject of the dissertation is a competition complaint in a public-law context and therefore in a tripartite constellation, involving the plaintiff (a competitor), the defendant (a public authority), and the interested party (co-competitor).

The finding that animal welfare law in the livestock sector is inadequately enforced by the authorities prompts consideration of introducing supplementary legal enforcement instruments. The causes of the enforcement deficit discussed thus far are therefore systematically presented and categorized in order to develop the competition complaint under animal welfare law on this basis. This will show that the basic mechanism of the complaint is linked to the cause referred to as the “conflict of objectives between animal welfare and economic efficiency”. A further reason for the proposal may be the fact that competitors are not granted any corresponding legal opportunities to enforce animal welfare law under current law.

The enactment of a competition complaint under animal welfare law by the federal legislator may be grounded in Art. 74 para. 1 no. 11 (law of the economy) and no. 20 German Basic Law (animal welfare), considering both its animal welfare and competition dimensions. Thereby, the proposal upholds the standards set by the necessity clause in Art. 72 para. 2 var. 3 German Basic Law (economic unity). In substance, the competitor action, though it permits a quasi-objective review by administrative courts initiated by third parties, remains compatible with the systematic individualistic orientation of the German system of administrative court review (Art. 19 para. 4 sentence 1 German Basic Law). Finally, it does not violate the fundamental rights (Art. 12 para. 1, Art. 14 para. 1 German Basic Law) of potentially burdened co-competitors.

The specific structure of the competition complaint is based on a theoretical conception, i.e. on certain fundamental choices made at a more abstract level. It is first clarified that the competition complaint builds on a pattern of distortion between competitors, a dynamic particularly known from civil competition law and commonly as an “advantage through breach of law”. This means that the violations of animal welfare law by a co-competitor can lead to cost savings and, as a result, to a competitive advantage for the infringing co-competitor. This dynamic places pressure on previously law-abiding competitors to also violate the law in order to remain competitive and avoid market exclusion. In this context, animal welfare law functions as a competitive condition that applies to all competitors. The dynamic of impairment, which is intended to encourage the competition complaint, can also be understood (non-technically) as an implicit subsidy, drawing attention to the authority’s role in distorting competition (i.e. through the failure to enforce animal welfare law).

The proposal is then embedded in the broader context of the mobilization of private actors in support of more effective enforcement of the law, a trend that is largely shaped by European legal developments. On a more technical legal level, this corresponds to the classification of the competition complaint within the framework of functional subjectivization, i.e. the legislative choice to grant subjective rights based on considerations serving the public interest. Taking into account the causes of the enforcement deficit, it is then demonstrated that the competition complaint can contribute to a realignment of interests between economic and animal welfare objectives, facilitate an increased flow of information, and promote increased voluntary compliance with legal norms. This approach is grounded in a conception of competitors not as advocates for animal welfare, but as self-interested, rational market actors – a view which is also supported by economic analysis of law perspectives. In this context, it is also considered whether the introduction of such a competition complaint might foster cooperation between animal welfare organizations and certain segments of the livestock industry, potentially resulting in forms of strategic litigation. At this more abstract level, the anthropocentric structure – i.e. the treatment of animal welfare violations as a category of market distortion – is also critically examined through the lens of various ethical and strategic approaches. Finally, it is demonstrated that the frequently cited concern about the outsourcing of animal suffering, which arises in debates on stricter domestic animal welfare standards, does not hold up.

In the concrete formulation, a key premise for assessing the admissibility and merits of the competition complaint is first established: it should be grounded not in substantive, but in autonomous subjective public procedural law. Building on this and on the previous sections, various practical considerations are anticipated and addressed – such as the burden of substantiation when filing an action. Regarding legal standing, the decisive factor is the element of competitive disadvantage, which reflects the concept of impairment through an “advantage through breach of law”. However, this disadvantage is presumed – thus conferring privileged standing – where a sufficiently close competitive relationship exists.

As a result of the dissertation, a draft provision for a competition complaint under animal welfare law is then proposed as a new § 16b Animal Welfare Act:

§ 16b TierSchG

(1) A company may, in accordance with the provisions of the Code of Administrative Court Procedure, bring an action before an administrative court against measures or omissions by public authorities concerning livestock-related companies, without the need to assert a violation of its own subjective rights. §

(2) The action shall be admissible only if the company asserts that the authority’s measure or omission is likely to distort competition to its disadvantage, due to the livestock-related company’s violation of legal obligations relating to the welfare of farm animals. The suitability to cause competitive disadvantage shall be presumed where a direct competitive relationship exists between companies.

(3) The action shall be justified if the authority’s measure or omission constitutes a violation of animal welfare provisions to the detriment of farm animals.