



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-671/15
President of the Autorité de la concurrence v Association des producteurs
vendeurs d'endives (APVE) and Others

According to Advocate General Wahl, agricultural producer organisations and their associations may be held liable for agreements, decisions or concerted practices contrary to EU law

That is the case, in particular, where concertation on prices or on the quantities placed on the market and exchanges of information occur between several (associations of) producer organisations or between such bodies and other types of operators on the market

In 2007, the French competition authorities discovered practices that they considered anticompetitive in the endive production and marketing sector. Those practices, implemented by producer organisations (POs), associations of producer organisations (APOs) and various bodies and companies, consisted, in essence, of concertation on the price of endives and the quantities of endives placed on the market as well as the exchange of strategic information.

The producer organisations and the other penalised entities brought an action before the French courts contesting the fine of almost €4 million imposed on them, arguing that their practices did not fall within the scope of the prohibition of anticompetitive agreements, decisions and concerted practices under EU law. They maintained that producer organisations and their associations are tasked, under EU law,¹ with stabilising producer prices and adjusting production to demand. The performance of that task therefore justified the practices deemed anticompetitive by the French authorities.

The Cour de cassation (Court of cassation, France), before which the matter was brought, has asked the Court of Justice to clarify the issue.

In today's Opinion, Advocate General Nils Wahl notes, first of all, that the POs and APOs have, among other tasks, the general objective of adjusting production to demand, reducing the costs of production and stabilising producer prices. Thus, the POs and APOs are required to play a decisive role in centralising the marketing of their members' products and are, in essence, forums for collective concertation.

Since the objectives of the Common Agricultural Policy (CAP) take precedence, under the FEU Treaty, over the objectives of competition, **certain actions taken by the POs and the APOs, which are strictly necessary for the fulfilment of their tasks, may escape the application of competition law.** In order to carry out the tasks assigned to them by the EU legislature, those organisations have to put in place forms of coordination and concertation which are not covered by market principles and which are therefore inconsistent with the idea of competition. The pursuance

¹ Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ 1962 30, p. 993); Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables (OJ 1996 L 297, p. 1); Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products (OJ 2006 L 214, p. 7); Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96 (OJ 2007 L 273, p.1); Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

of such objectives therefore means that the PO or APO concerned must have proper control over the conditions of sale and, in particular, sale prices.

However, the Advocate General considers **that it is not sufficient that the measures taken by the POs and APOs in some way help them to fulfil the tasks assigned to them by the EU legislature for those measures to escape the application of competition law**. Only practices relating to the tasks specifically assigned to the POs, APOs and professional organisations in charge of marketing the products concerned should escape the application of the competition rules.

Thus, according to the Advocate General, **for the practices in question to escape the application of competition law**, it must be established that **they have indeed been adopted *within* a PO or an APO** actually in charge of managing the production and marketing of the product concerned. Practices adopted *within* a PO or APO are comparable to those adopted within a company or group presenting itself, on the market in question, as a single economic entity. Such '**internal**' practices are not subject to the application of competition law.

However, **practices occurring *between* POs, *between* APOs, within entities not responsible for marketing for their members or *between* a PO/APO and other types of operators on the market must be subject to the rules on competition**, since those practices operate between economic entities which are supposed to be independent. It follows that, apart from the intervention measures strictly provided for by the EU legislature, concertation on prices, on quantities produced and on the dissemination of sensitive commercial information between different POs or APOs, or within an entity which has not been put in charge of marketing products by its members cannot escape the application of competition law.

The Advocate General then examines the facts relating to the alleged cartel on the French endive market. As regards, first of all, the **concertation on the prices of endives**, the Advocate General takes the view that a policy of fixing a **minimum price** between producers cannot escape the prohibition of anticompetitive agreements, decisions and concerted practices under EU law, whether that policy is determined between different POs/APOs, or within the same PO or APO. The POs and APOs are responsible for negotiating with operators downstream of the industry (distributors) a *single price* applicable to all of the production and variable depending on marketing periods and the quality of the product concerned. However, the fixing, within a PO or APO, of a *minimum price* that cannot be varied would, by definition, not have any point.

As regards, next, the **concertation on the quantities placed on the market**, the Advocate General takes the view that such concertation, within a PO or an APO in the context of production plans provided for in EU legislation, may, where it is genuinely intended to regulate production in order to stabilise the prices of the products concerned, escape the application of competition law. However, concertation between several POs and APOs, intended to limit and generally control the quantities placed on the market throughout the entire endive market and, consequently, to limit production over the long term (as appears to be the case here), does not escape the application of the competition rules.

Lastly, as regards the **exchange of strategic information**, the Advocate General considers that the tasks assigned to the POs and APOs necessarily involve exchanges of strategic information internally, with the result that the competition rules will generally not be applicable within a PO/APO. However, exchanges of information consisting in the communication of prices between POs, APOs and other competing entities (which appears to be the case here) cannot be linked to the tasks assigned to POs/APOs and are therefore subject to the principle of the prohibition of anticompetitive agreements, decisions and concerted practices.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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