



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 120/17
Luxembourg, 14 November 2017

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

Concertation on price and quantities between several organisations of agricultural producers and associations of such organisations may constitute an agreement, decision or concerted practice for the purposes of competition law

However, such practice is permitted within the same producer organisation or association of producer organisations if it is proportionate to the objectives assigned to that organisation

In 2012, the French Competition Authority imposed sanctions on practices considered to be 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 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, in so far as they come under the common agricultural policy. They submit, *inter alia*, that producer organisations and their associations are tasked, under EU law,¹ with stabilising producer prices and adjusting production to demand.

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 judgment, the Court notes first of all, that, under the Treaty on the Functioning of the European Union (TFEU), **the common agricultural policy (CAP) has precedence over the objectives of competition**, with the result that the EU legislature may exclude from the scope of competition law certain practices which, outside the scope of the CAP, would have to be regarded as anticompetitive. In particular, in the fruit and vegetables sector, the necessary practices for POs and APOs to achieve one or more of the objectives assigned to them under EU law (namely, ensuring that production is planned and adjusted to demand, concentrating supply and placing the products produced on the market as well as optimising production costs and stabilising producer prices) may escape the prohibition of agreements, decisions and concerted practices laid down in the TFEU.

However, the Court also observes that **the common organisations of the markets in agricultural products are not a competition-free zone.**

¹ Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ English Special Edition 1962 (I), p. 129); 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).

On that basis, the Court concludes, first of all, that **the practices adopted within an entity not recognised by a Member State in pursuance of one of the objectives assigned to POs and APOs cannot escape the prohibition of agreements, decisions and concerted practices** (only the entities duly recognised by Member States are entitled to implement the objectives of the common organisation of the market concerned).

Next, the Court states that, when **practices are applied by a PO or an APO duly recognised by a Member State**, such practices **must remain solely within that PO or APO in order to escape the prohibition of agreements, decisions and concerted practices**. Indeed, the responsibilities assigned to a PO or an APO may justify certain forms of coordination or concertation only between producers that are members of the same PO or APO recognised by a Member State. It follows that agreements or concerted practices that are not agreed within a PO or an APO, but between several POs and/or APOs, go beyond what is necessary in order to fulfil those responsibilities.

The Court concludes that practices established between several POs or APOs and, all the more so, practices involving not only such POs or APOs but also entities not recognised by a Member State in the context of the implementation of the CAP in the sector concerned cannot escape the prohibition of agreements, decisions and concerted practices.

With regard to practices agreed between producers that are members of the same PO or APO recognised by a Member State, the Court notes that **only practices that are actually and strictly connected to the pursuit of the objectives assigned to the PO or APO concerned can escape the prohibition of agreements, decisions and concerted practices**. That may be the case, inter alia, of **exchanges of strategic information**, the **coordination of the quantities of agricultural products** put on the market and the **coordination of the pricing policy** of individual agricultural producers, if those practices in fact seek to achieve, and are strictly proportionate to, the objectives assigned to the POs/APOs concerned.

By contrast, the collective fixing of minimum sale prices within a PO or an APO cannot be considered to be proportionate to the objectives of stabilising prices and concentrating supply, if it does not allow producers selling their own products themselves to do so at a lower price than those minimum prices and has the effect of reducing the already low level of competition in the markets for agricultural products.

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 judgment is published on the CURIA website on the day of delivery.

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