



Derogations from competition rules in the CMO regulation

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Normas de competencia y su aplicación al sector agrario
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Rules on competition

Cartels

Mergers

Abuse of dominance

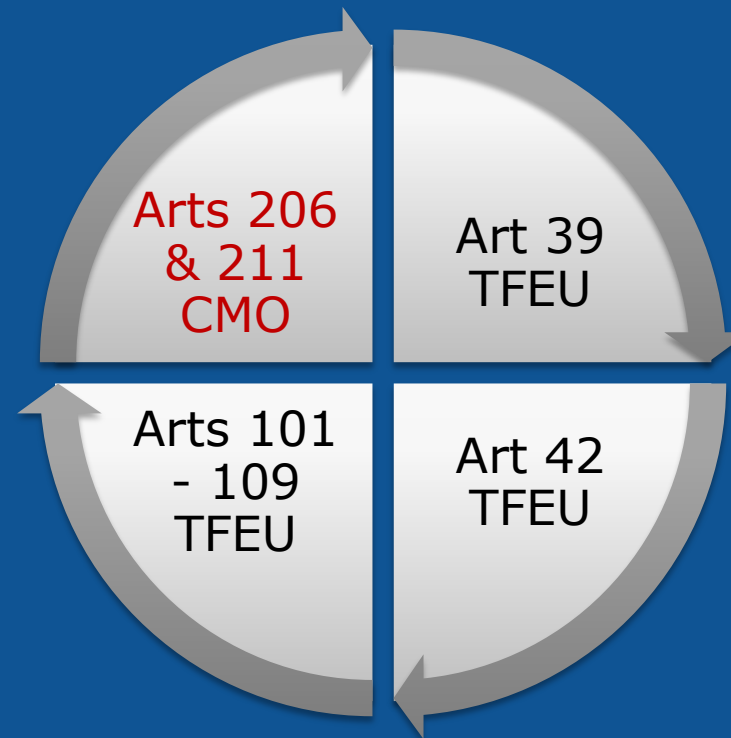
State aids



*Inter Member
State effect*

The CAP and competition law

Increased importance
due to reformed CAP





Selective ECJ case law

- Precedence of CAP objectives over competition law (C-137/00, *Milk Marque*)
- Agriculture is no competition free space (C-137/00, *Milk Marque*)
- Exceptions to be interpreted restrictively (Judgment, *Oude Luttikhuis*, 1995, paragraph 23)
- *Endives* case pending (C-671/15, *APVE*)



CAP policy goals re producer cooperation

Induce producers to cooperate economically

Strengthen producers' bargaining power by enabling them to concentrate supply

Relevant CMO provisions

33, 160
Fruit & veg

125, sugar

149, fresh
milk

150,
cheese

152, POs
general

167, wine

169-171,
sectoral

172, ham

209,
general ag
derogation

210, IBOs

222, crisis
cartel



Examples of collective producer activities

"Production planning and adjustment to demand"

- Exchange of information

"Concentration of supply"

- Joint selling
- Collective negotiation

"Optimising production costs"

- Integration of economic activities

Concepts & terms

- Transfer of property
- Putting on the market (commercialising)
- Concentrating supply
- Parties to the legal contract
- Principal/agent
- Negotiating "on behalf of"
- Charging an identical price
- Acting (selling) like a single undertaking
- Joint selling
- Collective bargaining
- "Governance" PO
- "Economic" PO - significant efficiencies
- Elimination of competition

.... and practice



Cooperatives I

associations of farmers “belonging to a single Member State”.

- the arrangements may not involve an obligation to charge identical prices. This essentially implies that traditional price fixing cartels will be prohibited. On the other hand, it is not intended to prevent farmers who sell their products via the co-operative from receiving pro rata the same price for their products.
- the arrangements shall not exclude competition.

M. Monti, *The relationship between CAP and competition policy* □ *Does EU competition law apply to agriculture ?*,
Speech 2003 at COGECA Conference



Cooperatives II

agreement involves farmers and/or their associations exclusively; an agreement involving farmers and dealers cannot benefit from it,⁵⁵⁴ whereas obligations arising between a farmer and a farming cooperative to which he belongs will be capable of doing so.⁵⁵⁵ The condition requiring there to be no obligation in the agreement to charge identical prices is probably intended to prevent price-fixing cartels of the ordinary kind, for example an agreement between farmers not to sell their cattle to slaughterhouses below a minimum price; it should not apply to an arrangement whereby producers selling through a cooperative receive proportionally the same realised price for their produce.⁵⁵⁶ Finally, this exception does not apply if the Commission finds that competition is excluded or that the objectives of Article 39 are jeopardised. Hence the combination of clauses in

Bellamy and Child: European Union Law of Competition (7th Edition, 2013), 12.157

Cooperatives in Germany

Wettbewerb ausgeschlossen oder die Ziele des Art. 39 AEUV gefährdet werden. Der Satz 2 des Art. 2 Abs. 1 war im ursprünglichen Kommissionsvorschlag (zur VO (EG) Nr. 26/1962) nicht enthalten. Er wurde eingefügt auf Veranlassung der deutschen Delegation, die auf diese Weise sicherstellen wollte, dass Kartellabsprachen landwirtschaftlicher Genossenschaften auf jeden Fall unter die Bereichsausnahme des Art. 2 Abs. 1 Satz 1 2. Alternative fallen.⁹⁶ Er stellt eine Vermutung zugunsten von Kartellabsprachen landwirtschaftlicher Erzeugerbetriebe und deren Vereinigungen dar, die nur unter bestimmten Voraussetzungen entkräftet werden kann (s. oben C Art. 2 Rdnr. 14 f.). Von Art. 2 Abs. 1 Satz 1 VO (EG) Nr. 1184/2006 und von Art. 176 Abs. 1. Satz 1 VO (EG) Nr. 1234/2007 unterscheidet sich die Ausnahme des jeweiligen Satzes 2 in

Immenga/Mestmäcker, EU Wettbewerbsrecht, 5. Auflage 2012



POs & transfer of property (France)

On notera d'emblée que les OP auxquelles leurs adhérents transfèrent la propriété de leurs productions en vue de leur mise en marché évitent le grief d'entente sur un prix unique dès lors que ces adhérents ne s'accordent alors pas sur un prix déterminé et restent dans un état d'incertitude (principe au cœur du dispositif concurrentiel) quant au prix auquel leur production sera valorisée sur le marché.

a) Les OPNC sans transfert de propriété sont en revanche exposées à des poursuites au

Conseil général de l'alimentation, de l'agriculture et des espaces ruraux, March 2012



Article 149 CMO - contractual negotiations in the milk and milk products sector

1. A producer organisation in the milk and milk products sector which is recognised under Article 152(3) may negotiate on behalf of its farmer members, in respect of part or all of their joint production, contracts for the delivery of raw milk by a farmer to a processor of raw milk, or to a collector



Article 152 CMO - producer organisations

Member States may, on request, recognise producer organisations [which] pursue a specific aim which may include at least one of the following objectives:

- (i) ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity;
- (ii) concentration of supply and the placing on the market of the products produced by its members, including through direct marketing;
- (iii) optimising production costs and returns on investments in response to environmental and animal welfare standards, and stabilising producer prices; ...



Articles 169-170 CMO - contractual negotiations

- Negotiation of supply contracts by a recognised PO or Association of Producer Organisations (APO) "on behalf" of members
- Product definition
- Quantitative thresholds
- Overall contribution to the fulfilment of the objectives of Article 39 TFEU
- Integration of certain listed activities
- Significant efficiencies
- Role of competition authorities



Article 206 CMO - Commission guidelines on the application of competition rules to agriculture

Save as otherwise provided in this Regulation, and in accordance with Article 42 TFEU, Articles 101 to 106 TFEU and the implementing provisions thereto shall, subject to Articles 207 to 210 of this Regulation, apply to all agreements, decisions and practices referred to in Article 101(1) and Article 102. [...]



Article 209 CMO - Exceptions for the objectives of the CAP and farmers and their associations

Article 101(1) TFEU shall not apply to agreements [...] which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, unless the objectives of Article 39 TFEU are jeopardised.

This paragraph shall not apply to agreements, decisions and concerted practices which entail an obligation to charge an identical price or by which competition is excluded.



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