



2018/2102(INI)

23.11.2018

OPINION

of the Committee on Agriculture and Rural Development

for the Committee on Economic and Monetary Affairs

on the Annual Report on Competition Policy
(2018/2102(INI))

Rapporteur for opinion: Angélique Delahaye

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SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas EU competition law is designed for the secondary and tertiary sectors;
- B. whereas Article 42 of the Treaty on the Functioning of the European Union (TFEU) states that rules on competition apply to the production of and trade in agricultural products only to the extent determined by the European Parliament and the Council, given the agricultural sector's unique characteristics and importance; whereas in January 2016, the Commission set up an expert group (the Agricultural Markets Task Force or the AMTF) with a view to improving the position of farmers in the food chain; whereas in its final report of November 2016, the AMTF made suggestions, inter alia, on how to strengthen market transparency, improve contractual relations within the chain and develop legal possibilities for organising collective action by farmers; whereas, given the specific natural and structural characteristics of agriculture, the European legislator has, since 1962, consistently defended the principle of granting a special status to the agricultural sector in the application of competition law, given that that law cannot be applied to this economic sector in the same way as other sectors;
- C. whereas the TFEU and EU jurisprudence assign primacy to the common agricultural policy (CAP) over competition law;
- D. whereas Article 39 TFEU gives the CAP the objective of ensuring a fair standard of living for the agricultural community and for those in Europe's rural areas, in particular by boosting the individual income of persons working in agriculture, and of stabilising the markets and safeguarding supplies;
- E. whereas the future CAP should likewise aim to foster a smart, resilient and diversified agricultural sector that ensures food security, to bolster environmental care and climate action and contribute to the Union's environment- and climate-related objectives, and to strengthen the socio-economic fabric of rural areas;
- F. whereas the 2013 CAP reform, the Omnibus revision and the Commission's 2018 proposals aim to strengthen the position of farmers in the food supply chain;
- G. whereas the specific objectives of the directive on unfair trading practices in business-to-business relationships in the food supply chain seek to maintain market stability, enhance agricultural producers' income and improve agricultural competitiveness; whereas the Commission's proposal to tackle unfair trading practices in the business-to-business food supply chain is a vital step in rebalancing power within the chain and bringing transparency to the buyer-supplier relationship and in achieving a more sustainable and competitive food supply chain for the benefit of farmers, consumers and the environment;
- H. whereas there has been a trend of consistently rising prices of agricultural inputs over

recent decades¹, while the farm gate prices that farmers receive for their produce have stagnated;

- I. whereas the ‘agricultural exception’ has become more relevant in the context of a market-oriented CAP and the increasing globalisation of agricultural markets, and should continue to be taken into account in the design and implementation of policies and the monitoring of compliance therewith by the Commission and the national competition authorities;
 - J. whereas the agricultural component of the regulation on the financial rules applicable to the general budget of the Union (Omnibus Regulation) is an important step forward for the CAP, given that it sets out an explicit derogation from the application of Article 101 TFEU for producer organisations;
 - K. whereas the request made to the Court of Justice of the European Union for a preliminary ruling in Case *Président de l’Autorité de la concurrence v Association des producteurs vendeurs d’endives (APVE) and Others* shows that producers, producer organisations and associations of producer organisations need greater legal certainty in the exercise of their activities², in particular given that this sector is characterised by highly fragmented supply, concentrated demand and difficulties in controlling supply and predicting demand; whereas the Court of Justice judgment concerning the application of competition rules to producers and producer organisations is of crucial importance in clarifying the implicit derogations connected with the work of producer organisations;
1. Points out that EU competition policy is not achieving the desired results because, while it is applied with the aim of defending fair competition between all actors on the internal market, with special emphasis on the interests of consumers, the reality is that due to the inequalities within the food supply chain, agricultural producers face an unacceptable degree of pressure; considers that the interests of both consumers and agricultural producers should be placed on an equal footing;
 2. Takes the view that the specific characteristics of agricultural activities make collective organisations essential to strengthen the position of primary producers in the food chain and to enable the attainment of the objectives of the CAP, as defined under Article 39 TFEU, and that collective activities carried out by producer organisations and their associations – including production planning, sales negotiation and contractual arrangements – must therefore be considered compatible with Article 101 TFEU; stresses that bringing farmers together in producer organisations reinforces their position in the supply chain;
 3. Considers that the interbranch organisations model is a successful form of sectoral management, given that it provides a structure for – and organises exchanges between – all players in the sector, fairly represented within its structure, by making it possible to transmit economic and technical information, to enhance market transparency and to

¹ Eurostat data on price indices of agricultural products (apri_pi); see also recital B of European Parliament resolution of 19 January 2012 on the farm input supply chain: structure and implications (OJ C 227 E/3, 6.8.2013).

² Judgment of the Court of Justice of 14 November 2017, *Président de l’Autorité de la concurrence v Association des producteurs vendeurs d’endives (APVE) and Others*, C-671/15, ECLI:EU:C:2017:860.

better distribute risks and benefits; considers that different, properly structured models of cooperation, such as the present one, should be facilitated by the CAP to ease the creation of interbranch organisations at European level;

4. Considers that, in line with the current trend, the competences of producer and interbranch organisations need to be further strengthened so that farmers' bargaining power to negotiate could be balanced with the negotiating power of retailers in the food supply chain; considers that EU co-financing for the establishment and operation of these organisations should be increased;
5. Calls on the Commission to facilitate the application of collective market-management instruments in the event of a crisis, using tools that do not require public funds, such as product withdrawals carried out by means of agreements among food chain operators; points out that such a measure could be applied by the interbranch organisations themselves;
6. Considers that the entry onto the European market of products from third countries which do not meet the same social, health and environmental standards creates unfair competition for European producers; calls, therefore, for the protection of vulnerable sectors and the systematic application of the principles of reciprocity and compliance as regards agricultural products in both future and ongoing trade negotiations; calls on the Commission to integrate this aspect into the Brexit negotiations;
7. Emphasises that access to the EU's internal market should be contingent on compliance with sanitary, phytosanitary and environmental standards; asks the Commission, in order to guarantee fair competition, to promote the equivalency of measures and controls between third countries and the EU in the area of environmental and food safety standards; notes that the highest standards of environmental and animal welfare can mean higher costs and hence that lowering standards can result in anti-competitive behaviour; recommends that the Commission explore ways of extending the scope of competition policy to prevent such dumping within the single market and from imports into the single market;
8. Calls on the Commission to take into account the effect on farmers, given their fragile financial circumstances and fundamental role in our society, of market distortions arising from trade agreements with third countries, since agricultural markets are typified by intense agricultural price volatility, which exacerbates farmers' weak position in the food chain;
9. Points out that climate disasters, which affect farmers, have an impact on the market and weaken farmers' position in the food supply chain; recalls that EU anti-dumping rules³ that apply, inter alia, to the agricultural sector consider that environmental dumping creates unfair competition; requests that the interests of European citizens demanding a sustainable and environment-friendly society be taken into account; calls, therefore, on the Commission, taking into account the functioning of the single market and the benefits for society as a whole, to allow exemptions from competition rules to facilitate cooperation, both horizontally and vertically, in the context of sustainability initiatives;

³ COM(2013)0192.

10. Stresses that the concept of a 'fair price' should not be regarded as the lowest price possible for the consumer, but instead must be reasonable and allow for the fair remuneration of all parties along the food supply chain; stresses that consumers have interests other than low prices alone, including animal welfare, environmental sustainability, rural development and initiatives to reduce antibiotic use and stave off antimicrobial resistance, etc.; encourages Member States' competition authorities to take account of consumer demand for sustainable food production, which requires that greater account be taken of the value of 'public goods' in food pricing; requests, in this regard, that EU competition policy look beyond the lowest common denominator of 'cheap food'; considers that the costs of production must be taken fully into account when agreeing prices in contracts between retailers/processors and producers with the intention of ensuring prices that at least cover costs;
11. Reiterates the proposal that the provisions of Regulation (EU) No 1308/2013 (Single CMO Regulation) authorising the introduction of supply control measures for cheeses with a protected designation of origin (PDO) or a protected geographical indication (PGI) (Article 150), for hams with PDOs or PGIs (Article 172) and for wines (Article 167) should be extended to other quality branded products in order to make it easier to adapt supply to demand;
12. Stresses that, in order to rule out restrictive interpretations, the concept of 'relevant market' in the Commission's assessment must be redefined and understood as meaning the whole of the sector concerned;
13. Emphasises that the proposed cap on direct payments may seriously affect the competitiveness of medium-sized farms;
14. Welcomes the fact that the Omnibus Regulation creates a procedure under which a group of farmers can request a non-binding opinion from the Commission on the compatibility of a collective action with the general derogation from the competition rules referred to in Article 209 of the Single CMO Regulation; calls on the Commission, in the light of the recommendation of the Working Party on Agricultural Markets, to clarify the scope of the general agricultural derogation and its overlap with the derogations provided for under Articles 149 and 152, and thus to define exceptions more precisely, so as to make any necessary suspension of the application of Article 101 TFEU applicable and achievable;
15. Points out that the individual ceiling for *de minimis* aid in the agricultural sector was doubled in 2013 (from EUR 7 500 to EUR 15 000) in order to help cope with the surge in climatic, health and economic crises; points out that, at the same time, the national *de minimis* ceiling has been only marginally adjusted (from 0.75 % to 1 % of the value of national agricultural production), which has reduced states' power to help farms in difficulty; supports, therefore, the Commission's proposal to give more flexibility to the Member States and regions via the agricultural *de minimis* rules;
16. Supports the Commission proposal to give Member States more flexibility by relaxing state aid rules in the agricultural sector in an effort to encourage farmers to voluntarily make precautionary savings, in order to better cope with the increase in risks to the climate and health and to the economy;
17. Welcomes the developments brought about by the Omnibus Regulation, in order to

facilitate the application of the provisions of Article 222 of the CMO Regulation, which allows for a temporary derogation from competition laws; calls, nevertheless, on the Commission to clarify the application of Articles 219 and 222 of Regulation (EC) No 1308/2013 with regard to taking steps in the event of market disturbances and severe market imbalances, given that the legal uncertainty currently surrounding both articles means that no one is applying them for fear of failing to comply with rules laid down by the competition authorities in the Member States;

18. Stresses that, during periods of severe market imbalances, when the agricultural sector is at risk and all citizens are affected by the potential damage to the supply of basic foodstuffs, a market-oriented CAP must support farmers and grant additional, time-limited and fully justified exemptions from competition rules for agreements and decisions between farmers, producer organisations, their associations and recognised interbranch organisations; takes the view, furthermore, that it must be made possible for Article 164 of the CMO Regulation to extend the rules of agreements or decisions taken within recognised agricultural organisations under Article 222 of the CMO Regulation;
19. Recalls that significant horizontal and vertical restructuring has taken place, which has led to further consolidation in the already concentrated seed, agro-chemical, fertiliser, animal genetics and farm machinery sectors, as well as in processing and retailing; calls on the Commission to ensure, in this context and following the acquisition of Monsanto by the Bayer group, which together control approximately 24 % of the global pesticide market and 29 % of the global seed market, that the interests of EU farmers, citizens and the environment are protected, by comprehensively and holistically assessing the impact, at farm level, of mergers and acquisitions of agricultural input suppliers, including producers of plant protection products, so that farmers can have access to innovative products of better quality, with less environmental impact and at competitive prices; highlights that such mergers and acquisitions could potentially damage competition in the field of access to essential products for farmers; takes the view that the marketing standards for seed and plant propagating material for minor use should be eased and made more flexible.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	22.11.2018
Result of final vote	+: 31 -: 0 0: 3
Members present for the final vote	Clara Eugenia Aguilera García, Eric Andrieu, Daniel Buda, Nicola Caputo, Jacques Colombier, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Norbert Erdős, Luke Ming Flanagan, Karine Gloanec Maurin, Esther Herranz García, Jan Huitema, Peter Jahr, Jarosław Kalinowski, Norbert Lins, Philippe Loiseau, Mairead McGuinness, Giulia Moi, Ulrike Müller, James Nicholson, Maria Noichl, Maria Lidia Senra Rodríguez, Ricardo Serrão Santos, Marc Tarabella
Substitutes present for the final vote	Angélique Delahaye, Maria Heubuch, Anthea McIntyre, John Procter, Sofia Ribeiro, Annie Schreijer-Pierik
Substitutes under Rule 200(2) present for the final vote	Stanisław Ożóg, Monika Vana

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

31	+
ALDE	Jan Huitema, Ulrike Müller
ECR	Anthea McIntyre, James Nicholson, Stanisław Ożóg, John Procter
ENF	Jacques Colombier, Philippe Loiseau
PPE	Daniel Buda, Michel Dantin, Angélique Delahaye, Albert Deß, Herbert Dorfmann, Norbert Erdős, Esther Herranz García, Peter Jahr, Jarosław Kalinowski, Norbert Lins, Mairead McGuinness, Sofia Ribeiro, Annie Schreijer-Pierik
S&D	Clara Eugenia Aguilera García, Eric Andrieu, Nicola Caputo, Paolo De Castro, Karine Gloanec Maurin, Maria Noichl, Ricardo Serrão Santos, Marc Tarabella
Verts/ALE	Maria Heubuch, Monika Vana

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EFDD	Giulia Moi
GUE/NGL	Luke Ming Flanagan, Maria Lidia Senra Rodríguez

Key to symbols:

+ : in favour

- : against

0 : abstention