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Co-operating to Compete: The New Agriculture Antitrust Guidelines

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Conference on Antitrust Guidelines in the Agricultural Sector

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Competition

Co-operating to Compete: the New Agriculture Antitrust Guidelines

Today, we will discuss the new competition rules in the agricultural sector, new rules that are intended to stimulate farmers to work together to achieve greater efficiency.

Rules that are also intended to improve the ability of farmers to compete.

In particular, we will discuss our new draft antitrust guidelines that explain these rules. We are going to ask you for your feedback.

We want to make sure that these guidelines will give the best possible guidance in the years ahead, to farmers, national competition authorities and courts alike, and to anyone else affected by these rules.

The new rules would apply to the olive oil, beef and veal and arable crops sectors. They make it possible for farmers to work together, in order to become more competitive and more profitable.

These rules can help farmers to sell greater volumes, share storage facilities and distribute their goods more effectively. Together, farmers can improve their competitive position.

European farmers have a long history of working together. Let me go back more than one hundred years.

In the nineteenth century, Danish farmers found themselves confronted by strongly declining grain prices.

Three developments had caused a glut in the grain market.
First, a successful land reform helped farmers to cultivate their land more effectively.

Second, land reclamation projects increased the amount of arable land.

Third, cheap Russian grain flooded the market.

As a result, grain prices fell.

So, what did the Danish farmers do?

I'll first say what they didn't do. They didn't sit around the table to fix

their prices. That would have been pointless, because they would not have been able to compete with the cheap imported grain anyway.
So, what *did* they do? They switched production from grain, to dairy and meat, and fed their unsellable grain to their cattle.

To make this switch, these farmers needed to make huge investments in dairies and slaughterhouses. They could not possibly pay for these investments on their own.

So they joined forces.

In 1882, a group of farmers in Jutland set up the first cooperative in Denmark, the Hjedding Cooperative Dairy, where they shared the use of a steam-powered cream separator.

On their own, the farmers had only been able to produce small amounts of milk and butter. But together, they could produce large quantities, at a constant quality.

Twenty years later, there were already nine hundred cooperatives like this in Denmark.

Sharing production not only vastly improved the income of Danish farmers, the cooperative movement became part of their identity.

Many more countries have cooperative movements, but I used this Danish example because it is a particularly good illustration of what we will be discussing today: how farmers working together can become more competitive.

Before I go into the new rules and draft guidance paper into more detail, I would like to make a more general point.

Competition is good for agriculture, as it is for other sectors.

I think most people in the agricultural community would agree with this message.

After successive reforms since the 1990s, the European Common Agricultural Policy is now more market-based than ever.

As a result, quantities and prices are not as regulated as they used to be. Markets are not as subject to administrative control.

Support from the public purse is decreasing.

More and more, agricultural producers have to anticipate market developments.

It's not an easy market, characterised as it is by perishable goods that need to be sold quickly.

On top of that, customers are constantly increasing their demands.

Customers want better products, they want sustainable products, and traceable products.

At the same time, farmers face increasing competition from non-European imports.

So, all in all, farmers are under a lot of pressure to become ever more competitive.

A big challenge here is that farmers often operate individually, while their business partners - wholesalers and retailers, exercise a lot of market power.

Of course, this is not the case for all farmers. Some farmers have already set up very large cooperatives, for instance in dairy and vegetables in the north of Europe.

But for the majority of agricultural producers, atomisation is a way of life. These small farmers do not have much bargaining power towards big buyers.

For these farmers, it can be difficult to increase revenues.

For these farmers, competition can be daunting.

There are two ways of responding to these challenges.

Short-term fix vs long-term solution

The short-term fix, and the long-term solution.

The short-term fix boils down to allowing farmers to form more price and volume cartels.

Unfortunately, the short-term approach is also the short-sighted approach.

To start with, the short-term fix is difficult to reconcile with some of the objectives of the Common Agricultural Policy under the Treaty, such as the need to increase farmers' productivity and the need to ensure reasonable prices for consumers.

Quite the contrary: joint selling or pricing will only increase prices for consumers, but it will not improve productivity for farmers.

Second, we know from experience that in general, cartels are very damaging.

Damaging, in this case, to the EU food processing industry and final consumers. Cartels reduce competition, increase prices, limit choice and halt innovation.

Third, the short-term fix is not only damaging, but also unsustainable. As I said, competition from imports from outside the EU is increasing. Remember the story of Denmark.

Alternatives are on the market. Consumers will simply vote with their wallets when faced with artificially inflated prices.

This means that the short-term fix is ultimately self-defeating.
We do have an alternative for the short-term fix.

We have a long-term solution to improve competitiveness and farmers' revenues.

A solution not based on cartelisation, but on integration.

What do I mean by integration?

Basically, we would not like farmers just to agree on the prices and quantities of jointly sold products and to leave it at that.

We would like them to take their cooperation a step further, and to integrate their activities, so that, instead of just setting prices, they can together set up an efficient and sustainable venture.

For instance, they could create common distribution platforms to gain in flexibility, reliability and speed of distribution.

If farmers work together in this way, if they integrate their work, they stand a good chance of improving their market position.

Together, farmers can increase the scale of their operations, improve their products and reduce costs. Ultimately, they can improve their competiveness and increase their revenues.

As you know, competition policy and agriculture have a special relationship.

Ordinarily, under competition rules, joint selling is a restriction of competition and banned, *unless* it can be demonstrated under Article 101(3) of the Treaty that it has certain positive effects for consumer welfare.

This is valid for agriculture as well, but for agriculture there are additional, specific exceptions.

Exceptions can be made for agreements or practices that help attain the objectives of the Common Agricultural Policy.

Objectives such as increased productivity, a fair standard of living for farmers, availability of supplies, reasonable prices for consumers.

These rules have allowed farmers to form producer organisations for many years.

But in practice, it has not always been easy to implement these rules. Farmers often complain that the rules are too complex, or not clear enough. This deters farmers from organising themselves into producer organisations.

In 2014, as a result of the latest reform of the Common Agricultural Policy, the European Union decided to promote this long-term integrated approach. In this reform, the European Union introduced new rules for three important agricultural sectors: olive oil, beef and veal, and arable crops.

These sectors are key agricultural sectors, and important to a large number of Member States.

Olive oil to Spain, Italy and Greece. Beef and veal to, among others, the UK, Ireland, France and Poland. Arable crops to France, Germany, Poland, Romania and Bulgaria, to name but a few.

These new rules spell out how farmers can act together without risking infringing the competition rules.

From a legal point of view, the new rules create a new derogation from competition rules.

These new rules make it clear under what conditions farmers are allowed to jointly sell and set prices, quantities and other terms of trade.

They may do so only, if they are organised in a producer organisation and the producer organisation carries out other activities as well.

These activities must have an integrated approach, and must generate significant efficiencies.

Significant efficiencies

So, what kind of activities are likely to generate significant efficiencies? That really is today's key question.

There are a lot of possibilities, we have mentioned many of these in the draft guidelines we present here today.

More specifically, joint activities could be the joint use of equipment and storage facilities, joint procurement of inputs, joint transportation and joint distribution, joint quality control, and so on.

As members of a producer organisation, farmers can carry out these activities on a larger scale than they could by themselves.

Indeed, individually, farmers might not be able to carry out these activities at all. Again, see the Danish example.

But when carried out together, these activities can lead to lower costs, more flexibility and greater reliability.

The greater the scale of these joint activities, the greater the potential efficiencies.
If the volumes and cost savings are significant, then the efficiencies are likely to be significant.

The new derogation does not provide a *carte blanche*. In order to protect competition from market power, the volumes marketed by the production organisation may not exceed certain thresholds.

For instance, for beef, veal and arable crops, the volume of production may not exceed fifteen per cent of national production for those sectors.

There are also a few administrative conditions, rules that outline the recognition of producer organisations and the notification of their activities.

How to apply the rules
The question remains then, how exactly should we apply the rules? How do we turn a legal document in to a living, daily reality?

The new rules will be applied by farmers, under the guardianship of national competition authorities and national courts.

Farmers will apply the new rules directly on the basis of self-assessment. In order to benefit from the competition derogation, they have to assess themselves whether their activities comply with the new rules.

National competition authorities will also enforce these rules. They will be able to apply a safeguard clause, which may re-open or cancel contracts between producer organisations, if the rules are not respected.

The Commission would like to make it easier to implement these rules, for farmers, courts and competition authorities alike.

That is why we have drafted these guidelines that you will be discussing today.

These guidelines are the result of a joint effort by DG Competition and DG Agriculture.

So, what do these guidelines contain?

First, using concrete examples, we make it clear just how producer organisations can gain significant efficiencies.

Second, we give guidance on how to check that marketed volumes do not exceed volume limits.

Third, we make it clear in what circumstances competition authorities may apply a safeguard clause.

Now, the time has come to hear your side of the story, to see the point of view of the people in the field, so to speak.

In January we launched a public consultation, and invited everyone involved to comment on the draft guidelines, farmers and authorities alike.

Today's conference is another step in that process.

Today, from our side, we will present the objectives and the basic elements of the new derogation, and the guidance that we have drafted. We want to listen to your remarks, answer your questions, and draw on your experience to improve these guidelines.

We welcome your comments about all parts of the document, but we also have some very specific questions. Because, better than anyone, you will know how to gain significant efficiencies in your sectors. Be it olive oil, beef and veal, or arable crops.

Today, you have an opportunity to shape this new competition tool.

I hope that your discussions today will help you prepare your written comments in the ongoing public consultation.

I would like to recall that the consultation ends on the fifth of May 2015.

Before leaving you to work on these issues I would like to note that these new rules cannot address all challenges in the sector, such as for instance market crises. There are other instruments for that purpose, but this new tool can contribute decisively to increasing the competitiveness and bargaining power of farmers.

Conclusion

Ladies and Gentlemen,

Let me come back to Denmark.

In West-Jutland, in Denmark, it rains even more than in Brussels.

It is good farming country, you might say.

Especially for arable crops and cattle, less so, of course, for olive oil.

In the countryside stands a rectangular, red-brick building, with white window frames, a red door and grey roof, just south of the town of Ølgod.

Coincidentally, Ølgod is also the city where our Commissioner, Margrethe Vestager, grew up.

But that is not why I am bringing this up.

In this building, a group of Danish farmers met in 1882 and established the Hjedding Cooperative Dairy. They pooled machinery to become more productive together.

Today, this building is a national industrial heritage site.

This is a monument to the past.

Our new rules will benefit the future. The future with a living agricultural sector, and will help it to become more market oriented, efficient and profitable, in the spirit of those farmers in Hjedding, who pooled their resources to become more competitive.