



***Civil Dialogue Group
Fruit and vegetables***

***Information regarding the application of the conclusions
of the Agricultural Markets Task Force –
Unfair trade practices***

Annette Kliemann

DG AGRI, Unit G 1 – Governance of Agri-Food markets



What are **Unfair Trading Practices**?

Practices that grossly deviate from good commercial conduct and are contrary to principles of good faith and fair dealing.

Agricultural Markets Task Force



'Improving Market Outcomes'
Report, 14 November 2016

Recommendations Task Force on UTPs

- *Finding: UTPs are liable to hamper the development of economically viable farmers and processing SMEs in the supply chain*
- *Inefficient production decisions*
- *That there is a problem, has already been acknowledged*
 - 20 MS have legislation
 - Voluntary Supply Chain Initiative

AMTF recommendations

- *Harmonised baseline approach in EU framework legislation*
- *Rule out certain UTPs, the AMTF names six UTPs*
 - **Payment delays**
 - **Retroactive changes to contracts**
 - **Contributions to marketing costs**
 - **Claims for wasted or unsold products**
 - **Last minute order cancellation for perishable goods**
 - **Upfront payments**
- *Provide for enforcement (in particular anonymous complaints)*



The Food Supply Chain Initiative

Unfair Trading Practices

Market Transparency

Producer
cooperation

What has happened ?

- *25 July 2017: Inception impact assessment*
 - **Described the topic and presented options**
 - Option 1: Status quo
 - Option 2: Common understanding, i.e. non legislative action
 - Option 3: EU framework legislation, also covering enforcement,
 - Option 3: Minimum framework legislation for the whole Food Supply Chain
 - **67 replies received**
- *16 August 2017: Public consultation*
 - **closed 17 November**



Relevant links and background

The Food Supply Chain initiative	Background and other useful sources
Inception impact assessment http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3735471_en	High Level Forum https://ec.europa.eu/growth/sectors/food/competitiveness/supply-chain-forum_en
Public consultation https://ec.europa.eu/info/consultations/food-supply-chain_en	AMTF Report November 2016 https://ec.europa.eu/agriculture/agri-markets-task-force_en
	Council Conclusion 12 December 2016 http://www.consilium.europa.eu/en/press/press-releases/2016/12/12/conclusions-food-supply-chain/
	EP resolution on unfair trading practices 7 June 2016 http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0250
	Supply Chain Initiative http://www.supplychaininitiative.eu/



Omnibus - Agriculture

Changes in the CMO – Producer organisations and competition law



Strengthened Producer Organisations-

Explicit competition derogation for sales and production planning activities of POs and APOs which genuinely integrate activities of their members (Article 152 CMO)

Horizontal approach for POs: Deletion of sector specific provision for olive oil, crops and beef/veal POs

Farmers and farmers associations – Right to ask the Commission for an opinion on the application of Article 209 CMO (Article 209 CMO)



Crisis cartels – Extension to other entities such as cooperatives and deletion of the last resort character of crisis cartels (Article 222 CMO)

Contractualisation – Right of the farmer to ask for a written contract, unless his trading partner is a SME (Articles 148, 168 CMO)

Value sharing mechanism – beyond existing sugar provision now option for all agricultural sectors (Article 172 a)

Larger number of objectives for Interbranch organisations to

- develop standard value sharing clauses and
- protect against risk related to animal health, plant protection and environment (Article 157)

Judgment 14/11/2017 Endives –relation between agriculture and competition law

- *Agricultural objectives take precedence over competition law objectives*
- *What are POs and APOs allowed to do?*
 - Court distinguishes between **inter** and **intra** PO behaviour
 - Practices established **between** several POs or APOs and involving entities not recognised by a Member State in the context of the implementation of the CAP in the sector concerned **are subject to the competition rules.**

Judgment 14/11/2017 Endives –relation between agriculture and competition law

- *Under strict conditions, the competition rules do not apply*
- *Practices applied by a PO or an APO **duly recognised** by a Member State, remaining solely **within that PO or APO**, escape the prohibition of agreements, decisions and concerted practices.*
- *The Court however notes that only practices that are **actually and strictly connected to the pursuit of the objectives assigned to the PO or APO** can escape the competition rules.*



Judgment 14/11/2017 Endives –relation between agriculture and competition law

- *These allowed practices might be:*
 - exchanges of strategic information,
 - the coordination of volumes of agricultural products put on the market and
 - the coordination of the pricing policy of individual agricultural producers, **however**
 - The setting of a **minimum price** within the PO for the sales of products by the members outside a PO is **not proportionate**, i.e. the competition rules apply