

## Annex F – Competition law

### The Member States' relevant provisions and good practices in relation to competition law<sup>246</sup>

#### 1. Netherlands:

The Dutch government adopted new regulations for the implementation of the vegetable and fruit producer organisations in July 2017 within their policy in modernisation and simplification of the CAP.

The Dutch Authority for Consumers and Markets (ACM) was critical of the new initiatives in the field of competition law (e.g. the Tomorrow's Chicken initiative aimed to remove certain factory-farmed broilers [plofkip] from Dutch supermarkets so the relevant parties in the food supply chain drew up a minimum standard). To tackle this situation, the Ministry of Economic Affairs presented the *More Room for Sustainability Initiatives Bill* (wetsvoorstel ruimte voor duurzaamheidsinitiatieven) in 2017. The bill allows for market players to present their sustainability initiatives within a single procedure to the Minister. The Minister may, at his own discretion, decide in favour of the initiative which then shall be converted into law. In addition to competition law considerations, social interests also play a role in the assessment of the initiative.

#### 2. Austria:

According to Austria's view there is a pressing need to reform the way in which EU competition law and the Common Agricultural Policy are delimited from each other. This will strengthen the position of farmers in the food chain. To do so, the EU Regulation No 1308/2013 (Articles 152, 206, 209 and 210) need to be thoroughly revised. The aim of the reform should be to:

- safeguard agriculture's special status = create general exceptions in antitrust law for agriculture and agricultural cooperatives (Article 206)
- associations of farmers (in the form of cooperatives and producer organisations) must be exempt from competition law (Article 209)
- European framework regulation against unfair trading practices
- handle the sale of products below the cost price more stringently and ban this practice EU-wide
- the definition of a "relevant market" on the producer side should make it possible to counterbalance concentration on the food retailer side.

#### 3. Germany:

The German Federal Cartel Office published a guideline on the evaluation of resale prices in the food sector in July 2017. These guidelines are relevant not only in relations to sales of German

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<sup>246</sup> <http://www.cedr.org/events/2017-congress-lille/>

products to customers, but other EU Member States' competition authorities are also interested in it.

In a highly concentrated food retail sector, agricultural cooperatives owned by farmers should also be granted privileges under antitrust law in order to enable them to negotiate on an equal footing with large food retailers. Consequently, possible coordination between agricultural cooperatives should be included in the antitrust privileges in Article 209 of the EU Regulation 1308/2013.

#### **4. Finland:**

Finland agree, that competition rules should be applied to agriculture as well as for agricultural organisations and cooperatives. However, producers must be enabled to cooperate more and their willingness for cooperation has to be strengthen. EU legislators must realise that competition rules may not be stronger than the rules on agricultural policy in the TFEU. Farmers still have the right to “a fair standard of living”. Presently, competition policy hinders this right. Competition policy seems to prevent farmers from cooperating and being treated in the same way as the much stronger retailers and food industry. This needs to change.

Producers should be allowed to work together. Competition policy should take a step back and let farmers cooperate. It is a fact that farmers are just as weak as consumers, and yet there is consumer protection but no farmer protection.