

Comment: French farmers get clarity on antitrust exemption from top EU court 15 Nov 17 | 17:10 GMT

Author: Matthew Newman

IN BRIEF

French farmers, driven to protest by a years-long price war against big supermarket chains, have finally got some legal clarity on how far they can push their exemption from antitrust law. Permission from the EU's highest court to coordinate pricing — under strict conditions — means farmers can start to take back control of how much they sell their produce for.

Farmers finally have some clarity on what they're allowed to do under their partial exemption from antitrust law.

That's good news for France's farmers, who for years have been locked in a sometimes ugly battle with supermarket chains trying to out price.

The EU's highest court yesterday upheld a fine that the French Competition Authority had imposed on Belgian endive producers in 2012. But in its decision, it also set clear lines on the extent of farmers' exemptions to antitrust law.

In short, farmers can't set minimum prices, but they can coordinate pricing and quantities to some degree within approved producer organizations.

With this legal backing and clarity, the days of French farmers blocking roads and dumping manure outside supermarkets may be coming to a close.

— Producers' organizations —

For years, supermarket chains such as Casino and Carrefour have been in command of pricing. That's pushed French farmers to the breadline, with a third of them earning less than 350 euros a month, according to social-security provider Mutualité Sociale Agricole.

President Emmanuel Macron has heard their pain, and in October announced a series of measures to "fight against abusively low prices" and to help boost farmers' incomes. In short, he wants farmers to group together in producer organizations as a condition for introducing a threshold to allow products to be sold at a loss and a framework for supermarkets' discounts.

"I want to professionalize these commercial producers' organizations so that they can collectively set prices and volumes that they want to negotiate with their buyers," Macron said.

www.mlex.com
MLex customer services
customerservices@mlex.com

MLex London
141 Moorgate
London EC2M 6TX
United Kingdom

MLex Brussels
Rue de la Loi 67
1040 Brussels
Belgium

MLex Washington
1776 I (Eye) St. NW
Suite 260
20006 Washington, D.C.
USA

MLex New York
535 Fifth Avenue, 4th
Floor
10017 New York
USA

MLex San Francisco
32 7th Street
CA 94103
USA

MLex Hong Kong
3901 39/F Hopewell
Centre
183 Queen's Road East
Hong Kong

www.mlex.com
MLex customer
services
customerservices@mlex.com

MLex London
141 Moorgate
London EC2M 6TX
United Kingdom

MLex Brussels
Rue de la Loi 67
1040 Brussels
Belgium

MLex Washington
1776 I (Eye) St. NW
Suite 260
20006 Washington, D.C.
USA

MLex New York
535 Fifth Avenue, 4th
Floor
10017 New York
USA

MLex San Francisco
32 7th Street
CA 94103
USA

MLex Hong Kong
3901 39/F Hopewell
Centre
185 Queen's Road East
Hong Kong

Producers' organizations are already granted substantial exceptions under EU competition law to plan on production levels, adjust to demand, concentrate supply, as well as "optimizing products cost and stabilizing producer prices."

EU law allows these exceptions as long as they necessary to achieve the goals of the bloc's Common Agriculture Policy, which aims to stabilize agricultural markets and provide fair income for farmers.

– Endive decision –

But there are limits. That was seen when the French Competition Authority in 2012 levied fines of almost 4 million euros (\$4.7 million today) against 10 endive growers and seven associations found to have set up an "organized and elaborate system" to control prices (see [here](#)):

In deciding to fine the endive growers and associations, the French authority said that price-fixing remains illegal in the agriculture sector, even though national rules implementing the EU's CAP allow producers to group together to increase their bargaining power with food retailers.

Maoron said he was baffled by the decision, which he called "a little ridiculous" considering farmers' dire economic straits and low margins. So he called on the French authority to provide a "precise interpretation of the competition law" so that farmers can "negotiate in a clear framework."

The EU Court of Justice gave that clarity yesterday in the endive case. EU judges said that farmers can group together to exchange information and coordinate quantities and prices, as long as they do so within a producer organization, which is recognized by the government and pursues the CAP goals.

They can't coordinate outside these producer organizations, and they can't ever fix minimum sales prices. This practice "cannot be considered to be proportionate to the objectives of stabilizing prices and concentrating supply," the court said.

The decision will certainly please Maoron. He can now push farmers to join producer organizations, knowing that competition law won't be an impediment in most cases.

As for the farmers, they may have to trade the barricades for the bargaining table.