

8/469/74-1  
**NEWSLETTER ON THE COMMON AGRICULTURAL POLICY**

No 6

JUNE 1974

COMPETITION POLICY AS AN ELEMENT OF  

---

EUROPEAN AGRICULTURAL POLICY  

---

CONTENTS

	<u>Page</u>
I. Competition, market and structural policies	1
II. Distortions of competition in general	5
III. State aids	7
IV. Restrictive practices and abuse of economic power	13
V. Market structures	16

COMPETITION POLICY AS AN ELEMENT OF EUROPEAN AGRICULTURAL POLICY\*

I.

Competition, market and structural policies

1. In the EEC Treaty there is a Chapter on rules of competition, originally applicable only to production of and trade in industrial goods. An exception was made for agricultural produce and this logically continued to be the case so long as national market organizations or similar national rules governed agriculture. The effect and perhaps the aim of these national rules was generally to give domestic agriculture a competitive advantage over foreign produce. Hence before a common body of law on competition could be applied to agriculture in the six founder States of the European Community, it was necessary to adopt a common agricultural policy.

---

\*This paper is based on a address given on 7 June 1974 by Dr Klaus Otto Nass, Head of Division in the Directorate-General for Agriculture of the Commission of the European Communities, before the Danish Council on Agriculture in Copenhagen.

Consequently, the competition rules in the EEC Treaty became applicable to agricultural production and trade at about the time when national market organizations gave way to the European organization. Since then, the provisions of the EEC Treaty on State aids and, to some extent, the rules on restrictive practices have generally been applicable to agriculture too.

However, the competition provisions of the EEC Treaty are not automatically applicable since, under Article 42, they are subject to the adoption of other provisions. Accordingly, a number of agricultural regulations lay down special provisions requiring or prohibiting national or Community aids for particular sectors of agricultural production. Some of these regulations give special responsibilities to producers' organizations within the Community market organization. These provisions, being of a specific nature, prevail over the general provisions of competition law in the Treaty.

2. More important than these specific rules, which vary from sector to sector of agriculture, is the fact that the Community market policy embodied in the agricultural regulations actually uses competition as a means of achieving its object. The guaranteed disposal of agricultural production at a fixed minimum price (intervention price) in effect helps to stabilize prices and thereby influences competition and this, as has already been found, does not only apply in cases of surplus production. However, as soon as the market price for a given product exceeds the intervention price, the regulations leave price formation on the market to the free interplay of competition with all its consequences.

Ever more important is the contribution made by the market regulations to competition by opening up the economic frontiers between Member States and facilitating free trade in agricultural produce. There is no doubt that competition has been sharpened to an unprecedented extent. It is precisely an efficient agricultural system which benefits from such free trade. Even the compensatory amounts applied in trade with the new Member States have no major effect on freedom of international trade, for they are to be removed as price levels are progressively aligned on price levels in the original six Member States, either by virtue of transitional arrangements or as a result of exchange rate fluctuations; this will at least be the case as long as the compensatory amounts are fixed at economically correct levels. For instance, it is impressive to note the extent to which Denmark has increased its exports of agricultural produce and food products into the Federal Republic following accession. These exports rose from some DM 560 million in 1972 to roughly DM 900 million in 1973. If we further consider that Denmark's share of total food imports into the Federal Republic thereby rose from 2.2% to 3.2%, it is clear that Danish agriculture and food production are highly competitive, to an extent which is only possible when farms operate on modern lines.

Another point worth mentioning as regards the competition aspect of the common agricultural policy lies in the fact that the Commission's price proposals are more and more tending to be prepared by reference to modern farms, i.e., farms which over a period of years are in a position to bring in an average earned income comparable with income derived from non-agricultural activities.

3. Commission estimates admittedly show that, in the Community, only some 12% of the 5.7 million farms working more than one hectare can be regarded as modern farms, although these account for almost a half of agricultural production in the Community. However, the vast majority of farms in the Community are in a comparatively unfavourable situation and these are the farms at which structural and regional measures are aimed. Ever since the first agricultural market regulations were adopted in 1962, agricultural structural policy has played an important role side by side with market policy. Here attention should be paid particularly to the individual projects for improving production and marketing, financed by the Guidance Section of the European Agricultural Fund, and the directives of the European Community, which together form the Mansholt Plan. Their aim is to contribute to the modernization of farms by investment aids, outgoer payments and annuities and measures to promote the retraining of agricultural workers. A further directive is likely to enter into force this year, providing assistance for agriculture in mountainous areas and other poorer farming areas.

These instruments of the European agricultural policy provide the background for the following analysis, which deals more specifically with the competition angle. There is no doubt that agricultural structural and regional policies and market and price policies have often been regarded as more important than competition policy, for a competitive agricultural system will take a different approach to competition policy than the large mass of farms which cannot hope to solve their income problems purely by means of price and market policies without structural adaptation.

II.

Distortions of competition in general

4. It is precisely those farmers who suffer from unfavourable geographical or structural circumstances who are sometimes tempted to regard these circumstances as a distortion of competition. However, cost factors facing individual farmers, such as size of the farm or, what is more important, its location and accompanying circumstances such as distance from the nearest market or infrastructure, are not so much distortions of competition as factors determining how profitable the farm can be; faced with them the farmer must decide whether and how he is to continue agricultural production.

On the other hand, macro-economic differences between one economy and another can lead to distortions of competition such as were found, although admittedly temporarily, in various energy-intensive areas of agricultural production following the energy crisis in the European Community. Naturally, the economic (including agriculture) of a State where, for whatever reason, energy is cheaper than in another State, will have a competitive advantage over that other State. The same clearly applies in general terms to the development of overheads and the influence of divergent rates of inflation in Member States on their level. In these cases we are dealing with macro-economic distortions of competition which, from the legal angle, could certainly be removed by directives or other Community measures for instance of energy, transport and tax policy where their repercussions are particularly serious. It should, however, be borne in mind that such macro-economic fluctuations as influence more than one branch or the economy further affect the balance of payments

situation and can even influence exchange rates. Specifically agricultural measures alone may have a temporary mitigating effect on these general distortions of competition but cannot be maintained in the long-term unless they are backed up by other policies, particularly in the economic and monetary field.

Nevertheless it must be said that as the law stands divergent macro-economic developments in the individual States - as pointed out by the Commission in its November 1973 Memorandum on the improvement of the common agricultural policy - give rise to long-term distortions of competition which are peculiar to agriculture, for the common agricultural prices fixed in units of account are not increased after devaluation in the devaluing country and are not reduced after revaluation in the revaluing country but, under the present rules, are generally maintained at the level which applied before the change in parity. The economic consequences of these exchange rates which, although in practice they have changed, remain as they were for agriculture, are offset by paying subsidies on imports into the devaluing country and charging levies on imports into the revaluing country. This may well be reasonable over a limited period of time for it avoids making agriculture (by reducing prices in case of revaluation) or consumers (by raising prices in cases of devaluation) bear the effects of the changed currency situation from one day to the next. Yet in the long term, the permanent system of border taxes gradually isolates agriculture from its general economic context in the relevant countries following the monetary events. Hence it may be better for the future to reconsider the policy of imposing border taxes without time limits.



III.

STATE AIDS

6. The Community has greater powers to act on specific distortions of competition of the type repeatedly coming into existence as a result of national subsidy policies in agriculture than elsewhere in the economy as a whole. The European Commission has comprehensive and in many cases exclusive power to monitor and coordinate national aid schemes. The relevant provisions of the EEC Treaty (Articles 92-94) provide that the Commission must be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid before they are actually implemented. This is a radical procedural provision which sharply affects the legislative powers of the Member States; it means that every year several dozen national agricultural aid schemes are notified by Governments to the Brussels Commission or are examined by the Commission on its own initiative with a view to verifying their compatibility with the common market.

The EEC Treaty further provides that the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States, and propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

In both cases, i.e., when new national projects and when existing projects are examined, the Commission can at any time institute proceedings against the relevant Member State where it finds that the aid is not compatible with the common market.

Thus the decisive question in respect of Community aid policy is this: What aids are to be regarded as incompatible with the common market? The answer is basically to be found in Article 92(1) of the EEC Treaty, which reads as follows:

"Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market."

Hence the decisive factor in deciding whether an aid is incompatible with the common market is whether or not it affects trade between Member States. The directness of their influence on international trade depends on the closeness to the trading stage of the point at which the aid is granted. Hence a national subsidy on exports to other Community countries is clearly not permissible. However the financing of agricultural structure measures is less easy to judge. Here a measure will often be seen as compatible with the common market where the aid promotes the improvement of agricultural structure so as to help agriculture to adjust to the circumstances of a modern industrial society and make it more competitive.

7. Over the years the Commission has begun settling and clarifying its law on national aid policies. For instance in 1966 the principle was established that all aids which are directly linked with the quantities or prices of agricultural produce or with areas under cultivation were incompatible with the common market. These aids directly impede the smooth working of the common market, particularly of the common prices,

and the Commission has accordingly adopted the principle that they will not be allowed. For their part the Member States have brought their national agricultural policies into line with this Community principle.

A further element of legal certainty and at the same time of neutrality of competition was introduced into the common agricultural policy by bringing investment aids for farms, particularly for farms seeking to modernize, under uniform rules throughout the Community. The rules are laid down in the 1972 Directive on the modernization of farms. Apart from its structural significance, its function in relation to competition lies in the fact that modern farms and farms which are trying to be modern are as far as possible treated in the same way. It is precisely those farms which operate according to the same economic principles which are to be regarded as competitors. From this point of view, what is left of the 1968 Mansholt Plan has also been a source of progress in competition policy.

Apart, for the moment, from investment aids for farms which, regardless of sector, are subject to uniform rules, the European Commission has endeavoured to introduce Directives on the grant of aids in all sectors of agriculture. Serious difficulties have stood in the way of these endeavours both in the past and at present. For a number of reasons, simply reading the agricultural budgets of the Member States does not give a full picture of the actual amounts of aid paid.

Firstly, the object of individual budgetary items is not always easy enough to understand; secondly, budget estimates and actual expenditure are not identical and thirdly, not all agricultural subsidies in the Member States appear in the budget. Moreover any waiver by a State of its right to collect money in amounts not specified in the budget also has the character of a subsidy. Nevertheless in the horticulture and sugar sectors, the Commission has managed to suggest what are known as objective measures, although these had to be revised following the accession of Denmark, Ireland and the United Kingdom. It can still be expected that Community principles for national aid schemes will be clarified before the end of this year.

Aids to stock breeding are now being examined in Brussels; the first results are expected in the second half of this year. The full gamut of general aid schemes, which often have a decisive influence on competition, remain to be investigated. Their importance becomes clear when it is realized that they include agricultural credit arrangements.

8. In all this the Commission is endeavouring to take account both of the rules of competition and of the specific components of its agricultural policy. Naturally there are cases where the rules developed as part of the general competition policy also determine how the rules on competition will apply to agricultural production and trade. A case in point would be aids financed from what are known as parafiscal charges, i.e., charges having an effect equivalent to taxes.

These aids are distinguished from other state subsidies not so much by their object or the way in which they are given as by the source of the finance. Accordingly the same considerations applied to these aids as to other aids. They may not lead to distortions of competition nor affect

trade between Member States; above all they must be notified to Brussels.

Obviously the parafiscal category does not extend to services provided by members of a voluntary association. These are not state aids. They only become state aids when the State provides or controls them by law or by any other means. There are no objections to contribution to such measures as long as only domestic producers or products are subject to them and imported goods are not affected. In these cases the Commission investigates the aids without raising objections to the actual source of finance.

On occasions it has been maintained that subsidies financed in this way are not aids within the meaning of the EEC Treaty since they are provided by the beneficiaries themselves and thus do not give them a competitive advantage. The Commission has felt unable to adopt this view. It rather holds that there is an "aid of whatever kind", as the Treaty puts it, whenever State funds (including contributions from parafiscal charges imposed by law) are made available to given undertakings. Another question to be asked is whether and to what extent these aids are liable to affect competition. In analysing these questions it may be important to consider whether the beneficiary himself has contributed all or part of the cost, or even more than they cost. The provision of subsidies by the beneficiaries themselves is thus a criterion for judging the subsidies but does not automatically mean that the aids will be regarded as having a neutral effect on competition.

There is difficulty in analysing parafiscal charges which are imposed both on domestic production and on products imported from other Member States. In these cases undertakings and producers in the other Member

State contribute to financing aids in a Member State on a rising scale: the more they sell in the relevant Member State, the more they finance a subsidy for the benefit of their own competitors. Here the financial basis for the aids provides protection going beyond the effect of the aids themselves. In its growing corpus of case decisions, supported by the European Court of Justice, the Commission has in such cases required imported goods to be exempt from such charges.

9. Even if the competition rules in the Treaty are in the long-term applied to agriculture, there will repeatedly be unexpected circumstances which Member States will seek to deal with by paying subsidies. Such problems recently arose from the energy crisis. This crisis particularly affected a number of energy-intensive agricultural sectors - particularly horticulture under glass. A number of Member States felt that this situation called for support measures.

The Commission's view is that the new situation on the energy market is not transitional but a long-term fact, although this does not mean that its effects will not vary in the short-term from country to country depending on the various ways in which the Member States plan their energy policies. Each sector of the economy must seek its own way of adapting to the long-term change in circumstances. If individual subsidies were given to permanently offset price differences without limit in time, this would simply have the unacceptable consequence that the less and less abundant supply of energy would not be used economically.

On the other hand there is justification for assisting those concerned to adjust to the new situation by means of short-term measures, provided that the other conditions, specified by the Commission in a Communication to the Member States, are met.

One of these conditions is that price increases must have threatened the very existence of the relevant undertaking and that this must threaten major social or regional problems. In such cases the Commission has not opposed the payment by the Member States of compensatory payments, whether as a lump sum or over a period of time. In all cases notified to the Commission the compensatory payments did not even cover half the price increases for energy products. For a number of reasons, particularly the fact that the energy policies of the Member States are not yet harmonized, the Commission has refrained from initiating its own action in this field under the European Agricultural Fund.

10. This outline of the European aid policy shows that in the foreseeable future the Member States will remain individually responsible for financing policies on agricultural structure and any other necessary short-term measures. Application of the rules of competition in the EEC Treaty cannot lead to preventing or even hindering all national promotion measures. Their function is simply to make sure that these measures do not lead to appreciable restrictions on competition.

#### IV.

##### Restrictive practices and abuse of economic power

11. A second category of rules on competition in the EEC Treaty concerns policy on restrictive practices and abuses of economic power.

Dealing firstly with abuse of economic power in relation to agriculture, any abuse of a dominant position within the common market or in a substantial part of it is prohibited as incompatible with the common market in so far as it may effect trade between Member States. An abuse may arise where unfair purchasing or selling prices or other unfair trading conditions are imposed. These rules, laid down in Article 86 of the EEC Treaty, are entirely applicable to production of and trade in agricultural products. The situation assumes that one or more undertakings hold a dominant position on at least a substantial part of the common market. Monopolistic or oligopolistic structures of this kind are to be found in agriculture in a number of states. Where the undertakings use their market power to the detriment of their competitors or trade partners, they would be caught by Article 86.

12. The situation is different as regards the specific area of restrictive practices. The relevant rules in the EEC Treaty apply to agriculture with two exceptions: for one thing they do not apply where agreements or concerted practices which would otherwise be caught by the rules are necessary for the attainment of the objectives of the agricultural policy under the EEC Treaty. In view of the flood of legislation from Brussels in recent years covering agricultural policy throughout the Community, it must be assumed that, in the absence of specific provisions, all the necessary legal steps have been or are being taken to achieve these aims, at least in respect of those agricultural products which are subject to European market organizations. Naturally a merger (e.g. of orange traders) may in some way serve to achieve the generally heterogenous objectives of the agricultural policy defined in the EEC Treaty; if it is not necessary, it will be prohibited by the rules in the Treaty.



This interpretation is backed up by the fact that some of the basic regulations confer particular functions on producers' organizations (fruit and vegetables, fish) and producer groups (hops), which are a euphemism for dominant bodies controlling the agricultural markets. A contrario, where the legislator makes no mention of them, they are not a necessary means of achieving the aims of Article 39 EEC.

A second exception from the general provisions on restrictive practices in the EEC Treaty relates to agreements between agricultural cooperatives where, without restricting prices policy, they relate to the production or marketing of agricultural produce or the use of joint-owned equipment for storing or processing agricultural produce. This "cooperative privilege" takes cooperatives out of the scope of the competition rules of the EEC Treaty, although admittedly subject to there being no price restrictions, i.e., subject to the price payable by purchasers at the next trading stage not being determined. This privilege furthermore does not apply where the Commission finds that it would eliminate competition or jeopardize the aims of Article 39, i.e., the aims of the Community agricultural policy. Thus here there is a legal presumption of compatibility with the common market, which the Commission can rebut in individual cases.

13. Here it should be mentioned that as long as eight years ago the Commission attempted to go beyond this mere negative encouragement for producers' organizations and positively promote their formation by transmitting a proposal for a regulation to the Council providing for

subsidies to assist the creation of such organizations. Two principal considerations were invoked to back up the proposal: firstly, the large number of farms working relatively small areas are a hindrance to increasing productivity in agriculture and the rational development of production and stand in the way of the optimum use of production factors. The draft recites that "these disadvantages can be partly remedied if farmers combine to carry on their activities together". A second consideration was that divergent national provisions for the promotion of agricultural producers' organizations should be harmonized so as to avoid discrimination between Community producers.

Although the proposal has received wide approval, it has not yet been adopted by the Council. For a number of years it never appeared on the agenda. This does not mean that a regulation on producers' organizations will never be adopted. Indeed it is likely that the Council will resume consideration of it before the end of the year.

V.

Market structures

14. Whatever happens, the Commission will be sending the Council a further proposal which should encourage it to resume consideration of the producers' organizations. This is the proposal for common measures to improve the conditions in which agricultural products are marketed. The proposal fits into the general context of European agricultural policies as follows.

One of the most effective instruments of this agricultural policy is the Guidance Section of the European Agricultural Fund. This is the source of Commission finance for private individual products in the Member States in the form of non-reimbursable loans. In 1971, for instance, 133 million units of account were devoted to improving production structures and 59 million units of account were devoted to improving the marketing structures for agricultural products (a 2:1 ratio).

The financing of individual products relating to production structures is due to come to an end since increasingly and, in the near future, exclusively it is to be replaced by reimbursement of part of the Member States' expenditure under the Mansholt Plan, including investment aids for the modernization of farms and outgoer payments. These measures will have a priority claim on Community funds. If this is also to be extended to marketing structures, it will be necessary to find a new legal basis for such finance and projects will have to be given the form of joint measures. The abovementioned Commission proposal would achieve this.

One special feature of the proposal is the fact that in the future individual projects relating to marketing structures will continue to receive assistance but only if they fall within the context of a sectoral programme which, although not actually compulsory, must exist if Community funds are to be committed. This should make it possible to investigate the commercial profitability of the project in relation to the general economic context of the relevant sector.

Projects which do not comply with the relevant rules on competition will continue to be excluded from Community financing. Moreover if such projects are to be financed by the Community, then the projects themselves and the financial resources devoted to them must directly or indirectly benefit agricultural producers. Resources from the agricultural fund are not to be made available for purely industrial or regional purposes. Each individual applicant must prove that the project will be beneficial to agricultural production. It is unlikely that there will be a legal provision in respect of this to the effect that when this or that fact is proved, then the project will be beneficial to agricultural producers. To give preferential treatment to particular legal forms of agricultural cooperation in this way would be unacceptable, if only because of the principle of non-discrimination applied in the Community. But this does not change the fact that the easier an applicant finds it to prove the benefit, the easier it will be for the Fund to consider his application.

One possible way of proving the beneficial effect on agriculture would be to show that long-term supply contracts have been concluded between producers and buyers. The contracts would be assessed on the basis not only of their duration but also, and above all, of their terms. As a result of the broad variety in long-term contracts depending on different circumstances in individual countries areas and products it does not seem appropriate for Community bodies to produce a uniform standard contract or even to give the parties to such model contracts the right to priority treatment when subsidies are granted.

VI.

And so we bring our brief analysis of a few problems relating to conditions of competition in the European agriculture to an end with an idea of what the legislator proposes to do in the future. Unfortunately a considerable proportion of the time and energy of the officials working in Brussels has for some time now been devoted to endeavours to preserve the Community structure as far as possible. And yet in times of repeated crises and uncertain developments, our eyes should not be closed to the future. Examples from other areas, to which less attention has perhaps been paid in the past, often suggest means of solving problems of apparently different nature. Competition as a device for controlling the European agricultural market and competition policy as an element of European agricultural policy now point the way to a greater number of practical solutions than were possible in the past. Market and price policy, agricultural structure policy and Community law on competition together form the overall complex of European agricultural policy. Whatever has been said to the contrary, it is the agricultural policy which, overcoming numerous difficulties, has turned out to be a major factor, if not the major factor, holding the Member States of the European Community together.

EUROPEAN COMMUNITIES FRUIT AND VEGETABLE YEARBOOK 1974

The Yearbook contains more than 16 000 full addresses, with telephone and telex numbers, and is divided into five sections, the most important being:

- A list of the major wholesale importers in the EEC, Switzerland and Austria arranged by country and region;
- A five-language (i.e., French, German, Italian, Dutch and English) alphabetical product index covering the 66 best-known products, which is followed by separate lists giving the addresses of the main growers of these products.

The Yearbook also give the addresses of canning and pickling factories, freezing plants, international carriers, banks, insurance companies, packaging specialists etc.

The information assembled in this publication will help to make the different sectors of the common market in agriculture more transparent. It should facilitate the search for new outlets and the rapid movement of goods within the Community.

Mr Lardinois, the Commissioner with responsibility for agriculture, has given the publication his blessing and written the preface.

---

THE EUROPEAN BOOKSHOP Ltd  
 rue de la Loi, 244  
 B - 1040 Brussels

ORDER FORM

Please send me ..... copy/copies of  
 EUROPEAN COMMUNITIES FRUIT AND VEGETABLE YEARBOOK  
 (240 pp; 21 x 30 cm)  
 at Bfrs 600 per copy + Bfrs 40 postage and packing.

I will pay the total cost (i.e. Bfrs 640 per copy) into Post Office Giro Account No 000.0011654-14 of the European Bookshop Ltd

Name .....

Address .....  
.....  
.....  
.....

Date ..... Signature .....

- We supply official publications of the European Communities.
- We specialize in books on European economy, politics, history and law.
- We deliver books anywhere in the world.