

Kluwer Competition Law Blog

Belgian endives on the frontline for price fixing by farmers

Jan Blockx (University of Antwerp) · Tuesday, December 15th, 2015

Belgian endives are a divisive vegetable: their bitterness delights some but repulses others. And even amongst Belgian endive enthusiasts you'll find some that prefer them raw – to maintain their crispness – while others like them cooked so that their bitterness comes out even more.

But Belgian endives are no longer the exclusive battleground of food aficionados: they will soon be served to the European Court of Justice following a request for preliminary ruling by the French Supreme Court.

The case which the French Supreme Court is analysing concerns what the French competition authorities described as a cartel between producers of Belgian endives, setting minimum prices and managing production volumes in order to maintain these prices. Such agreements, decisions and concerted practices between competitors are normally prohibited by Article 101 TFEU but the French Belgian endive producers have argued that the rules of the European Common Agricultural Policy (CAP) exempt them from this prohibition. The French competition authority rejected their arguments but, on appeal, the Paris Court of Appeal followed their reasoning, thereby annulling the fine the French competition authority had imposed. The French Supreme Court has now decided to raise the matter before the European Court of Justice.

To the dismay of some competition lawyers, the European Court of Justice has repeatedly held (see for example C-137/00 *Milk Marque*) that the objectives of the CAP take precedence over those in relation to competition policy. This does not mean that the CAP is a competition-free zone: according to the Court, the application of competition rules in the agricultural sector can be limited in a specific and targeted way but not excluded entirely. The Common Market Organisation (CMO) Regulations that have been adopted by the European Union in furtherance of the CAP have always foreseen exemptions from the competition rules in certain circumstances, but price fixing was not explicitly exempted.

The French Belgian endive producers argue that the CMO Regulations nevertheless foresee that the aims of producer organisations include “ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity”; “promoting concentration of supply” and “stabilizing producer prices”. The producers argue that they engaged in the contested practices with these objectives of a producer organisation in mind and that therefore Article 101 TFEU should not apply to them.

The producers can expect stiff opposition before the Court of Justice, possibly including from other Member States (where similar arguments have been squarely rejected by the courts – see for

example, the 20 March 2014 judgment of the Court of Rotterdam in the silver onion cartel case) and the European Commission. In its recent guidance on collective bargaining in the olive oil, beef and veal and arable crops sector, the Commission remains very close to the orthodoxy of EU competition law, despite the changes introduced in the latest CMO Regulation (Regulation 1308/2013) – not yet applicable to the endives case.

We will need to wait to see whether the judges' love or hatred of Belgian endives will make them favour farmers or dumping prices.

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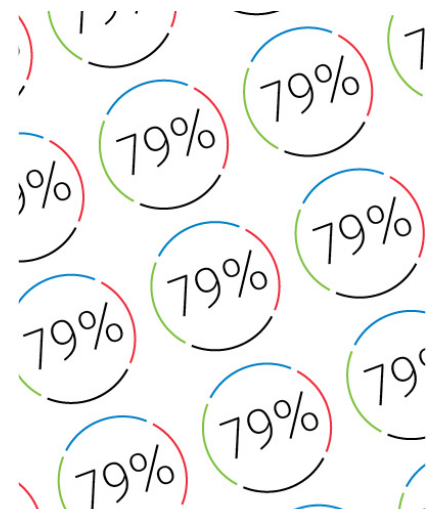
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