The Autorité publishes an opinion on inter-branch reserves in the wine sector

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Inter-branch reserves in the wine sector: the *Autorité de la concurrence* considers that the inter-branch organisations may introduce a price tunnel principle, provided that the minimum and maximum price limits are freely determined by each contracting operator

Background

The *Autorité de la concurrence* was asked by the French Minister for the Economy, Finance and Industrial and Digital Sovereignty to prepare an opinion on the implementation by the inter-branch wine organisations of a price framework for inter-branch reserves.

While inter-branch wine organisations can take market regulation measures, such as placing part of the harvest in reserve, they also want to introduce a collective framework for the price of those reserves when released, in order to avoid excessive fluctuations between the price of the main volume and that of the volume held in reserve.

The *Autorité* considers that, even if the agricultural sector benefits from certain rules that derogate from competition law, the proposed measure to regulate the price of inter-branch reserves does not fall within those derogations and, if implemented by a collective body setting the price fluctuation rate uniformly for all operators, is likely to constitute a price cartel contrary to competition law.

However, the *Autorité* finds that the inter-branch organisations may include a “price tunnel” in their inter-branch agreements, i.e. a framework whereby operators may

include in their contracts minimum or maximum limits between which the reserve price may fluctuate. **However, those limits must be freely determined and agreed upon by each contracting operator, to the exclusion of any joint fixing, and the inter-branch organisations must not be involved in determining the level thereof.**

In addition, in accordance with the provisions of the French EGAlim 2 Law, the *Autorité* notes that the French government could also, by decree, require the parties to include a standard clause in their contracts providing for a price tunnel, the limits of which would be freely determined by the parties.

The remit of the inter-branch wine organisations

In France, there are 24 inter-branch organisations in the wine sector, united under the *Comité national des interprofessions des vins à appellation d'origine et à indication géographique* (French national committee of inter-branch organisations for wines of designated origin, CNIV).

In addition to representing and promoting the products and vineyards concerned, the inter-branch organisations are responsible for economic forecasting and monitoring.

To fulfil their various responsibilities, the inter-branch organisations adopt inter-branch agreements that set out their operating and financing rules and provide a framework for their actions and those of their members. Under certain conditions, they can request that these agreements be extended to all operators in the sector for a specific period. In particular, they can take market regulation measures, such as placing part of the production in reserve; after approval by ministerial decree, these measures are made compulsory.

The aim of reserve measures is to limit market fluctuations. The wine sector is characterised by a certain fluctuation in harvest volumes and quality from one year to the next, due in particular to the vagaries of the weather. Furthermore, the sector has been facing a decline in demand for several years now. Against

this backdrop, operators are seeking to protect themselves against these hazards by deciding to place part of the grape harvest in reserve when the volume is high, and to release volumes held in reserve when the harvest is smaller than anticipated.

Request for an opinion on a price framework for inter-branch reserves

The request for an opinion concerns the introduction by the inter-branch organisations of a price framework for inter-branch reserves. The inter-branch organisations are considering including in their inter-branch agreements a provision whereby the price of the reserve at the time of release cannot fluctuate above or below a certain level in relation to the price of the main volume. However, the reserve price would remain freely determined by the parties to the transaction.

Each operator must be free to set its own prices

The *Autorité* notes that economic regulation of the agricultural sector is specific in that the *Treaty on the Functioning of the European Union* (TFEU) expressly limits the application of competition rules to the sector. However, the European regulation establishing a common organisation of the markets in agricultural products does not allow the inter-branch organisations to set prices.

Furthermore, at national level, the provisions of the French EGAlim 2 Law concerning the possibility for the parties to agree on a standard clause setting the principle of minimum and maximum price limits, as well as the option of making reference to such a clause compulsory for one or more agricultural products, do not allow such limits to be set collectively. They must be freely set by the parties to the contract.

In addition, Articles L. 420-1 of the French Commercial Code (*Code de commerce*) and 101 of the TFEU prohibit collective price-fixing.

Given that the specific regulations governing the agricultural sector do not allow derogation from the general prohibition on price-fixing, the *Autorité* considers that the proposed measure would be likely to contravene the current rules and

that it is unlikely that such a measure could benefit from an exemption.

However, as the *Autorité* is favourable to greater contractualisation in the agricultural sector to limit price volatility, it finds that the inter-branch organisations may include in their inter-branch agreements a framework enabling operators to include in their contracts minimum or maximum limits between which the reserve price may fluctuate. However, those limits must be freely determined and agreed upon by each contracting operator, to the exclusion of any joint fixing, and the inter-branch organisations must not be involved in determining the level thereof.

Lastly, the *Autorité* notes that, in accordance with the provisions of the French EGAlim 2 Law, the French government could also, by decree, require the parties to include a standard clause in their contracts providing for a price tunnel, the limits of which would be freely determined by the parties.

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on the arrangements for regulating the price of inter-branch reserves in the wine sector

See full text of the opinion (in French)

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