Sustainability: the Autorité de la concurrence publishes informal guidance on the creation of a system for the collective financing of the additional costs and risks associated with the agro-ecological transition

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Background

The *Autorité de la concurrence* has today published informal guidance in the area of sustainability, provided under the notice adopted on 27 May 2024.

An association, presenting itself as a trusted third party in the agro-ecological transition of agricultural holdings in France, consulted the General Rapporteur on the creation of a system for the collective financing of the additional costs and risks associated with the agro-ecological transition of agricultural holdings.

The General Rapporteur found the request to be admissible and that informal guidance could be provided given the importance of the transition for the agricultural sector, despite several aspects of the project still being under development.

In the letter sent to the requester, the General Rapporteur highlighted, in particular, the need to set transparent, objective and non-discriminatory conditions for participating in the project, unless otherwise justified. He also insisted on the need to use (i) scientifically sound tools to measure the transition of an agricultural holding and identify financing needs and (ii) a third party to collect, aggregate and anonymise the commercially sensitive data needed to implement the project.

In addition, the General Rapporteur outlined the analysis matrix to be used by project stakeholders to assess compatibility with competition rules, for the aspects of the project for which sufficient information was not available and, in particular, for the aspects relating to yield reduction and the payment of a premium by downstream players.

Lastly, the General Rapporteur recalled that farmers should be able to benefit from the monetisation of their agro-ecological data, in particular by downstream players.

Origin and content of the request

An association consulted the General Rapporteur on a project to determine and finance – on a collective basis – the agro-ecological transition needs of agricultural holdings across several regions in France.

The project brings together numerous players in the value chain, around a shared objective of supporting the agro-ecological transition of agricultural holdings in France:

- the association Pour une Agriculture du Vivant (PADV, the requester);
- collectors;
- manufacturers and distributors in the agri-food and luxury sectors;
- public and private financial partners (banks, insurers, local and regional authorities, water agencies, etc.);
- stakeholders such as trade unions, technical institutes, agricultural development agencies, professional organisations and non-profits.

The association performs a diagnostic of the level of agro-ecological transition of an agricultural holding, using a diagnostic tool called the regeneration index. Following the diagnostic, the agricultural holding receives a score out of 100. For example, a holding that receives a score of 40/100 is considered to have started

its transition.

In addition to its pre-existing tool, the association wants to introduce a method for determining and financing – on a collective basis – the additional costs and risks incurred by farmers in the agro-ecological transition of their holdings.

The financial support would be provided by:

- downstream players, in the form of premiums;
- public-sector players, in the form of subsidies;
- credit institutions and insurance companies, in the form of tailored services reflecting the commitment of the agricultural holding to the transition.

The plan is to deploy the project in six pilot regions in an initial phase and then nationally across France.

For the first time, the *Autorité* examined a case potentially falling within the scope of Article 210a of the CMO Regulation

The General Rapporteur found the request submitted by the association to be admissible and the processing thereof to be appropriate, in particular because the ***Autorité*** has never assessed the compatibility with competition rules of a project to create a system for the collective financing of the additional costs and risks associated with the agro-ecological transition of agricultural holdings.

In addition, the General Rapporteur considered that guidance could be provided given the importance of the transition for the agricultural sector, despite several aspects of the project still being under development. An analysis matrix is provided in the guidance for those aspects, which the project stakeholders are invited to use to assess compatibility with competition rules.

Insofar as it could not be ruled out that several aspects of the project still under development constitute a restriction of competition within the meaning of Article 101 TFEU, the General Rapporteur explained the conditions of application of Article 210a of EU regulation 1308/2013 establishing a common organisation of the markets in agricultural products of 17 December 2013 (the "CMO Regulation"). Article 210a provides an exception – where the conditions for its application are met – to the prohibition laid down in Article 101 TFEU, for conduct adopted by players in the implementation of a higher sustainability standard in the agricultural sector.

The need for objective, transparent and non-discriminatory conditions for participating in the project

First, the General Rapporteur recalled that the eligibility conditions for participating in the project must – in principle – be objective, transparent and non-discriminatory, unless otherwise justified.

Next, the General Rapporteur underlined that the voluntary and non-exclusive nature of the project preserved the incentive for players to innovate or to take different – more demanding or complementary – transition routes, which is fundamental for maintaining competition in the rapidly changing agricultural sector.

The need for scientifically sound measurement tools

While the regeneration index could not be examined in its current form, because it is already deployed in practice and therefore does not meet the condition of "project" defined in the notice on informal guidance, the General Rapporteur nevertheless recalled that a methodology and data based on sound scientific

principles are necessary to ensure that a project for calculating the environmental footprint is compatible with competition rules.

Moreover, the General Rapporteur highlighted that – in order to ensure compliance with competition rules – a collectively agreed method for determining the financing needs of an agricultural holding must be based on scientifically sound principles that identify, as accurately as possible, the additional costs and risks specific to the implementation of the project by farmers. He recalled, to that end, that particular care should be taken to preserve the widest possible range of transition routes, in order not to confine participating farmers to one or more specific schemes, which could compromise the objectives of the project.

The need to prevent exchanges of commercially sensitive information

The General Rapporteur noted that the project requires data to be collected, some of which may be commercially sensitive, in particular to (i) assess financing needs and (ii) model financing options.

After recalling the risks of collusion and foreclosure that can result from exchanges of commercially sensitive information, the General Rapporteur expressed reservations about the possibility for participants – and collectors in particular, which would be entrusted with data collection under the project – to collect and, more broadly, have access to such information. He considered that such practice was likely to constitute a restriction of competition within the meaning of Article 101 TFEU, without there being any possibility to benefit from the exception provided for in Article 210a of the CMO Regulation.

The need to assess the compliance with competition law of the expected yield reductions and the collective financing

With regard to the expected yield reductions, in the absence of sufficient information to perform a competitive analysis, the General Rapporteur invited the requester to assess the compliance of its project with the help of the analysis matrix provided in the guidance, which refers to the Commission guidelines for sustainability agreements in agriculture.

With regard to financing for the transition, the General Rapporteur first recalled that only financing that corresponds to a real financing need for the transition of a given crop can protect the project from competition risks. In the absence of sufficient information to perform a competitive analysis, he then invited the requester to assess the compliance of its project with the help of the analysis matrix provided in the guidance, which refers to the Commission guidelines for sustainability agreements in agriculture.

Lastly, the General Rapporteur emphasised that – without calling into question the principle of the free use of the premium to be paid under the project, which helps to maintain competition, in particular through the variety of transition routes – *ex post* monitoring was necessary to ensure that the project is pursuing its objectives effectively, efficiently and in compliance with competition law.

The need to ensure that farmers benefit from the monetisation of their agro-ecological data

Lastly, the General Rapporteur noted that data collected from farmers may be used by downstream partners for non-financial reporting purposes. Beyond questions concerning the legality of exchanges of sensitive information, he recommended that any revenue generated from the monetisation of such data should be distributed in accordance with competition law and, in particular, that

such distribution should not be to the detriment of farmers.

Information for undertakings

Since 2020, the *Autorité* has been committed to an "open door" policy. Players wanting to develop virtuous projects, but for which the analysis in terms of competition rules is particularly complex, can ask the *Autorité* for guidance in order to better self-assess the compatibility of their projects with competition rules.

In order to better support undertakings in their efforts, the *Autorité* published a notice on 27 May 2024, following a large public consultation. The notice is based on the chapter of the new European Commission horizontal guidelines dedicated to sustainability agreements, while taking a broader scope that covers all competition-related matters, with the exception of mergers.

Informal guidance 25-DD-01 of 29 January 2025
on the creation of a system for the collective financing of the additional costs and risks associated with the agro-ecological transition (in French)

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