

18 July 2011: Price volatility for agricultural raw materials

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The *Autorité de la concurrence* considers that it cannot pronounce on a general agreement between the players in the cattle, pork and poultry sectors in its advisory capacity, but agrees to reply to the general questions on competition asked by the Minister.

The *Autorité* considers in this regard that it is possible to insert price review clauses and “price smoothing” clauses into bilateral commercial contracts in these sectors to take the volatility of agricultural raw material prices into account, but stresses that these prices must be fixed independently.

> *Version française*



After a referral by the Minister of the Economy, the *Autorité de la concurrence* has delivered an opinion on the terms and conditions for negotiating contracts in the livestock sectors in a context of volatile agricultural raw material prices.

The impact of highly volatile agricultural raw material prices on production costs

In recent years, there have been strong variations in the price of the agricultural raw materials (cereals, oilseeds, etc.) used to feed animals, which reached a record level in December 2010. The increase in the price of animal feed resulted in further raises of farmers' production costs, and feed costs now represent more than half of production costs in livestock farming.

Confronted with this price volatility, the professional associations for farmers,

transformers and distributors in the pork, cattle and poultry sectors signed an agreement on 3 May 2011, in which the signatories agreed to reopen negotiations on prices of animal feed, if there were excessive variations in the prices of animal feed. A clause in the agreement made its application conditional on receiving the favourable opinion of the *Autorité de la concurrence*.

The general agreement signed by the players in the cattle, pork and poultry sectors cannot be subject to review by the *Autorité de la concurrence*.

When asked for its opinion, the *Autorité de la concurrence* can only pronounce on general questions of competition. No general competition question has been put to it in this case. It appears that the signatory parties simply wished to know whether the agreement complies with the law on anti-competitive agreements. However, the *Autorité* can only assess the compliance of such an agreement within the scope of litigation proceedings. The request for an opinion therefore does not come within the scope of article L. 462-1 subparagraph 2 of the Commercial Code.

The insertion of price review and “price smoothing” clauses in commercial contracts is compatible with competition law

Independently of the above-mentioned agreement, the Minister also asked the *Autorité* whether it was possible to insert price review and “price smoothing” clauses into the commercial contracts of operators in the livestock sectors (breeders, transformers and distributors), enabling operators to adjust prices in the event of sharp price volatility for agricultural raw materials.

Firstly, the *Autorité* considers that, under the general contract law and competition law, it is possible to insert these price review clauses into contracts, and that this is a frequent practice in other sectors.

Secondly, as it has already stated¹, the *Autorité* considers that the tools recently proposed by the legislator, notably contractualisation, are excellent mechanisms for managing risk for farmers and permit price review clauses to be systematically inserted into these sales contracts.

Finally, it is also possible to insert "price smoothing" clauses to adjust prices in line with fluctuations in the price volatility of agricultural raw materials.

However, the *Autorité* stresses that although standard contracts may be useful instruments for formulating these new clauses, prices must be fixed independently in accordance with the specific costs of the operators which are the parties in the contract without affecting the parties' freedom to negotiate.

(1) The Autorité de la concurrence has stated on several occasions that contractualisation is a suitable response to price volatility in the farming sectors. It enables farmers to strengthen their negotiating power vis-a-vis purchasers and guarantees them a sales volume and an income whilst securing the supply for purchasers. See Opinions [08-A-07](#), [09-A-48](#), [10-A-28](#) and [11-A-03](#).

> Consult the full text of [Opinion 11-A-11 of 12 July 2011 \(in French\)](#) on the methods for negotiating contracts in the livestock sectors in a context of price volatility of agricultural raw materials

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