

16th March 2005 : Anticompetitive practices in the cauliflower wholesale market in Brittany (Bretagne) - The Conseil de la concurrence imposes fines

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Following a complaint by the company Kampexport in 2001, the *Conseil de la concurrence* has imposed penalties on Cerafel (1), the economic agricultural committee for fruit and vegetables in Brittany, and on a number of producers' associations, the Saint-Pol-de-Léon SICA (2), the UCPT (3) and the SIPEFEL (4). These four organisations have been found guilty of committing anticompetitive practices in the cauliflower wholesale market in Brittany, and have therefore been fined a total of €45,000.

At the time of the facts, France was the second largest producer of cauliflowers in Europe. Brittany accounted for 75% of the country's total production. Between 50 and 60% of the cauliflowers produced were exported to Germany, the UK and the Netherlands, thus giving the case a European dimension.

Cauliflower sales modes in Brittany

The cauliflower distribution chain is structured around government-recognised producers' associations. In Brittany, these associations are the Saint-Pol-de-Léon SICA, the UCPT and the SIPEFEL, which are based in the three *départements* of Finistère, Côtes d'Armor and Ille-et-Vilaine. Centralising over 90% of the production, these associations are all members of the same regional economic committee, the Cerafel.

The main mechanism by which cauliflowers grown in Brittany are put on the market is the clock auction (a type of reverse auction). To access the auctions,

dealer-shippers must be officially approved. Over 90% of the volume of cauliflowers produced in the Cerafel economic zone are sold via the three markets of Saint-Méloir-des-Ondes, Saint-Pol-de-Léon and Paimpol, which are respectively managed by the SIPEFEL, the Saint-Pol-de-Léon SICA and the UCPT.

The Cerafel has also organised a dual contract system (fresh contracts and industry contracts), whereby a certain quantity of cauliflowers are sold at a price fixed several months in advance. Settled in 1998-99, tripartite contracts (between producers' organisations, approved dealer-shippers and recipients) were intended to prevent the risks of excessive fluctuations of the clock auctions' prices.

Kampexport's complaint

The Kampexport company imports and exports fruit and vegetables. It exports mainly to Germany and the Benelux countries, and acquires the majority of its supply on the markets controlled by the Cerafel. Cauliflower exports account for a substantial portion of the company's turnover.

In its referral, Kampexport complained that quotas had been introduced into the so-called "fresh contracts", limiting the quantities of cauliflowers that could be sold. The company believed these quotas hindered its economic development. In addition, the results of the *Conseil's* administrative inquiry enabled it to start *ex officio* proceedings, in order to deal with a number of other practices implemented in the cauliflower wholesale market in Brittany.

Abusive access conditions to clock auctions

Dealer-shippers such as Kampexport have no alternative but to take part in the clock auctions controlled by producers' associations, which are members of the Cerafel.

In its analysis, the Conseil emphasised that **the conditions imposed upon companies seeking approval for the auctions** managed by the Saint-Pol-de-Léon SICA, the UCPT and the SIPEFEL, had already been noted and condemned by the European Commission in 1977 . Under these conditions, companies are

obliged to:

- purchase exclusively on the markets controlled by the Cerafel;
- own a packaging store in the auction site's zone;
- purchase, work and ship on their own behalf only.

These practices contravene the provisions of Article 81 § 1 of the Treaty of Rome and Article L. 420-1 of the French code of commercial law (code de commerce), **insofar as they serve to restrict, prevent or control new shippers' access to auctions in Brittany.**

Arbitrary price determination and the presence of anticompetitive clauses in "fresh contracts" and "industry contracts"

"Fresh contracts" were originally intended as a mean of regulating the cauliflower market "prices" in Brittany during periods of excess supply, by enabling operators to commit to purchasing given quantities at prices, fixed in advance. "Industry contracts" were intended to fulfil the same purpose, by enabling the frozen food industry to obtain stocks during periods of abundant supply.

In its analysis, the Conseil emphasised that these types of contracts may be viewed as promoting competition, provided they are the result of the free interaction between forward supply and demand, and reflect the market conditions. This was not true in this case:

- firstly, because the Cerafel was arbitrarily fixing the price and quantities likely to be covered by these contracts, then choosing to award them to certain dealers in an effort to keep them in the Brittany cauliflower market;
- secondly, because the price paid by the purchaser of the contract was fixed at a very low level, whereas the price received by the producer was subsidised to bring it back up to the level of the day's auction.

Consequently, far from constituting a forward market, both "fresh contracts" and "industry contracts" served to conceal a process by which certain clients were subsidised, so as to deter them from obtaining supplies from other markets, notably the Spanish and Italian ones.

The artificially low prices of the contracts attracted more demand than could be possibly subsidised. As a result, the Cerafel compounded its practices by introducing rules intended to ration demand and control the final destination of subsidised cauliflowers, in order to prevent the beneficiaries of the contracts from selling them on the open market. Finally, for the "industry contracts", the Cerafel introduced loyalty bonuses aimed at deterring the purchasers of these contracts from seeking other sources of supply.

Consequently, **the Conseil took the view that the conditions required by the fresh and industry contracts effectively meant the introduction of a system intended to manage the quantity of cauliflowers subsidised**, involving:

- fixing an artificial price;
- managing shortages of subsidies, which were limited, by placing ceilings on available quantities and predetermining which purchasers would benefit from them;
- controlling outlets, thereby ensuring that the subsidised purchasers were indeed the selected purchasers.

By introducing these contracts, **the Cerafel engaged in practices** contravening the provisions of Article 81 § 1 of the Treaty of Rome. and Article L.420-1 of the French code of commercial law.

(1) *Comité Économique Agricole Régional Fruits et Légumes de la région Bretagne*, the Economic Agricultural Committee for Fruit and Vegetables in the Brittany Region (Région Bretagne)

(2) *Société d'Investissements et de Coopération Agricoles Saint-Pol-de-Léon*, the Saint-Pol-de-Léon Association for Agricultural Investment and Cooperation

(3) *Union des Coopératives de Paimpol et Tréguier*, the Paimpol and Tréguier Union of Cooperatives

(4) *Société d'Intérêt Professionnel des Producteurs de Fruits, Légumes, Bulbes et Fleurs d'Ille-et-Vilaine*, the Ille-et-Vilaine Professional Association of Fruit, Vegetables, Bulbs and Flowers Producers