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Circulation: balanceofcompetences@bis.gsi.gov.uk Contact:
Tel:
Email:

Balance of Competences: Competition and Consumer Policy

The National Farmers' Union (NFU) welcomes the opportunity to respond to the Balance of Competences, call for evidence: Competition and Consumer Policy Review. The NFU represents 47,000 farm businesses in England and Wales. In addition we have 40,000 countryside members with an interest in farming and the countryside. The NFU has responded to a number of previous "calls for evidence" and these can be viewed [here](#).

The NFU seeks to submit evidence in relation only to question 13 of the call for evidence document, and only in the context of competition policy, as set out below.

Question 13: Are there any general points you wish to make which are not captured above?

The NFU notes that competition rules necessary for the functioning of the single market fall within the exclusive competence of the EU. The NFU also notes that UK competition rules apply where there is no actual or potential direct or indirect effect on trade between Member States (i.e. if there is an EU dimension to an issue, EU competition law applies; whereas if the effect of an issue is limited to the UK market only, UK law applies). The NFU also notes that the UK competition regime is very closely modelled on the EU competition regime.

The NFU believes that the balance of competence described above is the correct balance. It is critical for the functioning of the single market that the competition regime is harmonious across Member States; farmers in the UK would be at a competitive disadvantage, for example, if a more liberal competition regime were in operation in other Member States. Therefore, commonality across the Member States is important to ensure that farmers across the EU can compete on equal terms.

Notwithstanding this, the NFU makes certain observations about the competition regime, as follows:

- Article 2 of Regulation 1184/2006 permits certain agreements in agriculture which are necessary for the attainment of the objectives set out in Article 39 of the TFEU; however, following the decision of the ECJ in *FRUBO v Commission* [1975] ECR 563, it has been very difficult for farmers or associations of farmers to make use of the provisions of Article 2. The NFU notes that the Commission has consistently rejected arguments in defence of agreements based on the provisions of Article 2 and Article 39. Clearly, when assessing the balance of competence, it is necessary not just to look at where legislation specifies that competence sits; it is also necessary to consider where such legislation is interpreted and applied (e.g. by the European Courts, or by the Commission). The narrow interpretation by the ECJ and the Commission of the provisions of Article 2 and Article 39 has effectively rendered those provisions meaningless for farmers.
- Competition law, whether under the EU or UK regime, does have an impact upon farmers in the UK, and the severe consequences of a breach of competition law (following on from broad and purposive interpretations of the EU regime by the European Courts and by the Commission, and as a consequence, by the UK competition authorities) can act as a disincentive for farmers to work together. Such a situation can be detrimental both to farmers and to consumers; farmer

The voice of British farming

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co-operation can result in economies of scale, shared knowledge and expertise, innovation, and cost and risk spreading. Whilst some degree of farmer co-operation is tolerated by the UK competition authorities, farmers are often very cautious about co-operating with each other, because of the draconian nature of the penalties if they are deemed to have acted in breach of the competition rules.

- Relatively speaking, farms are often small and fragmented businesses, and wield very little negotiating power with their buyers (processors and retailers). On the other hand, the processors and retailers that farmers are supplying are often concentrated and wield significant market share and bargaining power. Significant competition at the processor / retailer level can lead to sharp practices vis-à-vis farmer suppliers, and processors / retailers may seek to reduce the price paid to farmers to unsustainable levels. As a result, farmers can lose their ability to invest in their businesses, and the long term supply of the farmers' product to consumers is put at risk. This aspect of fierce competition – and the resulting long term effects on suppliers and consumers - is not addressed as part of either the EU or UK competition regimes.