

EXECUTIVE SUMMARY OF THE CNC REPORT ON THE DRAFT ROYAL DECREE REGULATING THE RECOGNITION OF PRODUCERS' ORGANISATIONS AND INTERPROFESSIONAL ORGANISATIONS IN THE MILK SECTOR AND ESTABLISHING CONDITIONS FOR CONTRACTS IN THE MILK SECTOR

IPN 50/11 ROYAL DECREE ON CONTRACTS IN THE MILK SECTOR

EXECUTIVE SUMMARY

The Council of the National Competition Commission, in its meeting held on 16 February 2011, approved this report on the *Draft Royal Decree regulating the recognition of producers' organisations and interprofessional organisations in the milk sector and establishing conditions for contracts in the milk sector* (hereinafter the Draft Royal Decree), in which it analyses the implications of the Draft Royal Decree from the point of view of effective competition on the markets.

The purpose of the Draft Royal Decree is to make progress with some of the recommendations put forward by the High Level Group of Milk Sector Experts, also set out in the proposal of the European Commission to amend EC Regulation 1234/2007¹, which, in the event that it is approved in its current terms, could give rise to an amendment of the Community rules and regulations relating to contractual relationships in the milk and milk products sector. Thus the Draft Royal Decree basically does the following:

- Regulates the position of the producers' organisations in the sector, listing their functions, along with the minimum requirements that they must satisfy and the rules for their recognition, and authorising them to be able to negotiate the terms of contracts with buyers on behalf of their members.
- Makes it mandatory to enter into contracts for the transactions carried out in the sector, as well as the minimum requirements that such contracts must satisfy.
- Determines the purpose of the interprofessional organisations in the sector, developing some of the activities for which they are responsible and the systems for authorising their agreements.

In general terms, the main considerations of the CNC in this report are:

1. The Draft Royal Decree regulates aspects that are also contemplated in the proposed reform of the aforementioned Community Regulation; in particular the possibility that Producers' Organisations and Associations of Producers' Organisations may negotiate the terms of the contracts with the buyers of raw

¹ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

milk on behalf of their members and the system of agreements of the interprofessional milk organisation. The domestic regulation of these provisions and their entry into force before such a reform is approved at European level, if that turns out to be the case, and before we know the terms on which the reform is finally approved, may impact on the understanding of the affected operators in terms of the application of the current competition rules and regulations to particular practices of the producers, giving rise to legal uncertainty.

2. In this sense, the domestic and Community competition rules and regulations would currently be fully applicable to such practices, irrespective of the entry into force of this Royal Decree. That is the case because, until we know the outcome of the Community reform, there is no legal basis for taking the view that these practices are not subject to the application of the national and Community competition rules and regulations, irrespective of whether or not such subjection represents their effective prohibition, based on the set of subsections 1 and 3 of article 1 of Spanish Competition Act 15/2007 of 3 July 2007 and article 101 of the Treaty on the Functioning of the European Union. As a result, the regulation contemplated in the Draft Royal Decree does not release the agents affected from the obligation to comply with the current competition rules and they may not legitimately rely on the fact that their practices accord with the law if they infringe the prohibitions established in the said competition rules and regulations.
3. As a result, and without prejudice to the fact that the specific wording of the text of the Draft Royal Decree on these points may be liable to the additional improvements to which the report also points in order to eliminate competition risks, the CNC takes the view that the regulation of such aspects ought to be removed from the Draft Royal Decree. If that is not done, its entry into force ought to be deferred until such time as the Community reform is fully effective, if that turns out to be the case.
4. The regulation of the obligation to formalise contracts in writing that is contained in the Draft Royal Decree does not raise competition problems. In a sector such as the milk sector, the obligation to formalise contracts in writing and the determination of their minimum content may help to eliminate possible asymmetries in terms of information, oblige the buyer to reach agreement with the seller on a price and quantity prior to the delivery date, balance the inequality of bargaining power and contribute towards respect for and control of the conditions agreed between producers and buyers, without the proposed regulation appearing liable to restrict competition, particularly as it expressly establishes that all the elements of the contract must be freely negotiated by the parties.

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