

SUMMARY OF RESOLUTION S/0231/10 PRODUCTOS HORTOFRUTICOLAS

In January of 2010 the Investigations Division began a confidential probe after learning through the press of the possible existence in the fruit and vegetable sector of minimum pricing arrangements and working meetings to regulate variations in prices by diverse associations farmers, produce exchanges and harvesters-exporters.

On 8 March 2010 the Investigations Division decided to bring an infringement proceeding against the Agrarian Association of Young Farmers (Asociación Agraria de Jóvenes Agricultores — ASAJA), the Coordinator of Organisations of Farmers and Cattle Breeders (Coordinadora de Agricultores y Ganaderos — COAG) and the Association of Marketers on Fruit and Vegetable Exchanges of the Autonomous Community of Andalusia (Asociación de Comercializadores Alhondiguistas de Frutas y Hortalizas de la Comunidad Autónoma de Andalucía — ALHÓNDIGAS) for possible conducts prohibited by article 1 of the Spanish Competition Act 15/2007 (LDC) and article 101 of the Treaty on the Functioning of the European Union (TFEU).

On 22 July 2010 the Investigations Division resolved to expand the proceeding to also include ASAJA-Almería and COAG-Almería amongst the accused. The resolution to widen the proceeding held that the parties responsible for the investigated conducts would not be COAG and ASAJA at the national level, but rather their provincial affiliates, COAG-Almería and ASAJA-Almería. Therefore, the proceedings were to henceforth only refer to ASAJA-Almería, COAG-Almería and ALHÓNDIGAS.

In its resolution of 14 December 2011 the CNC Council ruled that the evidence showed that COAG-Almería, ASAJA-Almería and ALHÓNDIGAS were responsible for an infringement of article 1 of the LDC and article 101 of the TFEU consisting in an agreement to fix minimum prices for California, lamuyo and Italian peppers, courgettes, cucumbers, aubergines and tomatoes. The conduct described is a pricing agreement intended to limit or distort competition, that is, an anti-competitive practice by object, so that there is no need to prove the existence of effects, but only that it is capable of having effects.

The decision holds that there was an effect on trade between Member States, as the price-fixing referred to products, namely, fruits and vegetables grown in Almería, some 60% of which are exported, with EU countries (Germany, France, Netherlands and the United Kingdom) accounting for nearly all, 97%, of the exports for the 2007/08 marketing season.

The Council does not object to farm organisations reaching agreements for joint action to defend the interests of their members, but it cannot accept that the banner of united action be used to support practices contrary to the competition rules, as is the case with agreements to fix minimum prices, which no doubt go beyond the boundaries of legitimate union action. According to the Council, the parties involved

in the agreement, COAG-Almería, ASAJA-Almería and ALHÓNDIGAS, are acting as economic operators within the meaning of the fourth additional provision of the LDC, which expressly provides that any person or entity that engages in economic activity is considered to be an undertaking for competition law purposes, irrespective of the entity's legal form and of how it is funded.

In view of all of the above, the CNC Council levied the following fines on the three entities: COAG-Almería €29,662, ASAJA-Almería €25,570 and ALHÓNDIGAS €183,214.