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Competition Policy in the Wine Industry in Europe

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Abstract

In recent years, several European antitrust authorities intervened in the wine sector to authorize mergers and acquisitions, provide opinions to governments, and ascertain anticompetitive agreements. This article analyzes these interventions in the context of an evolving regulatory framework. I draw conclusions about the direction of competition policy, in particular in relation to possible co-operations among various players in the wine industry. (JEL Classifications: K21, L40, L51)

Keywords: antitrust, appellations, competition, industrial economics, regulation.

I. Introduction

In recent years, several national competition authorities intervened in the wine sector in Europe, thus showing growing attention to an industry that had so far been excluded from competition rules.

In 2012, the French Competition Authority (FCA) approved an acquisition, but only after it conducted an in-depth examination.[1] In 2016, the Italian Competition Authority (ICA) issued an opinion (addressed to the Italian government and to all Italian regions) specifically targeting the wine market. The opinion communicated the need to apply current antitrust legislation, paying special attention to issues of price fixing and regulation limiting supply.

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[1] The FCA concluded that the transaction would not constitute a significant impediment to effective competition (SIEC) in the market for branded wines without a geographical indication.

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Between 2009 and 2018, the FCA and Spanish Competition Authority (SCA), identified and sanctioned four anticompetitive agreements in the wine sector (schemes fixing prices and/or quantities).

I also note that, as a result of the 2008 wine market reform and 2013 Common Agricultural Policy (CAP) reform, the European Union (EU) sectoral legislation has undergone significant changes.

In this article, I analyze antitrust legislation in combination with wine-specific sectoral regulation. I draw conclusions about the direction of competition policy in relation to possible cooperation among players in the wine industry.

I first propose definitions of the markets to be analyzed—the so-called "relevant markets" in antitrust terminology. The proposed definitions are based on geographic appellations or grape varieties, depending on the quality of the wines considered. On the basis of these definitions, I find that (1) price fixing could be considered illegal at any level of the value chain and (2) supply-side restrictions should be strictly limited to what is permitted by EU legislation.

The remainder of this article is organized as follows. Section II describes antitrust legislation and the evolution of EU wine regulation. Section III presents relevant markets, as they are defined by competition authorities. Section IV describes the Italian wine legislation and the ICA's opinion to the Italian government and regions. Section V presents the SCA's and the FCA's assessment of four anticompetitive agreements. Section VI concludes my proposed definitions for relevant markets and an assessment of price fixing and quantity restriction schemes.

II. Antitrust Legislation and Wine Regulation

A. Antitrust Legislation

Antitrust enforcement consists of (1) the ex-ante assessment of mergers and acquisitions (M&A) and (2) the ex-post ascertainment of illegal agreements and abuses of dominant position.

This article focuses on M&A and illegal agreements (cases of abuse of dominant position[2] have yet to be pursued in the wine sector).

Agreements that have as their object or effect the prevention, restriction, or distortion of competition are prohibited under EU rules. Such agreements include those which "directly or indirectly fix purchase or selling prices" and which "limit or control production" (TFEU, article 101.1).[3] In the context of M&As, antitrust

[2] Treaty on the Functioning of the European Union (TFEU), article 102.
[3] Article 101.3 indicates some possible exemptions to the prohibition of article 101.1.

authorities have the power to authorize transactions (as proposed by the parties or subject to conditions) or prohibit them (if they establish a SIEC[4]).

In most jurisdictions, antitrust authorities are also entrusted with advocacy powers, which allow them to advocate against legislative and administrative measures that create restrictions on competition.

B. Appellations

Wine is an experience good and is characterized by significant information asymmetries between producers and consumers. Generally, the quality of the wine can only be ascertained after purchase, that is, at the time of consumption.[5]

Regulations play a central role in the wine market, sorting wines on the basis of presumed quality through a classification system. In EU legislation, the concept of "quality wines" is based, inter alia, "on the specific characteristics attributable to the wine's geographical origin" (European Parliament and Council of the European Union, 2013, recital 92).

EU legislation defines a quality pyramid: the higher the expected quality, the stricter the rules. Current legislation identifies two broad categories:

- Wines without geographical indication (WGI): Previously called "table wines," they are now referred to as "generic wines" (with possible inclusion of harvest year) or "varietal wines" (with possible inclusion of grape variety and harvest year).
- Wines with geographical indication: These include wines with a protected geographical indication (PGI) and wines with a protected designation of origin (PDO); each of the PGI and PDO categories includes specific names, created by a group of producers around a consortium, a collective brand, and a set of binding rules.

Italian, French, and Spanish appellations, considered together, account for 74 and 58%, respectively, of all European appellations in the PDO and PGI categories (see Table 1).

C. Application of Competition Rules to Agriculture

EU regulations in the wine sector are not limited to quality provisions. They extend to a broad range of tools used to manage supply and address the long-established structural surplus in the EU.[6]

[4] Council of the European Community (2004).
[5] Castriota (2015).
[6] For a review of the evolution of EU regulations see Meloni and Swinnen (2013).

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Table 1
Distribution of Appellations in the PDO and PGI Categories in Principal European Countries for Wine Production, 2017

	PDO		*PGI*	
	hectares	*% of total area*	*hectares*	*% of total area*
Spain	100	7%	46	8%
France	405	30%	158	27%
Italy	500	37%	135	23%
Other countries	358	26%	236	42%
Total	1,363	100%	575	100%

Source: E-Bacchus (accessed 28 March 2018).

Under the TFEU, the CAP has precedence over the objectives of competition. On the basis of articles 39 and 42 of the TFEU, it is in the power of the EU legislator to determine whether and how far EU competition rules apply to the agricultural sector. The application of EU competition rules may not compromise the attainment of the CAP's economic and social objectives, for example, to ensure "a fair standard of living for the agricultural community" and "stabilize markets."

The 2013 CAP reform[7] established a common market organization (CMO) for agricultural products. Under this framework, EU competition rules apply to the agricultural sector, subject, however, to a number of derogations (i.e., rules that prohibit agreements restricting competition and abuses of dominant position, see recital 173 and article 206).

Derogations to competition rules may be general[8] (i.e., applying to all agricultural sectors) or specific (i.e., applying to only certain sectors). In the wine sector, the CMO mainly renews measures and approaches initiated during the 2008 wine reform. First, the CMO eliminates the previous transitional ban on planting vines.[9]

[7] Provided for by the European Parliament and Council of the European Union (2013).
[8] Producer organizations (POs) and their associations (APOs) contribute to strengthening the position of farmers and growers in the supply chain versus other downstream actors by carrying out a wide array of activities on behalf of their members. Interbranch organizations (IBOs) are vertically self-organized integrated organizations that include representatives of production and at least one partner from another level of the supply chain. Agricultural legislation provides that, on one hand, POs and APOs and, on the other hand, IBOs, may benefit from certain general derogations from competition rules which are expressly disciplined, respectively, by articles 209 and 210 of the CMO. Recently, the Court of Justice of the European Union (2017) derogated from the application of competition rules also specific agreements that derive from the responsibilities assigned, under European regulations adopted on the basis of article 42 TFEU, to POs and APOs. More specifically, agreements on price and quantities are permitted within the same PO or APO if they are proportionate to the objectives assigned to that organization under EU law.
[9] Council of the European Community (2008) established to revoke the previous prohibition on new plantings from 1 January 2016 in order "to permit competitive producers to respond freely to market conditions" (recital 59). The European Parliament and Council of the European Union (2013) have confirmed the end of the transitional ban on planting vines. However, in order to ensure an orderly

Second, the CMO confirms special supply-side management rules allowing, under certain conditions, agreements that limit output.

With regards to the latter, the CMO includes specific provisions for marketing rules that regulate wine supply. These rules may be established by Member States,[10] but must be notified to the European Commission (EC). Rules that restrict supply should be "proportionate to the objective pursued" and should not allow for price fixing ("including where prices are set for guidance or recommendation") or entail "excessive" supply restrictions (i.e., "not render unavailable an excessive proportion of the vintage that would otherwise be available") (article 167). Furthermore, the scope of such decisions should exclude practices which could "distort" competition (recital 137).

III. The Definition of Relevant Markets

The first step in evaluating competition claims is to define the relevant market(s). The market definition exercise identifies products and geographical areas that are substitutable in terms of supply and demand (European Commission, 1997).[11]

The market definition starts with the assessment of demand-side substitution, since demand is the most effective disciplinary force. This assessment is generally based on qualitative evidence collected by competition authorities usually from competitors and customers of the parties through hearings and requests for information.

Quantitative data, produced by the authorities, can complement the qualitative evidence. Such data include the response of consumers to putative price changes (collected through surveys), that is, how consumers would respond to relative price increases. Analysis of this data can indicate the degree of substitutability between two products. If the authorities find that two products exert a significant competitive pressure on each other, these two products may be included in the same relevant market.

Supply-side substitution is considered only if suppliers are able to adjust their production in the short term, that is, to have an impact equivalent to demand substitution in terms of effectiveness and immediacy.

growth of vine plantings during the period between 2016 and 2030, a new system has been set up. With the same aim of regulating supply, the former planting rights regime was substituted with a new scheme of authorisations. With the new system, Member States have an obligation to make available, on an annual basis, authorizations for new plantings representing 1% of the total planted vine. Member States can reduce this amount and target authorizations in specific areas.

[10] That is, through decisions taken by recognized IBOs to improve and stabilize the functioning of the common market in wines, "including the grapes, musts and wines from which they derive."

[11] Only the product dimension of the relevant market is described as, in the wine sector, the geographic market tends to coincide with national borders due to strong national preferences and consumption patterns that vary from country to country.

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Market definitions work best when products are homogenous. When products are differentiated, as is the case in the wine market, the usefulness of market definitions is less clear.[12] Indeed, when products are differentiated, competing products become imperfect substitutes; it becomes more difficult to draw a specific market boundary.

The economic literature has developed some tests to get around these difficulties,[13] in particular in relation to M&A evaluations. These test bypass market definitions and directly measure the parties' incentive to increase prices post-transaction. However, in practice these tests are never sufficient to conclude on the effects of a transaction; they are typically used in conjunction with qualitative evidence (e.g., current and potential competition, barriers to entry, buyer power, etc.). Therefore, the definition of relevant markets appears to be necessary in practice (as also demonstrated by the assessment of the FCA described in Section III.B).[14]

In decisions related to restrictive agreements, market definitions are less important—the detection of the illicit agreement matters more. In cases of restrictive agreements, the extent and object of each agreement defines the relevant market (see Section V for anticompetitive agreements ascertained by the SCA and FCA).

If the competition authorities were to consider certain particularly concentrated wine markets or wine sub-segments, the definition of the market could play a crucial role in the assessment of any possible future abuses of a dominant position, being a necessary pre-condition for ascertaining the market power of the company under scrutiny.

The remainder of this section describes the main M&A transactions examined by the competition authorities in Europe.

A. The European Commission Case Law

The EC has approved several M&A in the wine sector. In all cases, the transactions did not raise serious competition concerns; the evaluation of the competition would not have changed, even if the EC considered the narrowest possible market. In the decisions, therefore, market definitions were left open.

In the Pernod Ricard/V&S decision, the EC considered each of "still wines (…), champagne, sparkling wines (other than champagne), fortified wines (such as port and sherry) and light aperitifs" as separate relevant product markets (European Commission, 2008, par. 40, p. 9). Affected markets[15] included still wines in Finland

[12] See Kaplow (2010) and Sabbatini (2012) for criticism from both the legal and economic literature.
[13] Farrell and Shapiro (2010) have developed, for example, the upward pricing pressure test (UPP).
[14] Also the Autorità Garante della Concorrenza e del Mercato (2012) implemented the UPP test to assess the likely effects of a transaction in combination with other qualitative elements.
[15] Affected markets are the relevant markets in which the parties will have, post-merger, a horizontal combined market share of 15% or more.

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and Sweden, sparkling wines in Finland and Norway, port wines in Finland and Sweden, sherry wines in Finland, and light aperitifs in Finland and Sweden. The EC also considered appellation as a factor in defining relevant markets. The EC authorized the transaction, conditional on certain commitments from Pernod Ricard.

In a transaction related to sherry wines, the authorities used the "Sherry" PDO to distinguish between Spanish "Sherry" produced in the historic area of the Jerez region from other sherry-style wines (European Commission, 1994). However, while noting that appellation could be a relevant factor in defining a product market for sherry (different from other fortified wines), the EC left the issue open.

The EC similarly left the issue open in a 2002 case related to French wines. In the decision, the EC states that it does not exclude the possibility that appellations may give rise to distinct product markets.[16]

In a 2011 decision, the EC defined the production and marketing of wines in the Bordeaux region as a relevant market (the target companies were active only in the Bordeaux wine segment). Since almost all wines produced in the Bordeaux region are PDO wines, this relevant market implicitly coincides with that which includes all the PDO wines of the Bordeaux region.

While segmentations based on regions or appellations have not been definitively endorsed, relevant markets have been segmented by distribution channels—differentiating between on-trade sales such as bars and restaurants, and off-trade sales, that is, retail—and wine color (for still wines only). Market segmentations based on country of origin and price have been rejected (European Commission, 2008).

B. The French Competition Authority Case Law

Of the European national competition authorities, only the FCA has conducted an in-depth examination in the context of an acquisition. The acquisition was approved by the Autorité de la Concurrence in 2012. The acquiring entity (Castel Group) was one of France's leading wine producers and was active in all wine categories. The acquired entity (Patriache) was only active in the Burgundy region, and produced wines in the WGI and PDO categories.

Post-transaction, the combined entity would include a significant number of WGI brands. An in-depth examination was thus necessary to ensure that the transaction would not significantly impede effective competition for this category. The FCA ultimately concluded that the transaction would not negatively affect competition since Castel's strong position in WGI wines pre-dated the acquisition and Patriarche was a relatively small player.

[16] The decision was related to wines controlled by the Compagnie Nationale à Portefeuille (CNP) in the Bordeaux region, including the "Saint-Emilion," "Sauternes," and "Pomerol" PDOs, and wines controlled by Taittinger in the Saumur and Loire.

The FCA's decision is largely based on qualitative evidence collected through a broad consultation of the market's main participants, including competitors and clients (i.e., supermarkets). With regards to market definition, the FCA assesses that sparkling wines and still wines belong to separate markets—based on the different consumer tastes and consumption patterns in these two wine categories. The decision notes that market participants further segment still wines based on color (red, white, and rosé).

The decision also distinguishes between on-trade and off-trade channels, due to specificities in terms of packaging and dedicated sales force, and differences in market positioning enjoyed in each channel. The off-trade channel is further segmented into large- and medium-sized supermarkets (LMS), hard discount retailers, and wine merchants. The distinction between LMS and wine merchants is based on three main considerations: (1) wine merchants tend to be located in city centers, while LMS are located in the suburbs, (2) wine merchants, unlike LMS, provide advice to clients, and (3) wine merchants, unlike LMS, mainly carry premium PDO wines.

Within the LMS market, the decision further identifies various commercial proposals: producer labels, private labels, and first-price labels. The FCA has established that, from a demand perspective, considering both price and quality, it is possible to distinguish, on one hand, first-price labels from, on the other hand, producer and private labels that are considered together.

Finally, for still wines, the decision defines separate markets based on appellation: the market for PDO wines, and the market for PGI and WGI wines. This segmentation is based on supply- and demand-side considerations.

On the supply side, PDO wines are burdened by specific regulatory constraints.[17] On the demand side, the market investigation shows that consumers who choose PGI and WGI wines care about grape variety, while those who choose PDO wines also consider year of harvest, region of production, and bottling at the "château."

The qualitative elements collected by the FCA also suggest that PGI and WGI wines are substitutable and constitute the same relevant market, that is, ordinary wines for everyday consumption.

On the supply side, PGI and WGI wines derive from a similar manufacturing process: they are not subject to an aging process and the regulation allows for the mixing of grapes across vintages and/or varieties.

On the demand side, PGI and WGI wines are less distinguishable since the 2008 EU wine reform. The reform allows grape variety to be indicated on the label of

[17] Among others, based on European regulation PDO wines grapes must come entirely from a specific territory, however, for PGI this threshold is lowered to 85% of grapes.

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WGI wines, in line with PGI wines. The market investigation reveals that inexperienced consumers who buy wines of medium/low quality do not distinguish between WGI and PGI wines based on the geographical origin of a wine; the criterion of choice is mainly grape variety. Furthermore, the decision notes an upward shift in the preferences of French consumers, from WGI wines to PGI wines.

In the light of the activities of the parties, the transaction raised concerns in the following two markets for still wines, sold off-trade in LMS that considered only producer and private labels (and not also first-price labels):

- the market for Burgundy PDO wines; and
- the market for ordinary PGI and WGI wines for everyday consumption.

In relation to PDO wines, Patriarche was only active in Burgundy. The decision thus focuses on overlaps in the market for PDO wines in the Burgundy region, and finds low post-acquisition combined market shares (10–20%). Focusing on narrower segments—limited to producers' labels and wine color—the parties' market shares did not raise competitive concerns.

The decision reports a 30–40% combined market share for PGI and WGI wines (included in the same broad market for ordinary wines for everyday consumption), with a low increment due to the marginal role played by Patriarche. The market for PGI and WGI wines is not further segmented based on colors, as the market investigation did not reveal significant differentiation. After noting the existence of competitors with excess bottling capacity, the FCA concluded that there were no horizontal competition concerns in the market for ordinary wines for everyday consumption.

The definition of a market for ordinary PGI and WGI wines for daily consumption was confirmed in two subsequent decisions. The following case law also opened the possibility for further segmentation of the still wine PDO category into more specific geographic areas.

In the Evoc/Val d'Orbieu decision (Autorité de la Concurrence, 2014a), the FCA considered appellations as relevant markets—thus adopting a conservative approach since the parties significantly overlapped for these appellations. Accordingly, it considered the PDOs of "Corbières," in the Languedoc Roussillon region, and of "Bergerac," in the Vins du Sud-Ouest region, as relevant markets.

In relation to the acquisition of joint control of a wine activity by Castel Frères and Domaines Listel (Autorité de la Concurrence, 2014b), the market investigation showed production region to be the main determinant for consumers buying PDO wines in LMS. Accordingly, the FCA defined relevant markets for Provence and for Languedoc Roussillon (i.e., considering all of the PDO wines in these production regions).

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IV. Competition Advocacy

A. Italian Legislation

Italian legislation regulates all aspects of wine production—from wine growing to marketing. With regards to classification, the Denominazione di Origine Controllata (DOC) and Denominazione di Origine Controllata e Garantita (DOCG) categories are equivalent to the EU PDO, and the Indicazione Geografica Tipica (IGT) to the PGI.

In recent years, PDO wines have increased mainly at the expense of generic wines, thus making them the most widespread category of wine (see Table 2).

At the regional level there is still a significant difference in the role played by quality wines. In Piedmont, the PDO category represents 80% of total production, while in Apulia only 5% (see Table 3).

The production code ("disciplinare di produzione")—which is approved together with the awarding of a specific appellation as a PDO or PGI wine—regulates the delimitation of a specific geographical area, but also winegrowing (e.g., maximum yield per hectare), production, and labelling.

National legislation allows regions to implement several tools to manage supply. Following proposals from a producer consortium, regions may, temporarily or permanently, increase or reduce supply. These restrictions result in downward or upward pressure on average wholesale prices. I list these measures in the following paragraphs, starting from a competitive standpoint with the most harmless.

On one hand, in climatically favorable years, regions can exceed the maximum yields allowed by the production code by 20%. This practice aims to constitute a harvest stock to be used in subsequent years, to integrate possible production shortages, or to be released, following a provision by the region, to satisfy market needs (Law n. 238/2016, article 39.1).[18] Then, regions can also adopt different measures to manage the available output from a specific year's harvest. The establishment of inventories may be appropriate to temporarily align supply to demand (article 39.4).[19] However, inventories only smooth quantity supplied and do not tackle structural surpluses.

[18] See, for example, Direttore della Direzione Agroalimentare della Regione Veneto (2016b), which decreed that the appellation "*Prosecco DOC*" in relation to the 2016 harvest constituted a harvest stock because of the particularly favorable meteorological conditions that allowed for an optimal ripening of grapes. A successive decree, Direttore della Direzione Agroalimentare della Regione Veneto (2017a) authorized the release of the harvest stock in order to increase supply to meet demand. In 2015, with around 351 million bottles, "*Prosecco DOC*" was the most diffused Italian PDO, accounting for 15% of total PDO quantities (Il Corriere Vinicolo, 2017).

[19] See, for example, Direttore della Sezione Competitività Sistemi Agroalimentari della Regione Veneto (2014)—for the appellation "*Prosecco DOC*" and in relation to the 2014 harvest—ordered the producers to stock the product, above a determined quantity and until the maximum yield established by the

Table 2
Evolution of Wine Categories in Italy between 2011 and 2015
in 1,000 hectoliters

	2011		*2015*	
PDO	14,857	33%	18,155	37%
PGI	13,560	30%	14,175	29%
Varietal wines	219	1%	460	1%
Generic wines	16,062	36%	16,456	33%
Total	44,698		49,245	

Source: Il Corriere Vinicolo (2017).

Table 3
Regional Distribution of Quality Wines in Italy in 2015
in hectoliters

Region	*PDO*	*Total*	*PDO (% of total)*
Apulia	442,433	8,699,228	5
Molise	20,402	209,941	10
Sicily	815,089	5,069,299	16
Emilia Romagna	1,472,205	8,140,083	18
Lazio	341,364	1,087,893	31
Basilicata	29,928	86,327	35
Abruzzo	986,838	2,735,341	36
Campania	294,043	742,023	40
Umbria	202,546	508,321	40
Calabria	49,629	116,706	43
Marche	423,812	979,639	43
Lombardy	595,907	1,171,278	51
Friuli Venezia Giulia	877,261	1,635,996	54
Veneto	5,977,432	10,538,507	57
Tuscany	1,796,835	2,675,008	67
Sardinia	369,717	542,735	68
Trento	829,197	1,096,042	76
Liguria	31,902	40,987	78
Piedmont	2,272,528	2,827,443	80
Aosta Valley	12,286	14,467	85
Bolzano	313,301	328,038	96
Total	18,154,655	49,245,300	37

Source: Il Corriere Vinicolo (2017).

On the other hand, quantity supplied can also be permanently reduced to stabilize markets and achieve market balance (article 39.2); this, in turn, may adversely impact competition. The reasons for implementing this provision may be the need to cope

production code, to favor balance on the market for "*Prosecco DOC.*" A successive decree, Direttore della Sezione Competitività Sistemi Agroalimentari della Regione Veneto (2015a) released the quantities that had been previously blocked to meet market demand.

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with a declining demand, sometimes associated with the intention to improve quality. In these cases, the available production of the annual crop of a specific harvest is reduced and the remainder (up to the maximum yield allowed by the production code) is de-classified to a lower wine category. For instance, in the Veneto region (the largest Italian region based on the production of wine, see Table 2), two appellations are produced from dried grapes.[20] For both, the quantity of grapes reserved for dehydration was reduced in four consecutive harvest years (see Figure 1).[21]

Finally, the regions can regulate the planting area in their territory to achieve market balance. This is achieved by limiting the registration of new vineyards under specific appellations (article 39.3).[22]

B. Italian Competition Authority's Advocacy

The ICA seized the opportunity that arose from some agreements that occurred within a specific IBO (interbranch agreements)[23] hosted by the Piedmont region, to advise the Italian government and all Italian regions on the competitive impact of those agreements. The ICA considered that similar agreements could be taken in other regions as well.

In Piedmont, PDO represents 80% of volume produced; it is the Italian region with the highest ratio of quality wines in terms of total production (see Table 3). The opinion of Autorità Garante della Concorrenza e del Mercato (2016) concerned agreements that occurred between 2010 and 2014 for the sale of "Cortese" grapes used for the production of "Cortese di Gavi DOCG" and "Piemonte Cortese DOC" appellation wines.[24] The agreements not only introduced restrictions on the quantities of the grapes produced, but also established minimum prices for the sale of the grapes.

The ICA stressed the need to limit interbranch agreements to what is permitted under current legislation, which excludes agreements on grape, must, and wine prices at any level of the value chain (CMO, art. 167). Therefore, it invited the parties involved to limit the use of supply-side measures, due to their impact on the availability of wine in the retail markets and—consequently—on prices.

[20] "Amarone della Valpolicella DOCG" and "Recioto della Valpolicella DOCG." The former accounted for around 13.5 million bottles in 2015 (Il Corriere Vinicolo, 2017).

[21] In 2014–2017, the quantities destined for the dehydration process have been reduced between 23 and 46% of the quantity allowed from the production code.

[22] See, for example, Direttore della Direzione Agroalimentare della Regione Veneto (2016a) temporarily suspended the registration of new vineyards for the three seasons 2016/2017, 2017/2018, and 2018/2019. A similar provision was adopted for the previous three seasons as well.

[23] In Italy there are currently no recognized interbranch organizations in the wine sector. Interbranch agreements ("intese di filiera") are allowed by Italian legislation also outside recognized interbranch organizations; see the study commissioned by the European Commission (2016).

[24] In 2015, the "Cortese di Gavi DOCG" and the "Piemonte DOC" appellations—the latter being wider than the "Piemonte Cortese DOC" appellation that it includes—accounted for around 9 and 15.3 million bottles, respectively. *Source*: www.valoritalia.it, accessed 29 March 2018.

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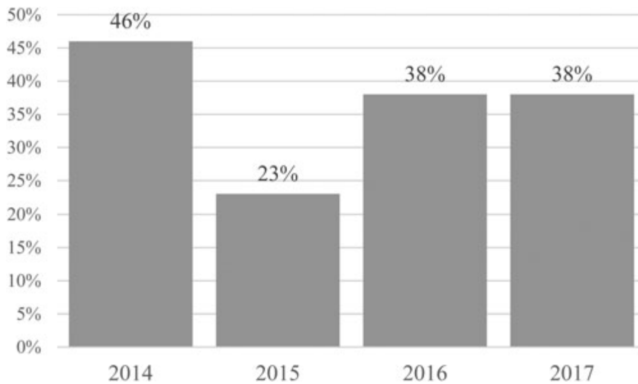
Figure 1

Reduction of Quantities Destined for Dehydration Process in Percentage of Allowed Quantity, 2014–2017



Source: Dirigente Regionale della Sezione Competitività Sistemi Agroalimentari della Regione Veneto (2014); Direttore della Sezione Competitività Sistemi Agroalimentari della Regione Veneto (2015b); Direttore della Direzione Agroalimentare della Regione Veneto (2016c, 2017b).

V. Antitrust Enforcement in Relation to Agreements among Competitors

In the period 2009–2012, the SCA intervened three times: twice in relation to horizontal anticompetitive agreements (i.e., among competitors active at the same level of the value chain) and once in relation to a vertical anticompetitive agreement (i.e., between players active at different levels of the value chain).

The FCA intervened once in 2018 to sanction a horizontal agreement among competitors.

A. Horizontal Agreements

(1) "Sherry" (Spain)

In 2010, the SCA unveiled a secret horizontal agreement among competitors (Comisión Nacional de la Competencia, 2010) in the export market of PDO "Sherry" wines. The relevant market consisted of wines supplied exclusively for export under the brand name of a distributor (buyer's own brand (BOB)), in the United Kingdom, Germany, Netherlands, and Belgium. The cartel consisted of nine companies, an industry association (Fedejerez), and the regulatory board for the "Sherry" PDO (Regulatory Board or CR). It all started with a leniency applicant[25] who revealed his involvement in the cartel and provided incriminating information to the SCA.

[25] The EC and national competition authorities operate a leniency policy whereby companies that provide information about a cartel in which they were involved may receive full or partial immunity from fines.

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The Sherry market had seen its fastest growth in the 1970s. Changes in consumer tastes in the 1980s led to declines in exports, so that supply continuously exceeded demand. Sales declined consistently over the eight years of the cartel (–29%)—led by drops in the export segment (the national market was rather stable, see Figure 2).

The cartel had two phases interrupted by the disagreements that arose among some of its members. In the first phase (2001–2003), rules were created and the cartel successfully raised prices. Under the agreement, production quotas would be implemented on the basis of average sales for the previous three-year period (1998–2000), including a reduction in supply to adapt to the estimated reduction in demand. The agreement included a re-distribution mechanism for companies exceeding the allocated quota and a minimum benchmark price.

The cartel was destabilized when new suppliers entered the market with lower prices, leading some cartel members to violate the agreement to defend their market shares. The cartel eventually broke down in 2003, when one of the cartel members refused to make the agreed compensation to another member who had sold below his allocated quota.

The cartel resumed in 2005, with cartelists focused on raising barriers to entry in the BOB market. The cartelists decided to push the CR to modify existing regulations and introduced quantity restrictions that would apply to the entire "Sherry" supply.

To guarantee the desired quality level, CR regulation required that the quantity of wine aged be about three times the volume available on the market.[26] As a result, the marketed share could not exceed 35% of each operator's stocks.

The cartelists lobbied the CR to establish limits based on total past sales instead of stocks of each winery. Total past sales could, in fact, be higher than the allowable percentage of stocks because any company could increase its ability to acquire wine from another winery that complied with its share. While stock limits were justified by quality considerations, the restrictions based on past sales represented an unjustified restriction of production.

The SCA confirmed the violation of article 101 TFEU and fined nine wineries, Fedejerez, and the CR.[27]

[26] The "Sherry" PDO regulation contains a minimum aging requirement of three years. The traditional system (so-called "criaderas y solera") for making "Sherry" consists in blending wines of different ages.

[27] In separate proceedings, the SCA sanctioned the CR's specific intervention, by means of a circular, that accepted the wineries' demand to restrict quantities beyond that which was required for the purposes of quality control (Comisión Nacional de la Competencia, 2009).

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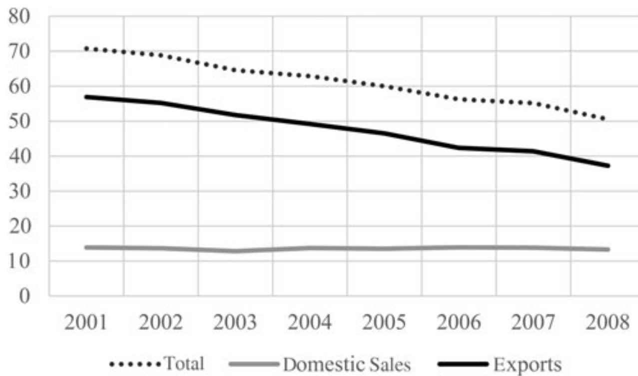
Figure 2

Evolution of Spanish Sherry Sales from 2001 to 2008
in million liters



Source: Consejo Regulador de los Vinos de Jerez y Manzanilla (2008/2007/2006/2005/2004/2003/2002/2001).

(2) "Valdepeñas" and "La Mancha" (Spain)

Horizontal cartels among wine producers can damage both downstream demand, as in the BOB cartel described earlier, and upstream grape growers.

In a subsequent case, the SCA sanctioned three winemaker associations for the exchange of information aimed at fixing the prices of wine grapes in the "Valdepeñas" and "La Mancha" production regions (Comisión Nacional de la Competencia, 2012).

These production regions belong to the largest winegrowing areas in the world and include several PDOs and PGIs. The antitrust breaches concerned grapes destined to both "Valdepeñas" and "La Mancha" PDOs—including both white and red wines, mainly from the "Airén" and "Tempranillo" grapes. The SCA found that three associations exchanged information on current grape purchase prices for the purpose of determining and fixing prices paid for wine grapes for the harvest years of 2009/2010 and 2010/2011.

(3) "Côtes du Rhône" (France)

In 2018, the FCA ascertained a horizontal anticompetitive agreement in relation to the conduct of the Syndicat Général des Vignerons Réunis des Côtes du Rhône (SGVRCR). Under the agreement, which took place between 2010 and 2017, the SGVRCR set and disseminated price recommendations to its members (Autorité de la Concurrence, 2018). The price recommendations covered all bulk wines included in the "Côtes du Rhône" PDO—segmented by color (white, rosé, and red) and, for red wines, by product range (bottom-, middle-, and top-shelf).

Originally, the agreement aimed at increasing bulk wine prices. Once the target minimum price was reached in 2014, the objective became to stabilize these same prices. In its decision, the FCA noted that a "syndicat" cannot exert any influence on the prices charged by its members—including through non-mandatory price recommendations. Prices must be determined individually, on the basis of costs.

B. Vertical Agreements

In 2011, the SCA intervened again in the "Sherry" sector, this time due to vertical agreements involving players at different levels of the value chain. It fined Fedejerez and the CR, among others, for fixing the prices of grapes[28] and must/bulk wine used to produce "Sherry" (Comisión Nacional de la Competencia, 2011). The scheme was discovered through documentation obtained in the investigation described earlier (in relation to BOB exports).

The anticompetitive practice emerged as a response to excess capacity in the "Sherry" sector. Each season, in the period between April 1991 and March 2009, associations of wine growers and producers negotiated and agreed on the price of grapes and must/bulk wine. As a result, producers did not have to compete for their main input, while grape growers maintained a minimum income.

VI. Conclusions

A. The Definition of Relevant Markets: Appellations Versus Grape Varieties

Should different geographic appellations and/or grape varieties constitute separate relevant markets? That is one of the main questions for market definition in the wine sector.

A first level of segmentation consists in different production methods, that is, still, sparkling, and fortified wines. Sparkling and fortified wines can be further segmented—champagne and other sparkling wines for the former, port and sherry for the latter.

A second level of segmentation consists in PDO appellations—providing a more accurate geographical segmentation than at the national level by considering (1) a specific appellation, (2) all the PDOs of a given region of production, and (3) all PDOs from different production regions.

With regards to a specific appellation, the EC noted that the Spanish "Sherry" PDO appellation could be relevant in the context of the definition of the market for sherry product (European Commission, 1994). In a subsequent decision related to French wines from the Bordeaux region, the EC considered specific

[28] Mainly "Palomino" but also "Pedro Ximénez" and "Moscatel."

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appellation PDOs as possible relevant markets ("Saint-émilion," "Pomerol," and "Sauternes" (European Commission, 2002)). In 2014, the FCA defined specific PDO appellations as relevant markets ("Corbières" and "Bergerac" (Autorité de la Concurrence, 2014a)).

With regards to all the PDOs of a given region of production, some decisions considered all of the PDOs from a specific production region, that is, Bordeaux (European Commission, 2011), Burgundy (Autorité de la Concurrence, 2012), and Provence and Languedoc Roussillon (Autorité de la Concurrence, 2014b).

With regards to all PDOs from different production regions, the FCA envisaged, without taking a definitive position, a possible segmentation that considers together the PDO wines of different production regions such as Bergerac and Bordeaux (Autorité de la Concurrence, 2014a) and Provence and Languedoc Roussillon (Autorité de la Concurrence, 2014b).

The decision among these geographical levels—specific appellation, production region, several production regions—was mainly determined by consumer preferences observed in terms of "terroir," grapes, climate, and taste.

When it comes to wines without a PDO, grape varieties seem to be a more important factor than geographic appellations. The FCA, for example, identified a broad market for ordinary wines for everyday consumption (including both PGI and WGI wines), because both can precisely indicate grape varieties on the labels.[29] However, the FCA did not go as far as identifying a market for a specific grape variety.

In some cases the evidence collected may suggest the possibility of further segmentation. Indeed, the competition authorities could consider possible positions of market power in specific sub-segments in terms of color, distribution channel, and/or commercial proposition.

Online wine sales are growing considerably in some countries. Competition authorities could examine competition between online and offline providers, and ascertain whether the online channel represents a market separate from the offline one.

B. Assessment of Price and Quantity Restrictions

Competition legislation punishes cartels, which mainly consist of price fixing and quantity restrictions. In fact, these types of conducts achieve the same negative effects as a monopoly. The total surplus is reduced by the so-called deadweight loss, which causes allocative inefficiency. At the same time, cartel arrangements can result in productive inefficiency, as production costs may be higher than those that would result in a more competitive environment. Further negative effects include a reduction in incentives for innovation and a worsening of dynamic efficiency.

[29] Autorité de la Concurrence (2012, par. 39).

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The SCA decision in relation to the "Sherry" cartel highlighted the negative effects of output restrictions and agreed minimum prices. In 2001 and 2002, prices rose from 1.00 euros/bottle to 1.42 euros/bottle. In 2003 cartelists discussed increasing prices to 1.75 euros/bottle. In May 2006, Fedejerez proposed a "gentlemen's agreement" with minimum benchmarked prices of 1.25 euros/bottle in the United Kingdom and 1.10 euros/bottle for the rest of Europe. As a result, during the first phase of the cartel, prices increased by 42%. In the second phase, prices increased to a lesser degree (10–25%).

The evolution of the "Sherry" secret agreement is paradigmatic of the difficulties that may arise in the stabilization of a cartel over time. In deciding whether to continue colluding or to deviate, each cartel member compares the immediate gain he/she would make by deviating with the profit he/she would surrender if rivals punish the deviation. Several structural factors may favor the instability of a cartel: low market concentration, absence of entry barriers, and demand variability.

The "Sherry" cartel was unstable precisely due to the presence of such factors. First, there were 64 wineries authorized to bottle and market "Sherry" wine. Second, there were no barriers to entry: each authorized operator could export wine. Finally, demand was unstable, with an overall reduction of 35% in total exports over the period considered (see Figure 2). When demand is unstable it may be difficult to identify the cause of lower sales, such as a cheating co-cartelist or worsening market conditions.

(1) Price Restrictions

As demonstrated by the four anticompetitive agreements ascertained by the SCA and the FCA over the period 2011–2018, price agreements are still widespread in Europe and extend to all levels of the value chain including (1) grapes (Comisión Nacional de la Competencia 2011, 2012), (2) must/bulk wine (Comisión Nacional de la Competencia 2011; Autorité de la Concurrence, 2018), and (3) bottled wine (Comisión Nacional de la Competencia, 2010).

Agreements over musts/bulk wine are more harmful than those relating to grapes: they apply to a level of the value chain closer to the final consumer and are thus more likely to affect final prices. Moreover, they provide a minimum income to the industrial component of the value chain, not growers (Arnaudo, 2016). From an antitrust perspective, price restrictions are even more serious when they concern final prices charged to consumers.

The ICA identified vertical agreements concerning the price of grapes in the context of interbranch agreements of two Piedmont appellations in the period from 2010 to 2014. The ICA reasonably supposed that similar agreements could concern other appellations as well.

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Interbranch agreements are widespread in the EU.[30] They include the "Comité Interprofessionel du Vin de Champagne" (CIVC), which is the trade association that represents the interests of independent "Champagne" growers and producers. Grape price agreements between growers and producers have a long tradition in the Champagne region.

The first meetings between growers and producers to discuss grape prices took place in 1890; price of grapes were set in 1935. In 1959, the first of several joint trade contracts to regulate the market for Champagne was agreed upon. In 1990 individual contracts replaced joint trade contracts as part of a new market reorganization, and indicative prices replaced fixed prices.[31]

The "Champagne" PDO production area covers 320 villages ("crus") in five departments: Marne, Aube, Aisne, Haute-Marne, and Seine-et-Marne. A rating system ("échelle des crus") was introduced in 1911. There were 17 and 42 vineyards classified, respectively, in the categories "grand cru" and "premier cru," while the rest were considered simply as "cru." The CIVC used to define the reference price that would then be paid at 100% to "grand cru," 90% to 99% to "premier cru," and 80% to 89% to "cru" vineyards.

Currently, the prefects of the five departments of the "Champagne" production area annually define the price of grapes for each "cru" in order to determine the rent to be paid for the vineyards ("fermage des vignes"). As shown in Table 4, for the harvests from 2013 to 2016, the price range is still narrow. The minimum price for "grand cru," "premier cru," and "cru" grapes are equal to at least 99, 92, and 85%, respectively, of the highest price (reference price or RP in Table 4).

Not all "Champagne" vineyards are subject to "fermage" prices. However, the diffusion of this system could eliminate the uncertainty typical under competition, and constitute a possible negotiation floor with producers.

EU sectoral legislation does not exempt the wine sector from the prohibition on price fixing defined by antitrust laws. The wine sector is subject to the rules of competition and price fixing may be considered illegal at all levels of the value chain, from grapes to bottled wine.[32]

[30] There are 31 recognized interbranch organizations in the wine sector, most of which are French. *Source*: https://ec.europa.eu/agriculture/producer-interbranch-organisations/interbranch-organisations_en, accessed 26 June 2018.
[31] Comité Champagne (2019).
[32] The TFEU prohibits agreements that have as their object or effect the restriction of competition. With object restrictions, the restriction is appreciable by their very nature, while not all agreements restricting competition by effect constitute an appreciable restriction of competition. The EC considers that by effect agreements among competitors that do not exceed 10% of the relevant market do not significantly restrict competition, without implying that agreements above that threshold constitute an appreciable restriction of competition (European Commission, 2014a, 2014b).

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Table 4
"*Fermages des vignes*" Grape Prices for the 2013–2016 Harvests
in €/kg of grapes

		2013	*2014*	*2015*	*2016*
"Grand Cru"	RP	6.06	6.13	6.18	6.26
	Minimum price	5.61	5.66	5.7	5.77
	Minimum as % of RP	99	99	99	99
"Premier Cru"	Minimum as % of RP	92	92	93	93
"Cru"	Minimum as % of RP	85	85	85	85

Source: Préfet de la Marne (2017/2016/2015/2014), Préfet de l'Aisne (2017/2016/2015/2014), Préfet de l'Aube (2017/2016/2015/2014), Préfet Haute-Marne (2017/2016/2015/2014), and Préfet de la Seine et Marne (2017/2016/2015/2014).

(2) Quantity Restrictions

Quantity restrictions typically have the same effect as price-fixing; output restrictions generally result in price increases. However, the CMO considers quantity restrictions different from price fixing. Indeed, in relation to the wine sector, the CMO allows Member States to derogate from the general antitrust prohibition to limit quantities under certain conditions. More specifically, European legislation currently allows Member States to adopt marketing standards to improve and stabilize the operations of the common wine market.

First, supply-side management measures—both increasing and decreasing quantities—are legitimate if they are aimed at improving quality. In winegrowing, quality depends on the specific climatic conditions prevailing in a given year, among other factors. The relationship between quality and climate has been modeled by various authors. Generally it appears that, to obtain high quality wines, certain weather conditions must be met (Ashenfelter, 2008).

Second, supply restrictions aimed at stabilizing markets (while not necessarily improving quality), are considered compatible with EU legislation if they are "proportionate" and do not "render unavailable an excessive proportion of the vintage," and are not "practices which could distort competition." Specific measures limiting quantities to stabilize markets must be well motivated and can be scrutinized by competition authorities. The "Sherry" cartel was sanctioned by the SCA for implementing supply-side restrictions based on the past sales of each operator—a justification that does not fit the allowed legislative framework.

Some appellations still feel the need to smooth quantity supplied for several consecutive harvests. However, even assuming the compatibility of these quantity restrictions with EU legislation, they do not solve the long-term problem of structural surpluses. On the contrary, market forces may progressively remove the most inefficient producers from the market, increasing competitiveness within appellations.

The introduction, through the CMO, of a new transitional authorization system (until 2030) represents a missed opportunity to implement the full liberalization

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introduced by the 2008 wine reform. The reform should have allowed "competitive producers to respond freely to market conditions" (recital 59).

Furthermore, supply-side regulations as a tool to stabilize markets should be abandoned. Interventions to limit quantity supplied should be limited to those specifically aimed at improving the quality of the wine produced to the benefit of the consumer. As suggested by the ICA (in relation to the agricultural markets as a whole), "the common research of a conformity of supply to the requests of demand should concentrate on aspects regarding quality of production, without limiting supply from a quantity standpoint" (Autorità Garante della Concorrenza e del Mercato, 2005).

To conclude, the progressive reform of the European wine regulation introduced a more market-oriented approach—although quantity restrictions aimed at stabilizing markets are still allowed under certain conditions. Recent changes to the regulatory framework and antitrust interventions are aimed at fostering a more pro-competitive spirit in the European wine industry. In the future, I hope that quality will drive cooperation among players, overcoming the quantity restrictions that have mostly proved harmful.

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