Competition policy in the wine industry in Europe

Andrea Minuto Rizzo

Abstract

In recent years, some European antitrust Authorities have intervened in the wine sector to clear M&A transactions, deliver opinions to Governments and ascertain illegal agreements. In the context of the evolving regulatory framework, this contribution analyses these decisions and derives some competition policy indications in relation to the boundaries of the possible cooperation among producers of a specific wine appellation. (JEL Classifications: K21, L40, L51)

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

I. Introduction

In recent years some European competition Authorities have intervened in the wine sector thus showing a growing attention to an industry that - like many other agricultural sectors - has been so far excluded from the application of competition rules.\(^1\) The French Competition Authority (hereinafter, FCA), in 2012, cleared an acquisition only after an in-depth examination that excluded that the transaction could have determined a significant impediment to effective competition (hereinafter, SIEC) for branded wines without a geographical indication. The Italian Competition Authority

\(^a\) The author thanks Karl Storchmann for his support, as well as an anonymous reviewer, Luca Arnaudo and Salvatore Lamarca for the helpful comments. This contribution is dedicated to Gabriella and Alessandro and their love for Villa de Toffoli in Soligo.

\(^2\) Autorità Garante della Concorrenza e del Mercato, Piazza G. Verdi, 6/a, 00198 Rome, Italy; andrea.minutorizzo@agcm.it. The opinions expressed in the present contribution are personal and do not necessarily reflect the position of the institution where the author is employed. The author holds a MBA at INSEAD and is a FIS sommelier.
(hereinafter, ICA), in 2016, delivered an opinion to the Italian Government and Italian Regions about the need to apply current wine legislation in the most proportionate way, excluding price fixing and limiting supply regulation. The Spanish Competition Authority (hereinafter, SCA), in the period 2009 - 2012, identified and sanctioned three cartels which fixed prices and/or quantities in the wine sector.

In the same period of time, the European Union (hereinafter, EU) sectorial legislation changed significantly as a result of the 2008 reform of the wine market and the 2013 reform of the Common Agricultural Policy (hereinafter, CAP).

The objective of the contribution is to analyse the intersection between antitrust legislation, which is horizontal to all economic sectors, and the sectorial regulation for wine, deriving some competition policy indications in relation to the boundaries of the possible cooperation among wine producers. It, first of all, proposes to define the markets to be analyzed - the so-called “relevant markets” in antitrust terminology - based on geographic appellations or grape varieties depending on the quality of the wines being considered. The contribution, then, concludes that, independently of the way agreements among competitors are concretely conceived, (i) price fixing should always be considered illegal at whatever level of the wine value chain and (ii) supply side restrictions should be rigorously limited to what is allowed under EU legislation.

The remainder of this paper is organized as follows: section II describes antitrust legislation and the evolution of EU wine regulation; section III presents the way relevant markets are defined by competition Authorities; section IV illustrates Italian wine legislation and the ICA’s opinion to the Government; section V presents the SCA’s assessment of three illegal agreements among competitors; section VI concludes on the definition of the relevant market and the assessment of price and quantity restrictions; section VII offers some closing remarks.

II. Antitrust legislation and wine regulation

A. Antitrust legislation

Antitrust enforcement consists of the ex-ante assessment of mergers and acquisitions (hereinafter, M&A), as well as in the ex-post ascertainment of illegal agreements and abuses of dominant position.
The present contribution focuses on M&A and illegal agreements, as abuses of dominant position\(^2\) have, so far, not occurred in the wine sector.

All agreements that have as their object or effect the prevention, restriction or distortion of competition are prohibited (TFEU, article 101.1\(^3\)), especially those that “directly or indirectly fix purchase or selling prices” and that “limit or control production”, while M&A should not determine a SIEC. Accordingly, antitrust Authorities can clear transactions, authorize them subject to conditions or prohibit them (Regulation No. 139/2004).

In most jurisdictions, antitrust enforcement is normally coupled with advocacy powers that allow antitrust Authorities to indicate to their Governments and Parliaments legislative and administrative measures that may create restrictions on competition. ICA’s advocacy described in the contribution (par. IV.B) is an *ex officio* non-binding opinion delivered both to central and local public administrations.

**B. Appellations**

Wine is considered an experience good as it is characterized by relevant information asymmetries between producers and consumers. With the exclusion of purchases after tastings or repeated purchases, generally wine quality can be ascertained only after its purchase, at the moment of consumption.

The European Community Council of Ministers adopted a reorganization of the wine market in 2008 (Regulation No. 479/2008), while the EU Parliament and Council adopted a reform of the CAP in 2013 (Regulation No. 1308/2013). For the wine sector, the latter mostly renewed the measures initiated with the 2008 wine reform.

Regulations play a central role, sorting wines on the basis of presumed quality through a classification system. More specifically, “*the concept of quality wines in the Union is based, inter alia, on the specific characteristics attributable to the wine's geographical origin*” (Regulation No. 1308/2013, recital 92).

The EU legislation has defined a quality pyramid, the rules being stricter and the expected quality higher, moving upward. Current legislation identifies two main categories that, from bottom to top, consist of wines:

---

\(^2\) Treaty on the Functioning of the European Union, hereinafter, TFEU, article 102.

\(^3\) Article 101.3 indicates some possible exemptions to the prohibition of article 101.1.
without a geographical indication (hereinafter, WGI), which consist of former table wines that can now be indicated as generic wines (with the possible indication of the harvest year) or varietal wines (with the possible indication of the grape variety and the harvest year), information that was previously forbidden;

- with a geographical indication, including wines with a protected geographical indication (hereinafter, PGI) and wines with a protected designation of origin (hereinafter, PDO); within each of the PGI and PDO categories are included specific appellations, which are created by a group of producers around a consortium, a collective brand and a set of binding rules.

Spanish, French and Italian appellations count for 74% and 42% of all European appellations, respectively, in the PDO and PGI categories (see Table 1).

*Table 1*

**Distribution of appellations in the PDO and PGI categories in principal European countries for wine production, 2017**

<table>
<thead>
<tr>
<th></th>
<th>PDO</th>
<th>PGI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>100</td>
<td>46</td>
</tr>
<tr>
<td>France</td>
<td>405</td>
<td>158</td>
</tr>
<tr>
<td>Italy</td>
<td>500</td>
<td>135</td>
</tr>
<tr>
<td>Other countries</td>
<td>358</td>
<td>236</td>
</tr>
<tr>
<td>Total</td>
<td>1,363</td>
<td>575</td>
</tr>
</tbody>
</table>

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

C. Application of competition rules to agriculture
EU regulations in the wine sector are not limited to quality provisions but extend to a wide category of tools used to manage supply in order to address the structural production surplus which has long existed in the EU. On the basis of articles 39 and 42 of the TFEU, the EU legislator determines the extent of the application of competition rules to the agricultural sector, taking into account the objectives of the CAP, which shall be - among others - to “ensure a fair standard of living for the agricultural community” and “to stabilize markets”. The recent reform of the CAP provided by Regulation No. 1308/2013, which established a Common Market Organization (hereinafter, CMO) for agricultural products, states clearly (recital 173 and article 206) that EU competition rules which prohibit agreements restricting competition (TFEU, article 101) and abuses of dominant position (TFEU, article 102) apply to the agricultural sector, with some exemptions defined in the regulation itself. Derogations from competition rules can be either general (articles 209 and 210), subject to the fulfilment of certain conditions, or specific to certain sectors. Focusing on the wine sector, the CMO mostly renews the measures and approaches initiated during the 2008 wine reform. First of all, it gradually eliminates the previous transitional prohibition on planting vines. It, then, contains specific provisions concerning marketing rules that can be laid down by Member States, particularly by way of decisions taken by recognized interbranch organizations5, to improve and stabilise the operation of the common market in wines, “including the grapes, musts and wines from which they derive”. These marketing rules for regulating the supply of wines, which have to be notified to the European Commission (hereinafter, EC), should be “proportionate to the objective pursued” and do not “allow for price fixing, including where prices are set for guidance or recommendation” and do 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).

4 For a review of the evolution of EU regulations see Meloni and Swinnen (2013).
5 Interbranch organisations are self-organised vertically integrated organisations which comprise representatives of production and at least one partner from another level of the supply chain.
III. The definition of relevant markets

The first step in any competitive assessment normally consists of the definition of the relevant market, which is functional to the successive ascertainment of market power. Basically, it is a tool to identify products and geographic areas that are substitutable from both a demand and supply perspective (EC, 1997).6

Market definition works best when products are homogenous, while its usefulness in relation to differentiated products, like wine, has been questioned both in the legal and economic literature (Kaplow, 2010; Sabbatini, 2012). Indeed, when products are differentiated, competing products become imperfect substitutes and it can become more difficult to draw a line between products that are inside and outside a specific market boundary.

In relation to M&As assessments, considering these difficulties, Farrell and Shapiro (2010) have developed the upward pricing pressure (hereinafter, UPP) test in order to move directly to the effects of a transaction, measuring the incentive of the parties to raise prices post-transaction, without precisely defining the relevant market. However, as described in paragraph III.B, even when competition Authorities7 are keen to take into account tests such as the UPP, they usually do not consider them sufficient to conclude on the effects of a transaction. Such tests are, indeed, corroborated by other qualitative elements in terms of current and potential competition, barriers to entry and buyer power. In practice, the definition of a relevant market seems to be still necessary.

In decisions that ascertain restrictive agreements, the definition of the relevant market is less important as it comes after the detection of the objective elements of the agreement. As described in chapter V in relation to Spanish cartels, it is, indeed, the breadth and the object of each agreement that defines the relevant market.

Should wine markets become more concentrated, market definition would play a crucial role in possible future abuses of dominant positions, being a necessary precondition to ascertain the market power of the company scrutinized.

---

6 Only the product dimension of the relevant market is described, as the geographic one tends to coincide with national boundaries due to strong national preferences and consumption behaviors which vary between countries.

7 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.
In the remainder of this chapter are described the principal M&A transactions in the wine sector examined by competition authorities in Europe.

A. European Commission’s case law

The EC has cleared several M&As in the wine sector in relation to transactions that did not raise serious competitive concerns. In these clearances, therefore, the exact definition of relevant markets has been left open as the competitive assessment would not have changed, even considering the narrowest possible competitive perimeter.

The EC considers 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 (EC, 2008).

These markets are defined according to the different methods of wine production, that consist, respectively, of the production of still, sparkling and fortified wines. They also include some specific wine appellations, such as a sparkling wine (“Champagne”) and two fortified wines (“Port” and “Sherry”), all of which - being included in the PDO category.

The Pernod Ricard/V&S transaction (EC, 2008) gave rise, for example, to several affected markets\(^8\) in the wine sector: still wines in Finland and Sweden, sparkling wines in Finland and Norway, “Port” in Finland and Sweden, “Sherry” in Finland, light aperitifs in Finland and Sweden. The Commission cleared the transaction only after Pernod Ricard submitted appropriate commitments which included, among others, the divestiture, of the “Red Port” brand in Sweden.

In other decisions, these relevant markets have been further segmented by taking into account, also cumulatively, the following factors: (i) distribution channels, (ii) appellations and (iii), so far only for still wines, colour.

More specifically, distribution channels have been distinguished between on-trade (including bars, clubs and restaurants) and off-trade (consisting of retailers) sales (EC, 2008).

\(^8\) Affected markets are the relevant markets in which the parties will have, post-merger, a horizontal combined market share of 15 per cent or more.
The second possible distinction has been made according to different appellations that may become an important factor in the definition of relevant markets.

In a decision related to a transaction concerning the “Sherry” PDO (EC, 1994), wines produced in the historic area of the Jerez region in Spain were initially compared with those of a similar style produced in other countries. However, numerous factors enabled to distinguish Jerez “Sherry” from the other sherry-style wines, among them the existence of the specific Spanish "Sherry" PDO.

In a decision concerning French wines, the EC (2002) stated that, as the wines controlled by CNP in the Bordeaux region and the wines controlled by Taittinger in the Saumur and Loire region may be subject to specific appellations (for example, the “Saint-Emilion”, “Sauternes” and “Pomerol” PDOs in the Bordeaux area), it could not be excluded that each of them constitute a separate product market.

In a successive decision, as the target companies were active only in the Bordeaux wine segment, the EC (2011) defined as a relevant market the production and commercialization of wines in the Bordeaux region. As almost all wines produced in the Bordeaux region are PDO wines, this relevant market implicitly coincides with the one of PDO wines in the Bordeaux region. The Commission considered both a broader market, consisting of all Bordeaux wines, and a narrower segmentation, based on colour. However, the combined market shares of the parties did not exceed 20% in any of these possible markets and their increase was very limited.

The third possible segmentation criteria is the distinction based on the colour of the wine and, so far, as mentioned, it has been applied only to still wines. In Pernod Ricard/V&S (EC, 2008), the market investigation indicated this distinction as appropriate, as wines of different colour are not seen as substitutes by consumers. Conversely, the EC (2008) dismissed possible distinctions based on the country of origin and price.

B. French Competition Authority’s case law

Among M&A assessments by European national Authorities, the FCA is the only agency, so far, to have approved an acquisition in the wine sector after having conducted an in-depth examination because there was a serious risk of SIEC (Autorité de la Concurrence, 2012). The Castel Group is one of the main producers of wine in
France and is active in all wine categories, both with its brands and as a supplier of wine to other private labels. The firms acquired from Patriarche were active only with their brands, mainly in the WGI category, and in the PDO category, limited to the Burgundy region.

The in-depth examination was necessary to verify if the transaction was likely to significantly impede effective competition in branded WGI wines, as the new entity post-transaction would have combined a significant number of relevant brands in the WGI category.

The FCA concluded that the strong position of Castel in relation to WGI wines dated back to before the acquisition and that Patriarche is only a relatively small player. The transaction was, consequently, considered not capable of significantly affecting competition adversely.

The clearance to the transaction was mainly based on qualitative evidence collected through a wide-ranging consultation of main players, including competitors and clients (supermarkets).

As to the definition of the relevant markets, the FCA considered that sparkling and still wines belong to two different markets because of the different taste of consumers and their different occasions of consumption. Then, respondents to the market investigation, who are competitors and customers of the parties, largely shared a segmentation of still wines based on colour.

The FCA also distinguished between on-trade and off-trade channels, mainly because of the specificities of each channel in terms of packaging, dedicated sales force and in the light of the different market shares that players enjoy in each channel. Moreover, the off-trade channel was further segmented into large and medium supermarkets (hereinafter, LMS), hard discount retailers and wine merchants markets. The distinction between LMS and wine merchants was based on three main considerations: (i) wine merchants tend to be located in the center of towns, while LMS more in the periphery, (ii) wine merchants, differently from LMS, provide advice to clients, (iii) the wines displayed in wine merchants, again differently from LMS, are mainly premium PDO wines.

Different commercial proposals have also been identified within the LMS market, consisting of producer, private and first-price labels. The FCA has ascertained that, from a demand perspective, taking into account both price and quality, it is possible to distinguish first-price labels from producer and private labels considered as a whole.
Lastly, in relation to a segmentation of still wines based on wine classifications, the FCA observed that PDO wines constitute a different market from PGI and WGI wines, both for supply and demand side considerations. On the supply side, the former are burdened by specific regulatory constraints while, on the demand side, the results of the market investigation highlighted that not only grape variety, but also other factors (year of harvest, region of production and bottling at the “château”), are relevant for consumers choosing PDO wines.

The qualitative elements collected by the FCA also suggested that PGI and WGI wines are substitutable and constitute the same relevant market of ordinary wines for everyday consumption because:

- on the supply side, PGI and WGI wines derive from a similar manufacturing process, are not subject to an ageing process, as well as the regulation allows both the option to blend grapes with those from another vintage or variety;
- on the demand side, PGI and WGI wines were getting closer because of the possibility, since the EU wine reform of 2008, for WGI wines to become varietal wines indicating the grape variety on the label as PGI wines; it emerged from the market investigation that inexperienced consumers buying average/low quality wines make no distinction between WGI and PGI wines based on the geographical origin of a wine, the criteria of choice being mainly grape variety; furthermore, the FCA observed a structural shift upward of French consumers’ preferences, from WGI to PGI wines.

In conclusion, in the light of the parties’ activities, the effects of the transaction were analyzed mainly on the following markets for still wines sold off-trade in LMS considering only producer and private labels and not also first price labels:

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

In relation to PDO wines, the only ones where Patriarche was active were the Burgundy appellations, while Castel was active in all major appellations in the PDO category. Therefore, the competitive analysis was undertaken only with regard to the overlaps in the market for PDO wines in the region of Burgundy.

---

9 Among others, based on the European regulation, for PDO wines grapes must come entirely from a specific territory, while for PGI this threshold is lowered to 85% of grapes.
However, the combined market share post-merger was low, in the order of [10-20]%, and even focusing on narrower segments - limited to producers’ labels and by colour of wine - the market shares of the parties did not raise competitive concerns. In relation to PGI and WGI wines, included in the same broad market of ordinary wines for everyday consumption, the combined market share was [30-40]%, with a limited increment due to the marginal role played by Patriarche. The FCA considered all colours together, as it emerged from the market investigation that none presented specific characteristics. Also considering the existence of current competitors, possessing excess bottling capacity, the FCA concluded that there was no horizontal competition concern about the market of ordinary wines for everyday consumption.

IV. Advocacy to Governments

A. Italian legislation

Italian legislation regulates all aspects from, wine growing to commercialisation. As for wine classification, the DOC and DOCG categories are equivalent to that of the PDO, as well as IGT to that of the PGI.

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

Table 2

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>PDO</td>
<td>14,856,937</td>
<td>18,154,655</td>
</tr>
<tr>
<td>PGI</td>
<td>13,560,271</td>
<td>14,174,831</td>
</tr>
<tr>
<td>Varietal wines</td>
<td>219,266</td>
<td>460,188</td>
</tr>
<tr>
<td>Generic wines</td>
<td>16,061,998</td>
<td>16,455,626</td>
</tr>
</tbody>
</table>


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

Regional distribution of quality wines in Italy in 2015 (hectoliters)

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


The production code ("disciplinare di produzione") - which is approved together with the awarding of a specific appellation as a PDO or PGI wine - regulates, in addition to the delimitation of a specific geographical area, several aspects such as winegrowing, production and labelling, including the definition of the maximum yield per hectare.
National legislation allows Regions, following a proposal by the consortium of producers of the specific appellation being considered, to implement several tools to manage supply. Accordingly, Regions can, temporarily or permanently, both increase or reduce supply, with the consequent respective pressure downward or upward on average wholesale prices. The possible measures are listed below, from those aimed at increasing supply to those decreasing it, concluding with those that may impact mostly on competition.

First of all, in climatically favourable years, Regions can increase the maximum yields allowed by the production code by 20% in order to constitute a harvest stock to be used during subsequent years, in order to integrate possible production shortages, or to be released, following a Regional provision, to satisfy market needs (Law n. 238/2016, article 39.1).10

Then, among the measures that Regions can adopt to manage the available output from a specific year’s harvest, the softer one is to implement a temporary stock in order to stabilize the functioning of the wine market by providing an evolution of supply more compatible with demand (article 39.4).11

Moving to permanent supply reductions, in climatically unfavourable years, the most obvious one is to reduce production until the real limit of that year’s specific harvest. It can happen, for example, as a consequence of heavy hail or frosts (article 39.1).12

Supply can also be reduced permanently in order to stabilize markets and to reach market balance (article 39.2). The reasons for the implementation of this provision can be the need to match a decreasing demand, sometimes coupled with the intention of raising quality. Accordingly, the available production of a specific’s year harvest is

---

10 See, for example, the Decree of the Veneto Region (2016 b) that - for the appellation “Prosecco DOC” and 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. The Decree of the Veneto Region (2017 a) authorized the release of the harvest stock in order to increase supply to meet demand. With around 351 million bottles, in 2015, “Prosecco DOC” was the most diffused Italian PDO, accounting for 15% of total PDO quantities (Il Corriere Vinicolo, 2017).

11 See, for example, the Decree of the Veneto Region (2014 a) that - 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 production code, to favor balance on the market for “Prosecco DOC”. The Decree of the Veneto Region (2015 a) released the quantities that had been previously blocked to meet market demand.

12 See, for example, the Decree of the Veneto Region (2014 b) that - for the appellation “Bardolino DOC” and in relation to the 2014 harvest - has reduced by 25% and 35% the maximum yields established in the production code, respectively, in two specific areas because of the heavy hail that occurred in the province of Verona.
reduced and the remainder, till the maximum yield allowed by the production code, is de-classified to a lower level in the quality pyramid. An illustration of such an intervention is given by the measures taken by the Veneto Region, which is the biggest Italian region based on wine production (see Table 2), in relation to two appellations that are produced from dried grapes. For both of them, the quantities of product destined for the mandatory dehydration process were reduced for four consecutive harvests from 2014 to 2017. In the years considered, the quantities destined for the dehydration process were reduced between 23% and 46% of the allowed quantity (See Figure 1).

**Figure 1**

Reduction of the quantities destined for the dehydration process in percentage of the allowed quantity, 2014 - 2017


Lastly, Regions can regulate the implantation surface in their territory to achieve market balance, by restricting the inscription of new plants in the vineyards register of a specific appellation (article 39.3).

---

13 “Amarone della Valpolicella DOCG” and “Recioto della Valpolicella DOCG”. The former accounted for around 13.5 million bottles in 2015 (Il Corriere Vinicolo, 2017).

14 See, for example, Decree of the Veneto Region (2016 a) that - for the appellations “Amarone della Valpolicella DOCG”, “Recioto della Valpolicella DOCG”, “Valpolicella DOC”, “Valpolicella Ripasso
B. Italian Competition Authority’s advocacy

The ICA took the opportunity, arising from some interbranch agreements\textsuperscript{15} hosted by the Piedmont Region, to advise the Italian Government and all Italian Regions on the competitive impact of such agreements. ICA considered, indeed, it reasonable to assume that similar agreements might take place in relation to other appellations also in other Regions. With the PDO category reaching 80%, Piedmont is the Italian region where quality wines account for the most out of total production (see Table 2).

The opinion (Autorità Garante della Concorrenza e del Mercato, 2016) concerned agreements, made between 2010 and 2014, in relation to the sale of “Cortese” grapes used for the production of the “Cortese di Gavi DOCG” and “Piemonte Cortese DOC” appellations.\textsuperscript{16} The agreements not only introduced restrictions on the quantities of the grapes produced, but also set minimum prices for the sale of the grapes.

The ICA underlined the need to limit interbranch agreements strictly to what is allowed by current legislation, with the exclusion of price agreements concerning grapes and, even more, must/bulk wine. It, then, invited the parties involved to limit the use of supply side measures, because of their impact on the availability of the product in retail markets and - consequently - on prices, although acknowledging that the winegrowing activity might endure a high differentiation in quality from year to year depending on the prevailing climate conditions.

V. Antitrust enforcement in relation to agreements among competitors

In the period 2009-2012, the SCA intervened several times in the national wine market, with the ascertainment of three illegal agreements among competitors.

\textsuperscript{15} In Italy there are currently no recognized interbranch organisations in the wine sector. Interbranch agreements (“intese di filiera”) are allowed by Italian legislation also outside recognized interbranch organisations; see the study commissioned by the European Commission (2016).

\textsuperscript{16} 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, respectively, around 9 and 15.3 million bottles (source: www.valoritalia.it, accessed 29 March 2018).
A. Horizontal agreements

In 2010, the SCA unveiled a secret horizontal agreement (Comisión Nacional de la Competencia, 2010) in the market for the export of “Sherry” PDO wines. More specifically, the relevant market consisted of the wines supplied exclusively for export under a distributor's brand (buyer’s own brand, hereinafter, BOB), to the United Kingdom, Germany, Netherlands and Belgium. The cartel was composed by nine companies, an industry association (hereinafter, Fedejerez) and the regulatory board for the “Sherry” PDO (hereinafter, Regulatory Board or CR). It all started with a leniency applicant 17 who admitted participation in the cartel providing adequate information to the SCA.

The sector had seen its fastest growth in the 1970s, but since the 1980s supply had continuously exceeded demand, mainly as exports had been declining due to changes in consumer tastes. The reduction of total sales was consistent in the eight years of the cartel (-29%), almost all of which concentrated on the export segment, while the national market was rather stable (See Figure 2).

\[ Figure \ 2 \]

Evolution of the sales of “Sherry”, 2001-2008 (liters)

---

17 The EC and National competition Authorities operate a leniency policy whereby companies that provide information about a cartel in which they participated might receive full or partial immunity from fines.
Two different time periods were identified, interrupted by the disagreements that arose between some members of the cartel during its development.

In the first phase, from 2001 to 2003, the rules of the cartel were created and the cartel was successful, reaching its objective of raising prices.

The agreement included the distribution of production quotas based on the average sales of the previous triennium 1998-2000 and the proportional reduction of supply to be adopted in order to adapt supply to the estimated reduction in the demand. The agreement included a compensation mechanism if any company exceeded its assigned quota and a benchmark minimum price.

The destabilisation of the cartel started when new suppliers entered the market, offering lower prices, causing cartel members to lose part of their business and leading them to breaches of the cartel agreement. The cartel eventually broke up in 2003 when one of the cartel members refused to make the agreed compensation to another member of the cartel who had sold below its assigned quota.

In 2005 contacts were resumed with a focus on the need to find a solution to the lack of barriers to entry in the BOB market. The solution chosen by the cartelists was to push the CR to amend the existing regulation by introducing quantity restrictions that would apply to the entire “Sherry” supply.

Source: CR, “Memorias de Actividades”
For the purpose of ensuring the desired level of quality, CR’s production regulation requires that the amount of wine being aged must be approximately three times as large as the volume taken to the market.\textsuperscript{18} Consequently, the percentage marketed cannot be higher than 35% of each operator's stocks.

The cartelists lobbied the CR to establish caps based no longer on the stocks of each winery, but on their total past sales. Total past sales could, indeed, be higher than the allowed percentage of stocks because whatever undertaking could increase its capacity acquiring wine from another winery that complied with its allotment. While limits on stocks were justified by quality considerations, caps based on past sales represented an unjustified restriction of production.

The SCA finally sanctioned the nine wineries, Fedejerez and the CR.\textsuperscript{19}

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

In a successive case, the SCA sanctioned three associations of winemakers for exchanging information aimed at fixing the prices of wine grapes in the “Valdepeñas” and “La Mancha” production regions (Comisión Nacional de la Competencia, 2012).

It is one of the biggest winegrowing regions in the world, which comprises several PDOs and PGIs. The antitrust procedure concerned grapes destined to the “Valdepeñas” and “La Mancha” PDOs, which both include white and red wines, mainly from the “Airén” and “Tempranillo” grapes. The SCA found that the three associations exchanged information on current grape purchasing prices with the aim of determining and capping the prices that their members would pay for wine grapes for the harvest years of 2009/2010 and 2010/2011.

B. Vertical agreements

\textsuperscript{18} 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 with different levels of aging. The wine is aged in butts that are arranged in rows (called “criaderas”) with the same level of aging, one on top of the other. The row closest to the ground (called “solera”) contains the oldest wine, which is periodically bottled. The amount bottled is replaced with the same amount of wine from the first “criadera”, that contains slightly younger wine, that will be filled up with wine from the second “criadera” and so on.

\textsuperscript{19} The SCA sanctioned in a separate proceeding the CR’s specific intervention, by means of a circular, to restrict quantities beyond what was required for the purposes of quality control (Comisión Nacional de la Competencia, 2009).
The SCA intervened again in the “Sherry” sector, this time in relation to a vertical agreement to fix the price of grapes and must/bulk wine.

In 2011, the SCA sanctioned Fedejerez and the CR for having engaged in a concerted practice to fix the prices of grapes - mainly “Palomino” but also “Pedro Ximénez” and “Moscatel” - and must/bulk wine used to produce “Sherry” (Comisión Nacional de la Competencia, 2011). The procedure started with the documentation acquired through the inspections in the investigation described above regarding BOB exports. More specifically, in the period from April 1991 to March 2009, in order to address the excess capacity in the “Sherry” sector, the prices of grapes and must/bulk wine for each season were subject to negotiation and agreement between the associations of wine growers and wine producers. Consequently, producers did not have to compete for their main input, while at the same time maintaining a minimum revenue for grape growers.

VI. Conclusions

A. The definition of the relevant market: appellations versus grape varieties

Demand side substitution is the starting point in the definition of relevant markets as demand is the most effective disciplinary force. In the decisions described above, the relevant market definitions have relied on qualitative evidence, gathered during the market investigations conducted by competition Authorities, mainly through questionnaires sent to and hearings of competitors and customers of the parties.

Such qualitative evidence can also be integrated with more quantitative data, for example, gathered through appropriately designed surveys commissioned by Authorities.\textsuperscript{20} The analysis of the actual responses of consumers can indicate the degree of substitutability between two products, allowing Authorities to decide whether they exert a significant competitive pressure on each other and have, consequently, to be included in the same relevant market. The FCA, in the Castle/Patriarche decision, observed that an appropriate survey should have asked a representative panel of consumers what their behaviour would be in response to an increase in the prices of WGI wines relative to PGI wines.

\textsuperscript{20} A more complex quantitative approach consists of the small but significant non-transitory increase in price, the so-called SSNIP test, see Massimo Motta (2004).
Supply side substitution may be taken into account only if suppliers are able to switch production in the short term, in order to have an impact in terms of effectiveness and immediacy equivalent to the demand substitution effect. The FCA, in the decision described above, concluded that PGI and WGI wines have to be included in the same broad relevant market also because of supply side substitution considerations as they enjoy a similar manufacturing process.

In relation to the definition of the relevant market in the wine sector, the main issue to be considered is whether a product market definition should be adopted by having regard to geographic appellations or grape varieties.

In the above mentioned M&A clearances, a first level of segmentation consists of the different methods of production, such as still, sparkling and fortified wines. In relation to sparkling and fortified wines, specific appellations have been considered as relevant markets such as, respectively, “Champagne” on one hand and “Sherry” and “Port” on the other hand.

For what concerns still wines, the possibility to identify a specific appellation as a relevant market has - so far - only been envisaged. In a decision concerning the French region of Bordeaux, the EC has considered as possible relevant markets some specific appellations defined at municipal level, such as the “Saint-émilion”, “Pomerol”, “Sauternes” PDOs, even if a final decision was not taken. In another decision concerning the Bordeaux region, the EC envisaged a possible relevant market implicitly including all PDOs of the region. The FCA, as well, concluded that all PDOs of a determined region, Burgundy, constitute a relevant market. The need to define a relevant market in relation to a specific still wine appellation has so far not emerged probably because of the lack of significant overlaps at that level between the activities of the parties involved in a transaction. Competition Authorities have nevertheless considered the role played by geographical indications in relation to PDO still wines taking into account a regional dimension of the market.

While geographic appellations may be an important factor of choice for quality wines, grape variety seems to be more relevant going down the quality pyramid. The FCA, for example, identified a broad market for ordinary wines for everyday consumption, comprising both PGI and WGI wines, precisely because they can both indicate grape
varieties. However, the FCA did not go as far as identifying a market for a specific grape variety.

On a case-by-case analysis, evidence may suggest an even more segmented approach. Competition Authorities could, consequently, take into consideration possible positions of market power in specific sub-segments in terms of colour, distribution channel and commercial proposition.

B. Assessment of price and quantity restrictions

Competition legislation looks unfavourably at cartels, which consist mainly of price fixing and output restrictions. Those types of conducts, indeed, achieve the same negative effects as a monopoly. Total surplus is reduced by the so-called deadweight loss, causing allocative inefficiency. The increase in producer surplus does not compensate for the reduction in consumer surplus. At the same time, they can also result in productive inefficiency, as production costs may be higher than those that would result from a more competitive environment, as well as in a reduction of dynamic efficiency.

The SCA decision that ascertained the “Sherry” cartel highlighted the price effects of the output restriction, coupled with the minimum agreed prices. In 2001 and 2002, prices rose from one to 1.42 euro/bottle, while in 2003 there were talks about raising prices to 1.75 euro/bottle. In May 2006, Fedejerez proposed a “gentlemen’s agreement” with benchmark minimum prices of 1.25 and 1.10 euros per bottle in the UK and in the rest of Europe. Consequently, during the first phase of the cartel, prices rose by 42%, while in the second phase it was more limited to a range in the order of 10/25%.

The evolution of the SCA’s “Sherry” secret agreement is paradigmatic of the difficulties that can emerge in stabilizing a cartel over time. In the decision to continue colluding or cheating, each cartel member, indeed, compares the immediate gain it makes from a deviation with the profit it gives up in the future, when rivals react. In that decision, several structural factors may favour cartel’s instability such as a low level of market concentration, the absence of barriers to entry and the variability of demand.
The “Sherry” cartel was unstable precisely because of the presence of such factors. Firstly, there were 64 wineries authorized to bottle and market “Sherry” wine. Furthermore, there were no barriers to entry, as any authorized operator could export wine. Lastly, demand was very unstable, with an overall reduction of 35% in total exports in the period considered (see Figure 2). When demand is unstable it may be difficult to observe if a reduction in a firm’s sales is due to other co-cartelists cheating or to the worsened market conditions.

i. Price restrictions

As it emerges from paragraphs IV.B and chapter V above, some degree of price cooperation existed and might still exist around Europe.

The SCA uncovered three cartels, all of which included a price component.

Moreover, the ICA observed the existence of price agreements, at the grape level, in the context of interbranch agreements of two Piedmont appellations in the period from 2010 to 2014. As hypothesized by ICA itself, similar agreements might exist in relation also to other appellations. Indeed, the interbranch agreements of other appellations might have included, at least some years ago, the price of grapes and must/bulk wine. Arrangements concerning musts/bulk wine are more harmful than the ones relative to grapes because they concern a level of the value chain nearer to the final consumer, being more likely to standardize final prices. Furthermore, they provide a minimum revenue to the industrial component of the value chain, not that of growers (Arnaudo, 2016).

Interbranch agreements are also diffused in the EU. Among them, the “Comité Interprofessionel du Vin de Champagne” (hereinafter, CIVC), which is the trade association that represents the interests of independent “Champagne” growers and producers. Here, the tradition of cooperation between growers and producers has also

---

21 Interbranch agreements relative to the “Asti DOCG” - which is the fourth most diffused PDO in Italy accounting for around 83.7 million bottles in 2015 - “Brachetto d’Acqui DOCG” and the “Gavi DOCG” can be downloaded from the website of the Piedmont Region (accessed 21 March 2018), see Commissione Interprofessionale per l’Accordo Moscato (2011), Tavolo Interprofessionale dell’uva Brachetto (2012) and Tavolo Interprofessionale per la DOCG Gavi (2011). It is possible to find on the web interbranch agreements relative also to successive harvests. Moreover, in Italy Chambers of Commerce (“Camere di Commercio”) might list past wholesale prices of grapes and must/bulk wine, as observed by a commission composed of growers, bottlers and wholesale traders. The prices detected vary from the minimum to the maximum observed in a specific area, while sometimes they are fixed. See the website of the Chamber of Commerce of the Province of Asti (accessed 21 March 2018).

22 There are 31 recognized interbranch organisations in the wine sector, most of which are French.
concerned the price of grapes for a long time.\textsuperscript{23} Since 1990, indicative non-binding prices have replaced fixed prices.\textsuperscript{24}

As described in paragraph II.B, the sectorial EU legislation does not provide for a derogation for the wine sector from the general prohibition of fixing prices defined by the antitrust horizontal legislation applicable to all sectors. Consequently, independently from the way an agreement among competitors is concretely conceived, such as a cartel or an interbranch agreement, price fixing should always be considered illegal at whatever level of the value chain, from grapes to bottled wine.

\hspace{1cm} ii. Quantity restrictions

Quantity restrictions generally have the same effect as price fixing as any restriction of output normally results in a corresponding price rise.

However, the CMO allows, under certain conditions, Member States to derogate for the wine sector from the general antitrust prohibition of restricting quantities. Antitrust Authorities might verify, as did the SCA in the “Sherry” cartel case, the existence, in the specific context analyzed, of the conditions that could justify a derogation.

European legislation currently allows Member States to adopt marketing rules to improve and stabilise the operation of the common market in wines.

First of all, in general terms, supply side management measures, both increasing and reducing quantities, appear to be legitimate if aimed at improving quality. In winegrowing, quality depends, among other factors, also on the specific climatic conditions that prevail in a given year. The relationship between quality and climate has been modeled by various authors. It generally results that, to obtain high quality wines, certain weather conditions must be met (Ashenfelter, 2008).

Restrictions of supply aimed at stabilizing markets, which not necessarily improve quality, might as well be considered legitimate provided that they are “proportionate” and do not “render unavailable an excessive proportion of the vintage”, excluding “practices which could distort competition”. Consequently, specific measures

\textsuperscript{23} A rating system (“échelle des crus”) was introduced in 1911. Vineyards where classified in the “grand cru”, “premier cru” and “cru” categories. The CIVC used to define the reference price that would then be paid at 100% to “grand cru”, from 90% to 99% to “premier cru” and from 80 to 89% to “cru” vineyards.

\textsuperscript{24} For the harvest 2016, the price varies from a minimum of 5,53 to a maximum of 6,26 euros per kilogramme (Préfet de la Marne, 2017).
restricting quantities to that aim need to be well grounded and motivated, as well as notified to the EC based on article 167 of Regulation 1308/2013. The SCA’s “Sherry” cartel was sanctioned because it was implemented through supply side restrictions based on past sales of each operator, a motivation that does not fit within the allowed framework.

More in general, even assuming the compatibility of specific quantity restrictions with EU legislation, matching demand and supply artificially does not appear to solve the surplus issue in the long term. This is well illustrated by the need of some specific appellation to implement measures to reduce supplies for several consecutive harvests. On the contrary, the application of the law of supply and demand would progressively drive the most inefficient producers out of the market, increasing the competitiveness of the appellations considered. As suggested by the ICA in relation to 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).

VII. Closing remarks

The progressive reform of European wine regulation has introduced a more market-oriented approach, even if quantity restrictions to stabilize markets are still allowed under certain conditions. Changes in the regulatory framework and the antitrust interventions that have occurred in recent years are aimed at spreading a more pro-competitive spirit in the European wine industry. Hopefully, quality will become the driver of cooperation among players, overcoming quantity restrictions that have mostly proved unsuccessful.
BIBLIOGRAPHY


Autorità Garante della Concorrenza e del Mercato (2005), *AS318 Disposizioni per la costituzione dei tavoli di filiera*.

Autorità Garante della Concorrenza e del Mercato (2012), *C11799 Bolton Alimentari/Simmenthal*.

Autorità Garante della Concorrenza e del Mercato (2016), *AS1266 Accordi relativi a prezzi di uve destinate alla produzione di vini DOCG e DOC*.


Comisión Nacional de la Competencia (2009), *S/2779/07 Consejo Regulador de Denominación de origen Vinos de Jerez y Manzanilla de Sanlúcar*.

Comisión Nacional de la Competencia (2010), *S/0091/08 Vinos Finos de Jerez*.


Decreto del Direttore della Sezione Competitività Sistemi Agroalimentari della Regione Veneto (2014 a), *Stoccaggio del prodotto atto ad essere designato con la DOC “Prosecco” proveniente dalla vendemmia 2014*.


Decreto del Direttore della Direzione Agroalimentare della Regione Veneto (2016 a), *DOCG "Amarone della Valpolicella", DOCG "Recioto della Valpolicella", DOC*
"Valpolicella" e DOC "Valpolicella ripasso". Sospensione iscrizione vigneti allo schedario viticol o veneto ai fini dell'idoneità alla rivendicazione per le campagne vitivinicole 2016/2017 - 2018/2019.

Decreto del Direttore della Direzione Agroalimentare della Regione Veneto (2016 b), Riserva vendemmiale prodotto atto ad essere designato con la DOC “Prosecco” proveniente dalla vendemmia 2016.


Decreto del Direttore della Direzione Agroalimentare della Regione Veneto (2017 a), Svincolo del prodotto atto ad essere designato con la DOC “Prosecco” ottenuto dalla vendemmia 2016, posto in riserva vendemmiale.

Decreto del Direttore della Direzione Agroalimentare della Regione Veneto (2017 b), Riduzione dei quantitativi ad ettaro classificabili per la vendemmia 2017 della DOCG “Amarone della Valpolicella” e DOCG “Recioto della Valpolicella”.


European Commission (1997), Commission notice on the definition of relevant market for the purposes of Community competition law.


European Commission (2008), COMP/M.5114 Pernod Ricard/V&S.


European Commission (2016), Study on agricultural interbranch organisations in the EU, Annex on national legislation and actions concerning IBOs: Italy.


Meloni, G. and Swinnen, J. (2013), *The political economy of European wine regulations*, *Journal of Wine Economics*, Volume 8, Number 3, 244-284.

Préfet de la Marne (2017), *Arrêté préfectoral relatif au prix du raisin servant au calcul des fermages pour les vendanges 2016*.


Tavolo Interprofessionale per la DOCG Gavi (2011), *Accordo di filiera per Gavi DOCG per la vendemmia 2011*, available at [http://www.regione.piemonte.it/agri/politiche_agricole/viticoltura/gavi.htm](http://www.regione.piemonte.it/agri/politiche_agricole/viticoltura/gavi.htm).