



Market Power, Rent Distribution and Regulation of “Unfair Trading Practices” in EU Food Chains

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Food Prices: Shocks & Volatility

FAO FOOD PRICE INDEX 2006 - 2018

(2002-2004 = 100)

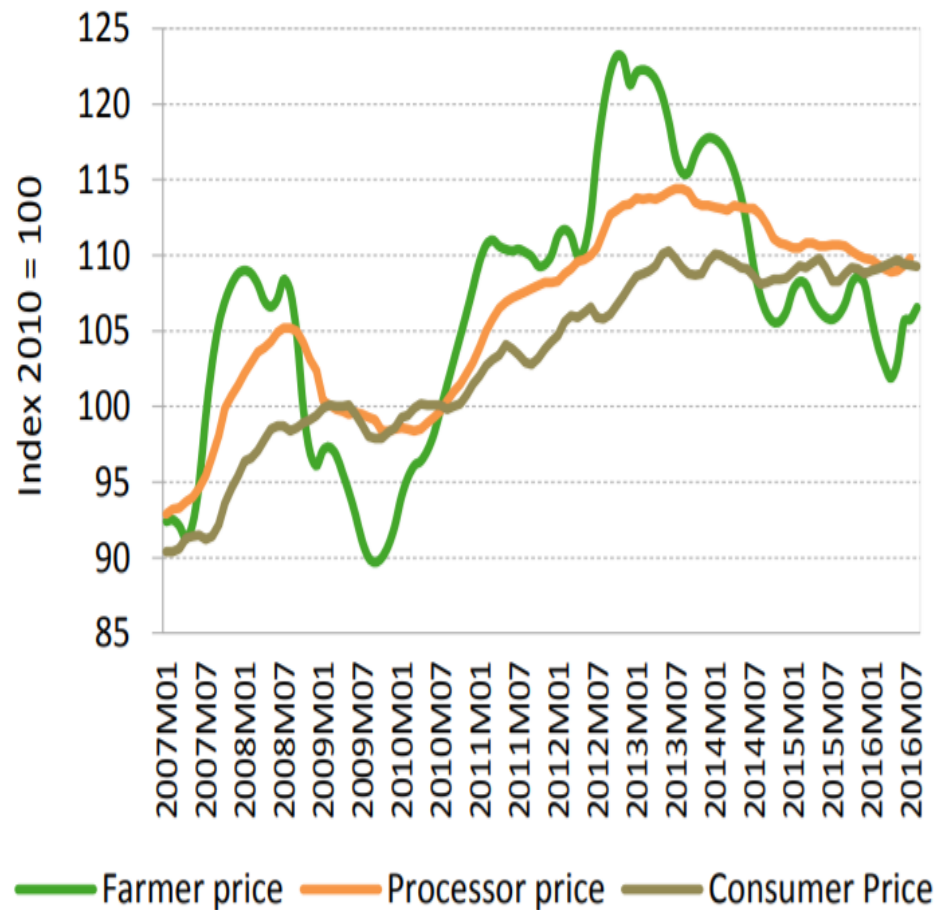


The Policy Debate

- Are farmers disproportionately affected by price volatility?
 - Many complaints from farmers on asymmetric price transmission
- ➔ Trigger of policy discussions in the EU on the introduction of regulations to restrict Unfair Trading Practices (UTPs).
- ➔ EU *“Agricultural Markets Task Force”*

A simple look at the data ...

Global price fluctuations
transmitted into
domestic price fluctuations
but
with differences
along the value chain



Previous studies & Our approach

- measure asymmetric **price transmission** (McCorrison, 2015), coping with price volatility at farm level (e.g. OECD, 2000) or at other stages of the value chain (e.g. Assefa et al., 2017)
- No measure of **mark-ups** along the value chain (= indicator of market power) or how they change with price volatility and how this may differ between firms
 - Exception: Kaditi (2013) who estimates average mark-ups along the value chain
- ➔ We use a recent approach by De Loecker and Warzynski (AER 2012) to estimate **firm- and time-specific markups** and their **volatility**
 - **Vertically**: along the food value chain (i.e. farmers, food processors, food wholesalers and food retailers)
 - **Horizontally**: among firms at the same value chain stage, i.e. focusing on firm size heterogeneity

Data & estimation- intensive, so focus on :

- the **agri-food chains in France and Italy** (major EU agri-food producers – 86,000 obs)
- between **2006 and 2014** (period of strong volatility)

Number and distribution of firms in the analysis of the agri-food value chains

Sector	France		Italy	
	Nr. of Firms	Share	Nr. of Firms	Share
Agriculture	6,505	12.0%	7,241	22.3%
Food Processing	12,970	24.0%	7,248	22.3%
Drink	1,229	2.3%	1,036	3.2%
Food Wholesale	10,718	19.8%	10,148	31.3%
Food Retailers	22,674	41.9%	6,793	20.9%

Estimated mark-up volatility along the agri-food value chain

Sector	France		Italy	
	Volatility	p-value	Volatility	p-value
Agriculture	0.27		0.28	
Food Processing	0.08	0.00	0.11	0.00
Drink	0.15	0.00	0.12	0.00
Food Wholesale	0.07	0.00	0.08	0.00
Food Retail	0.05	0.00	0.04	0.00

Note: The reported p-values are the result of the t-test comparing agricultural sector against the other sectors.

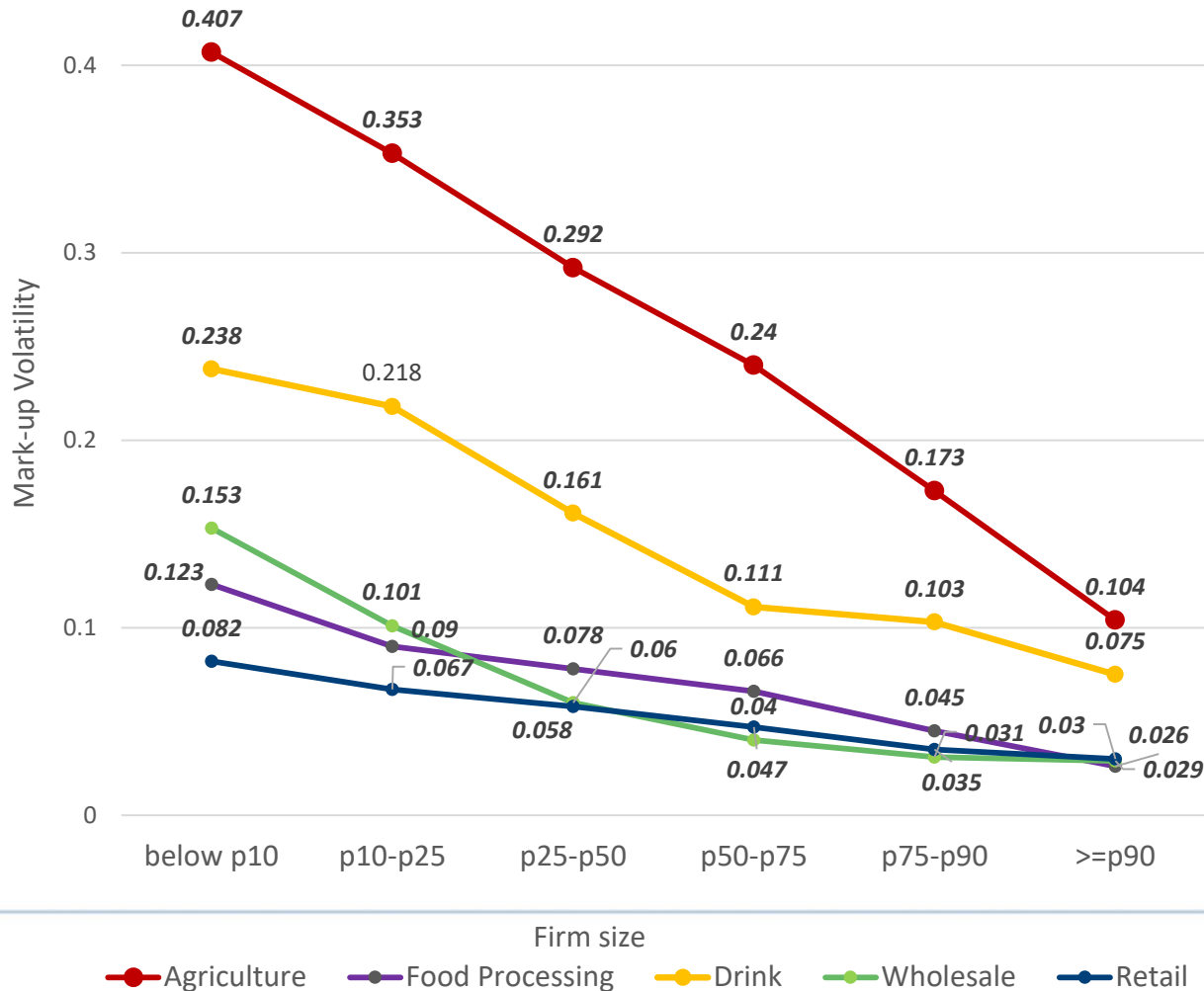
High mark-up volatility in all agricultural sub-sectors

Sector	France		Italy	
	Volatility	p-value	Volatility	p-value
Cereal Sector	0.23		0.32	
Livestock Sector	0.25	0.27	0.21	0.00
Fruits, Nuts & Vegetables	0.26	0.01	0.28	0.01
Other Crops	0.17	0.00	0.27	0.03
Mixed Farming	0.24	0.64	0.29	0.31
Other Agric. Activities	0.28	0.00	0.21	0.00
Agriculture TOTAL	0.27		0.28	

Mark-up volatility and firm size Hypothesis ?

- ***a priori uncertain*** how firm (farm) size affects mark-up volatility:
 - Higher mark-up volatility for small farms if they are less efficiently managed than large farms
 - Lower volatility for small firms if they are less specialized and they have more mitigation strategies, such as off-farm sources of income
 - ... ?

Mark-up volatility and firm size: Estimated relationship



Some conclusions on volatility along the EU food value chains

- During the period of high food price volatility (2006-2014) :
 - Mark-up volatility was **much higher at farm level** than at other segments of the value chain
 - Mark-up volatility is high for **all sub-sectors of agriculture**
 - There is a **negative correlation between firm size** and mark-up volatility
 - This negative relationship is **especially strong at farm level**, where mark-up volatility is largest



Weak position of farmers in EU food value chains ...

Due to / Exacerbated by

**“Unfair Trading Practices” ?
(UTPs)**





Unfair Trading Practices : What are they?

*“Practices that grossly deviate from **good commercial conduct** and are contrary to good faith and fair dealing and which are typically imposed in a situation of **imbalance** by a stronger party on a weaker one and can exist from any side of the B2B relationship and at **any stage in the supply chain.**” (European Commission, 2013)*



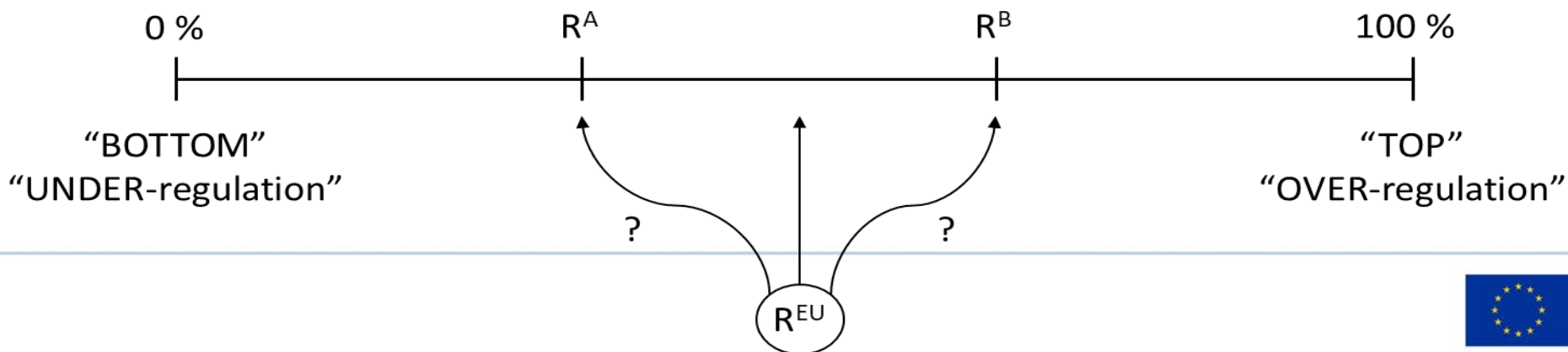
Unfair Trading Practices : What are they?

EXAMPLES:

- Lack of clarity in contract offer
- Lack of written contract
- Abuse of economic dependence
- Liability disclaimers
- Unilateral modification clauses
- Terms unreasonably imposing or shifting risks
- Unfair use of confidential information
- Unfair use of confidential information after contract expiry
- Unfair breaking off of negotiation
- Unfair contract termination
- Refusal to negotiate

EU or MS Regulation of UTPs ?

- The optimal UTP regulation may differ by MS since it will depend on :
 - Legal system and regulatory history
 - Preferences of consumers, producers, retailers, ...
 - Importance of production, consumption, trade
 - Cross-border regulatory externalities
 - ...



Costs and Benefits of EU Harmonization in UTP Regulation(s)

Benefits of EU harmonization

1. Regulation of transboundary phenomena
2. Prevents regulatory race-to-the-bottom
3. Economies of scale in administration
4. Transaction cost savings

Costs of EU harmonization

1. Deviation from social optimum (harmonization cost)
2. Switching cost
3. Over-regulation

Regulatory UTP initiatives

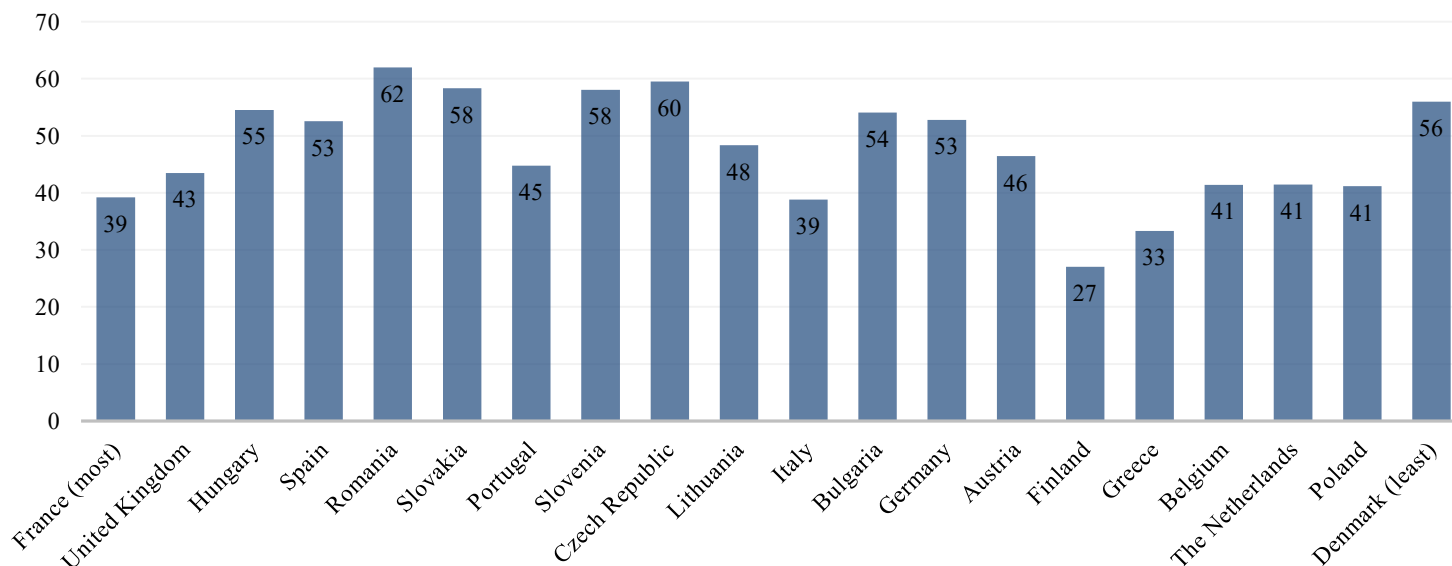
- No specific EU legislation until now, only voluntary framework
- Surge in specific UTP regulation in EU Member States in recent years. Regulatory approaches differ in:
 - Legal treatment
 - Authorities
 - Enforcement
 - Confidentiality of complaints
 - etc

RANK	Country	Legal Treatment	Enforcement			Coverage (%)	Private code
			Authority	Ex Officio	Confidentiality		
1	Croatia	Specific	Dedicated	Yes	Yes	91	Yes
2	France	Specific	Dedicated	Yes	Yes	73	Yes
3	United Kingdom	Specific	Dedicated	Yes	Yes	73	Yes
4	Hungary	Specific	Dedicated	Yes	Yes	55	No
5	Spain	Specific	Dedicated	Yes	Yes	27	Yes
6	Romania	Specific	Dedicated	Yes	No	64	No
7	Slovakia	Specific	Dedicated	Yes	No	55	No
8	Portugal	Specific	Dedicated	Yes	No	18	Yes
9	Slovenia	Specific	Competition	Yes	Yes	91	Yes
10	Czech Republic	Specific	Competition	Yes	Yes	64	Yes
11	Lithuania	Specific	Competition	Yes	Yes	55	Yes
12	Latvia	Specific	Competition	Yes	Yes	45	Yes
13	Italy	Specific	Competition	Yes	No	100	No
14	Bulgaria	Specific	Competition	Yes	No	18	Yes
15	Ireland	Specific	Competition	No	No	55	No
16	Germany	Stretched	Competition	Yes	Yes	45	Yes
17	Cyprus	Stretched	Competition	No	Yes	45	No
18	Austria	Stretched	Competition	No	No	55	No
19	Finland	Stretched	Competition	No	No	18	Yes
20	Greece	Stretched	Court	No	No	55	No
21	Belgium	Voluntary	Court	No	No	36	Yes
22	Estonia	Voluntary	Court	No	No	36	Yes
23	The Netherlands	Voluntary	Court	No	No	36	Yes
24	Sweden	None	Court	No	No	0	Yes/No
25	Poland	None	Court	No	No	0	Yes/No
26	Malta	None	Court	No	No	0	No
27	Luxembourg	None	Court	No	No	0	No
28	Denmark	None	Court	No	No	0	No

Member States UTP Regulations

R A N K	Country	Legal Treatment	Enforcement			Coverage (%)	Private code
			Authority	Ex Officio	Confidentiality		
2	France	Specific	Dedicated	Yes	Yes	73	Yes
16	Germany	Stretched	Competition	Yes	Yes	45	Yes
21	Belgium	Voluntary	Court	No	No	36	Yes
28	Denmark	None	Court	No	No	0	No

UTP occurrence and regulations



“Have you had any experience with UTPs in the past five years?” (%)

Ranked from most stringent to least stringent

Source: Areté report for DG Grow

→ No clear correlation between stringency and effectiveness



Existing EU level regulations that deal with (some) UTPs

- Articles 101 and 102 TFEU: **unfair practices in horizontal competition and abuse of dominant position** (almost never holds in food sector)
- Unfair Commercial Practices Directive 2005/29/EC: **between firms and consumers**
- Directive on **Unfair Terms in Consumer Contracts** 93/13/EC: between firms and consumers
- Consumer Protection Cooperation (CPC) Regulation 2006/2004/EC: coordinates **consumer protection efforts** across MS borders





UTPs on the EU policy agenda

- 2009 : Better functioning of the food supply chain in Europe
- 2010 : Establishment of a High Level Forum
- 2013 : Green Paper + launch of the ***Supply Chain Initiative (SCI)***





Voluntary EU Level Initiative

Supply Chain Initiative

- Built around the **Principles of Good Practice** (2011), which came out of the High Level Forum
- **11 EU level signatory organizations** from across the food supply chain
- But at the time of the actual creation of the SCI, **not all actors represented** (e.g. Copa Cogeca) → limited success
- Dispute resolution mechanism: both bilateral and aggregated complaints can be received





UTPs on the EU policy agenda

- 2009 : Better functioning of the food supply chain in Europe
- 2010 : Establishment of a High Level Forum
- 2013 : Green Paper + launch of the ***Supply Chain Initiative (SCI)***
- 2016 : Report by the European Commission & *Agricultural Markets Task Force* & vote in EU Parliament
- 2017 : JRC workshop on UTPs & DG AGRI Public Consultation
- 2018 : Intensive discussions (stakeholders, politicians and 3 EU institutions)
- **Final agreement** between EP, EC & Council on 19 **Dec 2018**
- **Final vote** expected in EP **next week** (11-14/03/2019)





UTP Regulation in the EU: Agreement between EP, EC and Council

- **# UTPs covered by the regulation: 16, including:**
 - Payments later than 30 days for perishable agricultural & food products
 - Unilateral cancellation of order of perishable products less than 30 days from the agreed delivery date
 - Unilateral & retroactive changes of the supply agreement terms
 - Unless agreed in the contract:
 - buyer returning unsold food products,
 - buyer charging payment to secure or maintain a supply agreement on food products (so-called 'hello money') &
 - supplier paying for buyer's promotion, advertising or marketing





UTP Regulation in the EU: Agreement between EP, EC and Council

- Covers entire agri-food sector (incl. animal feed, cut flowers, pet food)
- Implementation by national authorities
- ‘*Cascade approach*’ based on annual turnover: complaints are only possible against larger firms

Suppliers of ...	Protected against buyers of ...
< € 2 million	> € 2 million
> € 2 million & < € 10 million	> € 10 million
> € 10 million & < € 50 million	> € 50 million
> € 50 million & < € 150 million	> € 150 million
> € 150 million & < € 350 million	> € 350 million



Reactions to EU UTP Regulation

- “Near unanimous support” from Agriculture Ministers (not from Denmark and UK)
- Farmers’ organizations: step in the right direction, but prefer EU level enforcement mechanism





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Appendix: extra slides



- **Legal treatment:** extent to which UTPs are prohibited by a country's legal code
 - None: no provisions for UTPs, only contract law
 - Voluntary: platform where parties can engage in dispute settlement
 - Stretched: adapted existing legislation to incorporate UTP issues
 - Specific: dedicated UTP legislation was introduced



- **Enforcement:** how is UTP legislation enforced?
 - Authority: who? (the courts, competition authority or a dedicated government agency)
 - Ex officio: can they launch their own investigations?
 - Confidentiality: can complaints be received confidentially?
- **Coverage:** number of UTPs covered by the legislation/voluntary platform
- **Private code:** is there (in addition to legislation) a voluntary platform dealing with UTPs

