



Decision

Decision on request for enforcement filed by producer organization of Dutch pig farmers

Our reference : ACM/UIT/602154
Case number : ACM/23/182045
Date : March 12, 2024

1. Introduction

- 1 On February 6, 2023, the Netherlands Authority for Consumers and Markets (hereinafter: ACM) received a request for enforcement from POV, the producer organization of Dutch pig farmers. In that request for enforcement, POV stated that the buyer Vion Farming B.V. (hereinafter: Vion) had violated the Agriculture and Food Chain Unfair Trading Practices Act (hereinafter: Agriculture UTP Act). According to POV, Vion unilaterally changed the supply agreements between it and the pig farmers in various ways.
- 2 ACM supervises compliance with the Agriculture UTP Act. The Agriculture UTP Act is an implementation of a Directive¹ resulting from the recognition that there is a regular imbalance in negotiating power in the agricultural sector between relatively small suppliers on the one hand and larger buyers on the other. A number of large slaughterhouses are active in the pork sector. Vion is one of the largest pig slaughterhouses in the Netherlands, with an annual turnover of more than EUR 5.3 billion in 2022.² [XXX]³ Vion has a total of [XXX] pig suppliers.⁴ Some of these suppliers (approximately 500 estimated by POV),⁵ as well as pig farmers who supply other buyers, have come together in POV. To date, POV has been a producer organization without joint sales and has not therefore negotiated on the agreement and the price system on behalf of its members. The agreement that Vion concludes with its suppliers has an exclusive supply obligation and a notice period of twelve months.
- 3 The assessment in this decision is limited to one of the three complaints: Vion's use of the DG-Agri carcass price quotation for the calculation of the supplementary payment. ACM has already addressed the other two complaints in its decision to declare binding the commitment that Vion offered to ACM on November 14, 2023. Vion gave this commitment in response to the draft decision submitted by ACM on POV's request for enforcement.
- 4 In this decision, ACM successively describes the procedure it adopted, the legal framework, the relevant facts and circumstances, the complaints from POV and the opinion of Vion and POV, before presenting its assessment.
- 5 ACM concludes that the way in which Vion uses the DG-Agri carcass price quotation does not imply a unilateral change to the agreement between Vion and the pig farmer. ACM notes that this concerns a difference of opinion about the interpretation of the agreement.

¹ Directive (EU) 2019/633, April 17, 2019.

² Turnover of Vion Holding N.V. in 2022, see ACM/INT/485338.

³ [XXX]. See ACM/IN/760787.

⁴ ACM/IN/760787.

⁵ ACM/IN/753310.

2. Procedure

- 6 On October 31, 2022, a report appeared in the media about price changes implemented by Vion and dissatisfaction about it on the part of POV.⁶ The article stated that POV intended to ask ACM to assess whether the price changes were permitted under the Agriculture UTP Act.⁷
- 7 Following this report, ACM contacted POV. On November 18, 2022, POV explained its complaints in a discussion with ACM.⁸ Between November 18, 2022 and January 26, 2023, POV contacted ACM on several occasions to explain its reservations.⁹
- 8 Between December 7 and December 27, 2022, ACM contacted Vion on several occasions.¹⁰ In two discussions and in submitted documents, Vion explained its view that no violation of the Agriculture UTP Act had occurred.
- 9 On February 6, 2023, ACM received a request for enforcement from POV in which POV set out its complaints regarding three different practices of Vion.¹¹ A third discussion took place between ACM and POV on February 9, 2023.¹² In this discussion, among other things, POV further explained its complaint regarding the supplementary payment for 2022.
- 10 ACM held a discussion with Vion on February 13, 2023.¹³ In this discussion, ACM informed Vion that it was continuing its investigation and working towards a decision. ACM announced that Vion would be given an opportunity to express its opinion on the draft decision at a later date.
- 11 As part of the investigation, ACM asked POV and Vion questions on a number of occasions, to which they provided written answers.¹⁴
- 12 A fourth meeting between ACM and POV took place on March 23, 2023, in which POV further explained some aspects of the pork sector. The supply of turnover figures from pig farmers was also discussed on this occasion.¹⁵
- 13 Following the investigation, ACM drew up a draft order subject to periodic penalty payments. The draft decision was presented to Vion and POV on April 26, 2023. On May 17, 2023, ACM received POV's opinion on the draft decision.¹⁶ On May 25, 2023, ACM received Vion's opinion on the draft decision.¹⁷
- 14 Vion also contacted ACM in response to the draft decision to discuss the options for giving a commitment. POV was informed by ACM about the commitment process and was kept informed during this process. In those discussions, POV again explained its opinion.¹⁸
- 15 Vion submitted its application for the commitment to be declared binding to ACM on November 14, 2023. In response to this application, ACM formulated a draft commitment decision, which was made available for inspection on December 4, 2023. POV submitted its written opinion on the commitment decision on January 9, 2024 and explained it orally on January 18, 2024.¹⁹

⁶ ACM/INT/464837.

⁷ ACM/INT/464833.

⁸ ACM/UIT/589739.

⁹ ACM/IN/736527, ACM/INT/463032.

¹⁰ ACM/INT/468847, ACM/IN/762844, ACM/IN/736932, ACM/INT/461387, ACM/IN/739820.

¹¹ ACM/IN/753310.

¹² ACM/INT/463947.

¹³ ACM/INT/464091.

¹⁴ ACM/UIT/593479, ACM/IN/760787, ACM/UIT/594685, ACM/IN/764656, ACM/UIT/593885, ACM/IN/760677.

¹⁵ ACM/INT/468130.

¹⁶ ACM/IN/774666.

¹⁷ ACM/IN/776624.

¹⁸ ACM/INT/472623, ACM/UIT/601013.

¹⁹ ACM/IN/834506, supplemented by ACM/IN/835155 on January 11, 2024. With an oral explanation: ACM/UIT/613510. POV made comments on the report: ACM/IN/843599.

- 16 ACM asked Vion written questions on February 7, 2024,²⁰ which Vion answered on February 13, 2024.²¹
- 17 ACM drew up this decision on the basis of all the information obtained, which was added to the underlying file.

3. Legal framework

- 18 The Agriculture UTP Act came into force on November 1, 2021. This Act is based on an EU directive²² that aims to strengthen the position of farmers, fishers, market gardeners and other suppliers of agricultural and food products.
- 19 Substantial differences in size between suppliers and buyers can lead to an imbalance in bargaining power in the supply chain. This may result in certain trading practices that are contrary to the principles of good faith and fair trading. The Agriculture UTP Act protects agricultural producers and food suppliers against unfair trading practices by relatively large buyers.
- 20 According to the Agriculture UTP Act, a buyer buying agricultural products is prohibited from unilaterally changing the conditions of a supply agreement.²³ It follows from Section 5 of the Agriculture UTP Act that this prohibition only applies between parties that meet certain turnover thresholds.²⁴ Pursuant to Section 7 of the Agriculture UTP Act, the buyer must refrain from engaging in unlawful trading practices. ACM is responsible for supervising compliance in respect of unlawful trading practices as described in the Agriculture UTP Act. An interested party can request ACM to carry out enforcement in connection with a suspected prohibited commercial practice affecting the supplier concerned. A supplier, an organization of which a supplier is a member or an association of such an organization can be regarded as an interested party.²⁵
- 21 Pursuant to Section 9 of the Agriculture UTP Act, ACM can act in various ways. For example, it can take a decision establishing the violation, impose an administrative fine on the offender, impose an order subject to periodic penalty payments on the offender or impose an independent order.
- 22 Existing agreements (predating November 1, 2021) must comply with the Agriculture UTP Act from April 15, 2022. Agreements concluded from the time of entry into force on November 1, 2021 fall directly under the Agriculture UTP Act.²⁶
- 23 Under the General Administrative Law Act, ACM is authorized to demand information as part of its compliance supervision.²⁷ Every party is obliged to cooperate.²⁸
- 24 Pursuant to Section 12h of the ACM Establishment Act, ACM may declare a commitment application to be binding if it considers that it would be more effective than an investigation that could possibly lead to the imposition of an administrative fine or an order subject to periodic penalty payments. If ACM declares a commitment application to be binding, it no longer has the power to impose an administrative fine or an order subject to periodic penalty payments.

²⁰ ACM/UIT/614403.

²¹ ACM/IN/843692.

²² Directive (EU) 2019/633, April 17, 2019 (the '**Directive**').

²³ Section 2(1)(c) of the Agriculture UTP Act.

²⁴ In this case, a buyer with a turnover exceeding EUR 350,000 and a supplier with a turnover of up to EUR 350,000, Section 5(2)(e) of the Agriculture UTP Act.

²⁵ Section 8(1) of the Agriculture UTP Act.

²⁶ Section 12 of the Agriculture UTP Act and Official Gazette 2021, 178.

²⁷ Section 5:16 of the Administrative Law Act.

²⁸ Section 5:20 of the Administrative Law Act.

4. Facts and circumstances

4.1. The parties involved

- 25 **POV** is a producer organization that represents around 70% of pig production in the Netherlands.²⁹ The members of POV supply pigs to various buyers, of which Vion is one of the largest. POV estimates that around 500 members of POV supply to Vion.³⁰
- 26 **The pig farmers** who supply pigs to Vion under what is known as the Price Index Guarantee system, both members and non-members of POV, are affected by the practices of Vion raised in POV's request for enforcement.
- 27 **Vion** (Vion Farming B.V.) is responsible for supplying fattening pigs and sows from the farm to the various Vion slaughterhouses. Vion Farming B.V. is part of Vion Food Group, an internationally operating Dutch food company that mainly owns slaughterhouses and meat-processing businesses for pork and beef.

4.2. Agreements

- 28 Pig farmers with whom Vion has a contract supply to Vion on the basis of what is known as the Good Farming Balance agreement (hereinafter: the Agreement). The Agreement contains the delivery conditions and a price system. The Agreement obliges pig farmers to supply their pigs exclusively to Vion.³¹ Pig farmers who supply to Vion under the Agreement therefore do not also supply to other buyers.
- 29 The Agreement includes what is known as the Good Farming Balance conditions (hereinafter: GFB conditions), which enable pig farmers to view, among other things, [XXX] of the pigs they supply to Vion. Further [XXX] are also specified in the GFB conditions.³²

4.2.1. Pricing system

- 30 Pig farmers who enter into an agreement with Vion can choose from three different price systems: the Vion weekly listing, the Price Index Guarantee system (PIG system) and the Long-Term Price system.
- 31 **The Vion weekly quotation** is a weekly quotation published by Vion stating the amount that the pig farmer will subsequently receive for their pigs delivered that week. This weekly quotation [XXX] (see marginal 32).
- 32 **The PIG system** (Price Index Guarantee system) is the system to which POV's complaint relates. [XXX] of the total of [XXX] pig farmers who supply Vion have opted for the PIG system.³³ The PIG system was introduced in 2015. This took place in consultation with a 'sounding board group' of pig farmers.³⁴ The PIG system works as follows: [XXX] (see marginal 31), [XXX] a composite 'basket' of quotations ('the Basket') is determined:³⁵

Quotation	Weighting factor
[XXX] (Germany)	21%
[XXX] (Denmark)	21%
[XXX] (Spain)	21%
[XXX] (Belgium)	7%

²⁹ ACM/UIT/589739.

³⁰ ACM/IN/753310.

³¹ ACM/IN/753310.

³² ACM/IN/753310.

³³ A pig farmer with multiple locations can choose for each location whether to apply the PIG system or one of the other price systems. The [XXX] pig farmers supply Vion from [XXX] different locations. The [XXX] pig farmers have chosen [XXX] locations for the application of the PIG system. See ACM/IN/760787.

³⁴ ACM/IN/736932.

³⁵ ACM/IN/736932.

[XXX] (Netherlands)	20%
DG-Agri carcass price quotation	10%

33 [XXX], and on this basis a supplementary payment can be made to the pig farmers.

34 This supplementary payment is calculated as follows: [XXX].³⁶ [XXX].³⁷ [XXX].³⁸

35 For clarity, the calculation is shown below as a formula:³⁹
[XXX]

The table below shows a calculation example of how [XXX]

[XXX]

36 **The Long-Term Price System** is a price system in which pig farmers can fix the price for 13 weeks based on the Vion weekly quotation or the Basket of the PIG system. [XXX].⁴⁰

5. POV's complaints

37 POV sees Vion as the market leader in the pork sector. According to POV, the position of the pig farmer is not strong vis-à-vis Vion as a major buyer. The pig farmers therefore do not have a good negotiating position, according to POV.⁴¹

38 POV believes that Vion violated the prohibition on unilateral changes to the supply agreement in three ways (Section 2(1)(c) of the Agriculture UTP Act). POV states that Vion unilaterally changed the price system laid down in the supply agreement in three ways.

39 The first complaint from POV concerns the change in the Basket. Vion temporarily removed the German quotation from the Basket in 2022 and according to POV this was done unilaterally. The second complaint concerns the change to the PIG system. Vion changed the supplementary payment system as of January 16, 2023. This was also a unilateral change to the Agreement, according to POV.

40 ACM included these two complaints in the commitment decision dated March 12, 2024.⁴² As described in the assessment of this decision, ACM therefore no longer has the power to impose an administrative fine or order subject to periodic penalty payments.

41 The third complaint concerns the supplementary payment for 2022, with the use of the DG-Agri carcass price quotation. Vion has given no commitment regarding this complaint. This complaint is therefore assessed substantively in this decision.

5.1. The supplementary payment for 2022 with the use of the DG-Agri carcass price quotation

42 POV argues that Vion did not correctly use the DG-Agri carcass price quotation, which is part of the Basket, when calculating the supplementary payment for 2022. POV states that when using the DG-Agri carcass price quotation, Vion assumes the [XXX] instead of the [XXX] that comprises the DG-Agri carcass price quotation.⁴³

³⁶ In other words, by for both [XXX]

³⁷ [XXX], see ACM/IN/753310.

³⁸ ACM/IN/753310.

³⁹ ACM/IN/753310.

⁴⁰ ACM/IN/753310.

⁴¹ ACM/INT/467476.

⁴² ACM/UIT/613562.

⁴³ ACM/IN/753310.

- 43 On January 6, 2023, Vion announced that an amount of 3.1 ct/kg (2.82 ct/kg excluding VAT) would be paid by way of supplementary payment to its suppliers in respect of 2022.⁴⁴ The supplementary payment is calculated on the total kilograms supplied in 2022. The pig farmers received the supplementary payment in week 5 of 2023. The Vion news release shows the calculation of the supplementary payment for 2022 in a table.⁴⁵
- 44 According to Article 19 of Regulation 2017/1182⁴⁶, the DG-Agri carcass price quotation refers to an average Union price for pigs in each class stated in Article 9 of Regulation 2017/1184. Article 19 of Regulation 2017/1182 further states that this is the weighted average of the national market prices recorded for the class in question, according to POV. POV states that this weighted average is based on the ratio between the number of slaughters for the class concerned in each Member State and the total number of slaughters for that class in the Union.
- 45 POV considers that Vion is acting in violation of the Agreement by not using the DG-Agri carcass price quotation as referred to in Regulation 2017/1182 when calculating the supplementary payment for 2022, instead using a [XXX], by calculating a [XXX] of the DG-Agri carcass price quotation per Member State. POV argues that Vion thus unilaterally changed the PIG system.⁴⁷

6. Opinion in response to the draft decision

- 46 As noted in marginal 3 of this decision, ACM has included two complaints from POV in the commitment decision. This concerns the two complaints relating to the change in the Basket and the change in the PIG system. This section therefore only considers the part of the opinions relating to the third complaint: the use of the DG-Agri carcass price quotation in the calculation of the supplementary payment.
- 47 In the draft decision, ACM concludes that it is not competent to judge this complaint, because it concerns the interpretation of the Agreement and is a civil dispute.

6.1. Opinion of POV

- 48 In its opinions on both the draft decision on an order subject to periodic penalty payments⁴⁸ and on the draft commitment decision⁴⁹, POV states that the complaint concerning the DG-Agri carcass price should not be rejected. After all, Vion itself determined a quotation based on information that the EU Member States communicated to the Commission for determining the DG-Agri carcass price quotation, according to POV. POV considers that this can be regarded as a unilateral change within the meaning of Section 2(1)(c) of the Agriculture UTP Act.⁵⁰ POV states that Vion replaced the DG-Agri carcass price quotation with a [XXX].. According to POV, this explains the difference in the supplementary payment and how it calculated it and the amount actually paid out by Vion.
- 49 POV states that the DG-Agri carcass price quotation from the basket refers to the average Union price for pigs in each class referred to in Article 9 of Regulation 2017/1184, as regulated in Article 19 of Regulation 2017/1182, and that it concerns a [XXX]. According to POV, it does not follow from the draft decision that this is disputed by Vion.

⁴⁴ ACM/IN/753310.

⁴⁵ ACM/IN/753310.

⁴⁶ Commission Delegated Regulation (EU) 2017/1182 of April 20, 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig, and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.

⁴⁷ ACM/IN/753310.

⁴⁸ ACM/IN/774666.

⁴⁹ ACM/IN/834506, supplemented by ACM/IN/835155 on January 11, 2024. With an oral explanation: ACM/UIT/613510. POV made comments on the report: ACM/IN/843599.

⁵⁰ ACM/IN/774666.

- 50 According to POV, the replacement of the DG-Agri carcass price quotation does qualify as a unilateral change to the contract conditions. In material terms, there is no difference compared to permanently or temporarily removing the German quotation from the basket, according to POV. In both cases, the pig farmer receives a smaller supplementary payment. POV disagrees with ACM's preliminary judgement in the draft decision that this is a civil matter and believes that ACM can indeed demand that Vion pay out the lost income to its pig farmers.⁵¹
- 51 By ruling that this is a civil law matter, POV believes that ACM opens the door for buyers to bring their contracts into line with the Agriculture UTP Act, but then not to adhere to those contracts. The Agriculture UTP Act thus becomes a dead letter, according to POV.⁵² POV is therefore surprised that the violation regarding the use of the DG-Agri carcass price quotation is not addressed in the commitment decision.⁵³

6.2. Opinion of Vion

- 52 Vion states that the calculation of the supplementary payment for 2022, of which this quotation is part, was carried out in accordance with the system set up in 2017 and verified by auditors.⁵⁴ Vion states that its calculation of the supplementary payment follows from the methodology agreed in the Agreement.⁵⁵
- 53 In its response to ACM's request for information, Vion explains its interpretation of the use of the DG-Agri carcass price quotation.⁵⁶ Vion states that the DG-Agri carcass price quotation, as included in the Agreement on January 22, 2022, is a [XXX] of all countries within the European Union. According to Vion, the DG-Agri carcass price quotation can be calculated in various ways based on data from the European Commission's Agri Food Data Portal. A distinction can be made on the basis of the type of carcasses, but also on the basis of the average price per Member State or the weighted average in the European Union. A distinction can also be made on the basis of the time period. This distinction can be made by checking various options in the European Commission's 'Agri Food Data Portal'. Vion states that it calculates the DG-Agri carcass price quotation based on the [XXX] provided by the 27 EU Member States.
- 54 According to Vion, the DG-Agri carcass price quotation is used in the manner described above from the time at which it is included in the Agreement. It has never adjusted the method used to calculate the DG-Agri carcass price quotation and therefore the Agreement has not been changed. Vion states that there is a difference of interpretation between the explanations of Vion and POV concerning the use of the DG-Agri carcass price quotation. POV considers that the calculation of the DG-Agri carcass price quotation should be based on the [XXX]. This is not in line with Vion's interpretation of the DG-Agri carcass price quotation. Vion states that its calculation method is in line with the way in which it communicated it to its suppliers when this quotation was introduced into Vion's price system. In addition, Vion notes that the calculation of the DG-Agri carcass price quotation is in line with the calculation of the other quotations in the Basket. Vion does not use a [XXX] for any of the quotations in the Basket.

7. Assessment

⁵¹ ACM/UIT/601013.

⁵² ACM/IN/835155.

⁵³ ACM/UIT/613510.

⁵⁴ ACM/IN/753310.

⁵⁵ ACM/IN/743168.

⁵⁶ ACM/IN/843692.

- 55 It follows from marginal 46 above that the assessment in this decision only concerns POV's complaint about the calculation of the supplementary payment and the use of the DG-Agri carcass price quotation.

7.1. Applicability of the Agriculture UTP Act

7.1.1. Interest of POV

- 56 The request for enforcement was made by POV. POV is a recognized producer organization for pig farmers,⁵⁷ which, among other things, provides its members with information and represents its members in dealings with social stakeholders. POV does not sell collectively. The members of POV are suppliers within the meaning of the Agriculture UTP Act and supply pigs to Vion (and others). Pigmear is a product as referred to in Annex I to the Treaty on the Functioning of the European Union and is a food product as referred to in Section 1 of the Agriculture UTP Act.
- 57 Section 8(1) and (2) of the Agriculture UTP Act ensures, in accordance with Article 5(2) of the Directive, that organizations of which a supplier is a member can request ACM to enforce the prohibition of unfair trading practices. The status of an organization such as POV as an interested party in this decision results from the operation of law.⁵⁸
- 58 As a producer organization, POV has the express opportunity under the Agriculture UTP Act to submit a request for enforcement with regard to a suspected violation of the Agriculture UTP Act. ACM therefore rejects Vion's complaint that POV is not permitted to submit a request for enforcement regarding the Agriculture UTP Act to ACM because POV would thereby violate the Farmer Cooperation Guidelines and Section 6 of the Dutch Competition Act. POV is an interested party in this case by operation of law and as such was permitted to submit a request for enforcement to ACM.

7.1.2. Turnover limits for the applicability of the Agriculture UTP Act

- 59 The relationship between the supplier and the buyer is important for assessing whether the Agriculture UTP Act applies.⁵⁹ The turnover of Vion Holding N.V., the parent company of Vion, was over EUR 5.3 billion in 2022.⁶⁰ Vion's turnover in 2022 was therefore more than EUR 350,000,000. This means that the Agriculture UTP Act applies to supply agreements between Vion and all Vion suppliers with a turnover of less than EUR 350,000,000.
- 60 ACM concludes that no pig farmer who supplies Vion has a turnover of more than EUR 350,000,000. For reasons of proportionality and efficiency, ACM has not requested turnover data from every Vion supplier. ACM did request information from Vion about its five largest suppliers who supply pigs to Vion using the PIG system. The turnover from the sale of pigs to Vion of each of these five largest suppliers is between EUR [XXX] and EUR [XXX].⁶¹ Inquiries among the five pig farmers concerned show that the total annual turnover of these undertakings (including parent companies, subsidiaries and partner companies) is between EUR [XXX] and EUR [XXX].⁶² Based on this data, ACM considers that it is sufficiently plausible that all pig farmers who supply to Vion remain below the turnover limit of EUR 350,000,000.
- 61 Based on the above, ACM concludes that the Agriculture UTP Act and the present decision apply to all pig farmers who supply pigs to Vion using the PIG system.

⁵⁷ ACM/IN/753310 and ACM/IN/760677.

⁵⁸ Explanatory Memorandum, House of Representatives, session year, 2020-2021, 35 642, no. 3, p. 6.

⁵⁹ See Section 5 of the Agriculture UTP Act.

⁶⁰ ACM/INT/485338.

⁶¹ ACM/IN/760787.

⁶² ACM/IN/764043, ACM/IN/764442, ACM/IN/764445, ACM/IN/766116, ACM/IN/766841, ACM/IN/767110.

7.1.3. Temporal effect of the Agriculture UTP Act

- 62 Existing agreements (predating November 1, 2021) must comply with the Agriculture UTP Act from April 15, 2022.⁶³ Agreements concluded from the time of entry into force of the Act on November 1, 2021 fall directly under the Agriculture UTP Act. With effect from April 15, 2022, the agreements between Vion and its suppliers, even if concluded before the Agriculture UTP Act came into force, had to comply with the Agriculture UTP Act.
- 63 ACM assesses below whether the method of calculating the 2022 supplementary payment by Vion constitutes a violation of the Agriculture UTP Act.

7.2. Assessment of complaint concerning the 2022 supplementary payment using the DG-Agri carcass price quotation

- 64 As set out in Sections 5.1 and 6.1 of this decision, POV considers that Vion did not use the DG-Agri carcass price quotation correctly in the calculation of the supplementary payment for 2022. In its complaint, POV states that for the calculation Vion incorrectly uses the [XXX] instead of the [XXX] that would comprise the DG-Agri carcass price quotation. POV considers that Vion thus unilaterally changed the PIG system and that this calculation method therefore qualifies as a unilateral change to the supply agreement.
- 65 ACM rejects this complaint and considers the following.
- 66 ACM notes that the Agreement refers only to the 'DG-Agri carcass price quotation' and that this is weighted at 10%:

The basket is composed as follows:

Quotation	Weighting factor
[XXX] (Germany)	21%
[XXX] (Denmark)	21%
[XXX] (Spain)	21%
[XXX] (Belgium)	7%
[XXX] (Netherlands)	20%
DG-Agri carcass price quotation	10%

- 67 The Agreement or associated conditions do not state how this quotation should be calculated ([XXX]).
- 68 ACM cannot follow POV's reasoning that it follows from the draft decision that Vion does not dispute that it should be a [XXX]. In its opinion on the draft decision on an order subject to periodic penalty payments, Vion stated only that it calculated the supplementary payment based on the methodology laid down in the Agreement and that the supplementary payment for 2022 was verified and approved by an auditor.
- 69 At the request of ACM, Vion explained on February 13, 2024 how and why it arrived at the DG-Agri carcass price quotation used to calculate the price paid to its suppliers.⁶⁴
- 70 POV states that the alleged incorrect calculation of the DG-Agri carcass price quotation and thus the alleged incorrect supplementary payment is materially the same as the temporary removal of the German quotation from the Basket, since in both cases the supplementary payment is lower for the pig farmer. However, ACM notes that when assessing a possible unilateral change the only important factor is how this change came about. From that perspective, the material consequence is not important for the assessment of whether a change took place unilaterally.
- 71 ACM notes that this concerns a difference of opinion between the parties regarding the interpretation of the Agreement. It does not follow from the Agreement and the documents known to ACM that the

⁶³ Official Gazette 2021, 178 and Section 12 of the Agriculture UTP Act.

⁶⁴ ACM/IN/843692.

parties unambiguously agreed on how the DG-Agri carcass price quotation was established. ACM does not see that Vion itself changed the agreement with its method of calculation. In ACM's opinion, an allegedly incorrect calculation does not constitute a unilateral change and therefore does not constitute a violation of Section 2(1)(c) of the Agriculture UTP Act. ACM therefore rejects this complaint.

- 72 If POV considers that with this calculation Vion is not complying with the terms of the Agreement, the route to the civil court is open. ACM is not competent to judge such a civil matter.

8. Decision

- i. The Netherlands Authority for Consumers and Markets rejects the complaint concerning the use of the DG-Agri carcass price quotation.

This decision in case ACM/23/182045 was drawn up on March 12, 2024 in The Hague.

Netherlands Authority for Consumers and Markets,

on its behalf,

M.T. Snoep
Chairman of the Board

If you are an interested party, you may lodge an objection to this Decision. Send your substantiated notice of objection to the Netherlands Authority for Consumers and Markets, Legal Department (JZ), PO Box 16326, 2500 BH The Hague. You must do this within six weeks of the day on which this Decision is announced. In your statement of objection, you may request the Netherlands Authority for Consumers and Markets to agree to a direct appeal to the administrative court.