Prof. Dr. Giuseppe Spoto[•]

GLOBAL AND LOCAL DIMENSIONS OF FARMS

1. Globalisation as a phenomenon has profoundly altered the role of individual states over time. This role must be taken into account in developing a market economy model that is generally able to self-regulate, but in which the focus remains on choices that favour legal systems capable of providing the best investment opportunities, or a lower tax burden allowing companies to bear lower costs. States that can offer these advantages can better attract producers' investments.

After initial enthusiasm in exploring these issues, the first challenges began to emerge: while it is true that "successful" legal systems are those that are able to offer companies legislation suitable to achieve their objectives, this model can produce negative effects such as a competitive edge for countries that don't concretely safeguard workers' rights or protect the environment, or countries that employ tax avoidance mechanisms, i.e. tax havens.

The truth is that, today, individual national economies are forced to operate in vast markets, and the description of the free market economy model - in which the state is represented as an impartial arbiter that ensures fair competition – can no longer be applied in a perfect manner, in that no competition between companies can take place within a single system to the exclusion of all others since "borders" have expanded enormously. There is something to be added to this observation: what we are witnessing is a contamination between different legislative models that makes the general framework of economic globalisation increasingly complex. In a certain sense, we have entered a new phase which can no longer be explained exclusively by theories on competition between legal systems, and which requires further reflection and further study.

In order to relaunch national economies and tackle the financial crisis, in recent years legal systems have generally followed "recipes" primarily focused on reducing production costs for businesses, while direct aid policies have largely been limited due to prohibitions at a European and international level. However, we need to start thinking about new models that are better able to face the problems deriving from a given economic framework in a global and constantly changing dimension.

A different perspective is only attainable if we evolve our understanding of new types of contracts signed between companies to reach common objectives; we must shift the attention from mere competition to more sophisticated forms of collaboration, without crossing the line into prohibited cartels or mergers. These business aggregation models are allowed because they are

[•] Professor of civil law and agricultural law at the Department of Law of the Roma Tre University.
Email: giuseppe.spoto@uniroma3.it

constructed for the sake of common programmes that are potentially open to all those having the same interests.

The idea here is to create new models of cooperation and collaboration that are not born to “divide” according to the logic of competition, but to unite those who face the same challenges. Tools that are not designed for competition-oriented “attacks”, but rather defense against structural and collective problems that affect all those working in the sector in the same way.

So far, the agricultural sector has been regulated by different rules compared to the general principles on competition between companies and the prohibition of state intervention, and the common agricultural policy has allowed a system of agricultural production aid to be implemented. But globalisation and new challenges brought by the economic and political crisis invite further reflection in this specific sector as well.

Cooperation has become a key word at various levels. It can be recalled in the context of relations between public and private enforcement, but it can also be recalled to highlight the phenomenon of partnership between companies that establish a network to achieve common objectives with greater efficiency and competitiveness.

However, there is no unanimous consensus on which method should be followed to consolidate new forms of collaboration between companies. On the one hand, contracts flanked by the idea that cooperation relations must be formalised seem to be the most suitable tool for this purpose; on the other hand, this model currently seems to be undergoing a crisis because of studies on "informal" relationships based on the achievement of results.

2. In a globalised age, companies are no longer the protagonists of the economy and become small gears in a machine too vast and complex to be understood separately from the surrounding world.

In a market where goods and people can travel quickly, and large business groups that can offer their products globally dominate the scene, small businesses that cannot compete with the larger ones face an uphill struggle. For this reason, medium and small businesses can only remain competitive by deciding to cooperate, implementing common strategic projects and objectives. To avoid losing their independence and individuality, companies can decide to sign a “network contract”.

The companies that make up a network remain distinct, autonomous entities, possibly continuing to compete with each other, but only within a more general framework.

Forms of collaboration can involve not only the main business activities, but also complementary ones, in a given stage or in several stages of the supply chain. Any contribution of goods and services takes place in a relationship marked by interdependence that does not exclude the legal and economic autonomy of each participant in the network.

Parties to network contracts essentially decide to increase their ability to innovate, both individually and collectively, by devising a common programme aimed at collaborating in specific fields, exchanging information, or providing services.

This type of contract can be very appealing, especially for farms. The possibility of organising internal work resources and putting everyone's resources together to achieve common objectives allows for limits connected to local productions and short supply chains to be overcome, and to widen distribution. Clearly, companies connected to the network will have broader opportunities than those that choose to operate individually. The networking phenomenon is also particularly advantageous for rural development policy objectives, because entrepreneurs will be able to overcome the economic and environmental disadvantages associated with land fragmentation. For this reason, business-to-business networks have been taken into account in the European framework for rural development, i.e. the European Agricultural Fund for Rural Development (EAFRD), which provides many funding possibilities.

Still, interpreting national legislation in a manner consistent with European laws on the subject of Common Agricultural Policy is no easy task. Indeed, one can encounter many issues of interpretation and overlap. For instance, the list of products that are considered "agricultural" at European level, pursuant to Annex 1 to the Treaty on the Functioning of the European Union (TFEU), does not always match definitions of agricultural products in national legislation.

Let us take Italian law as an example. Timber is not included in Annex 1 to the TFEU despite forestry activities being considered the main agricultural activity by Article 2135 of the Italian Civil Code. Or consider sugar and flour: Italian law considers these industrial products, while Annex 1 to the TFEU lists them as agricultural products. Which rules should be applied in these situations? The rules governing agricultural production or the rules governing industrial production?

Another aspect that warrants closer examination is the application of non-compete clauses in network contracts between several farms. What must be assessed here is whether exceptions should be made in this area with regard to the ban on mergers, and – more precisely – whether any specific legal treatments exist within the generally applicable rules on horizontal and vertical agreements. Article 209(1), second subparagraph, of EU Regulation No. 1308/2013 provides that Article 101(1) TFEU shall not apply to agreements, decisions and concerted practices of farmers, farmers' associations, or producer organisations "which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products”, unless the Common Agricultural Policy objectives are jeopardised.

These specific objectives, established by Article 39 TFEU, are to: increase agricultural productivity by promoting technical progress and ensuring optimal use of production factors; ensure a fair standard of living for the agricultural community; stabilise markets; guarantee the availability of supplies; ensure reasonable prices for consumers.

There is nothing to prevent this provision from being applied to business networks between agricultural producers, which can therefore be considered exempt from the prohibition of non-competitive agreements. However, whether this exemption can also be extended to networks involving non-agricultural producers is up for debate.

Another problem arises from overlapping rules on networks between farms and approved interbranch organisations. Agreements of an interbranch nature between companies involved in the various stages of a supply chain are exempt from non-compete rules, provided that they are aimed at establishing approved interbranch organisations. In this regard, however, business networks can be a considered a separate concept from approved interbranch organisations, given that Italian legislation on interbranch organisations states that these types of aggregations must always take the form of associations according to Italian civil law, while business networks are accorded a more flexible treatment.

Interbranch organisations aim to bring together those involved in the entire production chain and simultaneously play a useful role as a nexus, because they facilitate communication between participants in supply chains. Producer organisations and the processing sector operate within them, while the participation of the heads of the manufacturing and distribution sectors is not always possible, as they are subject to stricter rules regarding competition. The differences therefore also depend on the supply chain and the specifics of the productions.

Let us therefore clarify the differences between the various types of company aggregations that might involve several agricultural undertakings, and possibly commercial ones as well. A brief parenthesis on so-called “agricultural producers’ organisations”, which only involve farmers and not the participants in the entire supply chain (farmers, processors, distributors and retailers), will be useful here.

In order to cope with the challenges of the highly perishable nature of agricultural products and the risks generally associated with production, common measures have been put in place over time to manage these risks. The functions carried out by producers’ organisations and the rules governing them should be placed in this context. Still, while they have a strategic role, it is worth mentioning that there is a notable difference between these forms of aggregation and business networks: the latter mainly aim to increase the competitiveness of their participants. Instead, producers' organisations were primarily created to enjoy more flexible rules on freedom of competition. This legal framework complements other European rules, including derogations from prohibitions on state aid and anti-competitive agreements, and therefore help exclude farms from the restrictive provisions laid down in Articles 101-109 TFEU.

3. Business networks can therefore be viewed as one of the possible tools to create a modern competition and industrial innovation policy that is in line with the considerations made by the European Commission in its 2010 Communication to the European Parliament, “An Integrated Industrial Policy for Globalisation Era”.

This document clearly stated that EU companies must now withstand competition from China, Brazil, India, and many other emerging economies. Developing new strategies, therefore, has become essential.

In this regard, one can note two contrasting phenomena: on the one hand, you have globalisation and the possibility of offering goods in a borderless market, pushing companies to unite in order to be present even in distant nations; on the other hand, you have companies that prefer to focus their investments on their main business activities, entrusting the company’s secondary organisational aspects to others. It is within the context of this second trend that size reduction choices can be approved, and be offset by greater specialisation of labour.

In other words, some companies choose to diversify their activities to be more competitive, grouping up with those having the same interests and the same skills, while other companies invest in sectoral specialisation, reduce their costs, and restructure internally. In this case, in order to avoid reducing their production levels, and in order to have specialised personnel, companies form a network to "exchange" resources and achieve set objectives.

The phenomenon of networking between companies has also been studied in the field of legal sociology. In particular, Gunther Teubner’s work on business-to-business networks is worth mentioning. Teubner uses the metaphor of a "many-headed hydra" to indicate that business networks lack a “single centre of will-formation”. A network does not act according to the traditional corporate model, but consists of a multitude of "nodes", each of which operates autonomously for itself and simultaneously for the "network". It is a "hybrid" that connects heterogeneous elements.

The foundations of this theory can also be found in the socialisation movements for productive forces and sustainable degrowth.

What do I mean by "sustainable degrowth"? Let us examine two core concepts employed by Latouche: "*happy degrowth*" and "*sustainable growth*". The first expression presents a new economic model in which society self-limits behaviours that are considered wrong and seeks to return to a simpler way of life, where everyone can be happier, working and consuming less. This model redistributes resources, reuses assets, halts unbridled production, and reduces inequalities. In this manner, sustainable and therefore real growth can be achieved. Development based on indiscriminate growth only increases social inequality and does not generate widespread well-being. The invitation is to organise collectively, so that the decrease in goods production does not reduce levels of well-being, but may end up actually increasing everyone's quality of life. This line of reasoning also applies to agricultural production, because it is quite often the case that multinational companies have used land that should have been used for agriculture, and not for industry, for the sake of greater production.

The theory has however been subjected to criticism by laissez-faire economists who consider the concept of degrowth dangerous, in that it causes consumption to drop and therefore generates recessions. It has also been criticised by socialists, who hold that capitalism's main problem is not an excessive production of goods, but an undue appropriation of profits.

But, if we adhere to a more moderate version and exclude more radical interpretations, the theory of the commons proves that certain goods can be better utilised by a group of beneficiaries than by single individuals.

The theory of economic degrowth has been widely critiqued and is not considered reliable by most economists. Yet, despite some doubts that are to be shared, it can still be useful to better understand many of the topics covered in this work.

A group of researchers at the New Economics Foundation (NEF) in London has evidenced the fallacies in the traditional economic model of unlimited economic growth, through the example of the so-called "impossible hamster". The demonstration involves observing the life of a small hamster that doubles in size and weight every week, from birth to adulthood. If, once it reaches adulthood, it should continue to grow at the same rate, it would reach exaggerated dimensions, depleting the food supplies of the entire globe. There is in fact a reason that living things only grow up to a certain point in nature; it follows that this same reasoning can be extended to all economic phenomena. When resources are exhaustible, growing indefinitely is not conceivable, meaning that new models capable of rationalising production must be devised. Personally, I believe the concepts of "economy" and "market" are not "realities" that we find in nature, but rather the fruit of the human mind; hence, the observations we can make for natural phenomena cannot be used to describe and explain economic phenomena.

However, it is possible to extrapolate some corollaries from the impossible hamster theory that are acceptable in a more moderate form.

The implications of the sustainable degrowth theory clash with an apparent paradox. The purpose of each company is to produce goods and services and the whole organisation is aimed at achieving this goal. For companies, growth means increasing production and consequently generating more profits. The sustainable degrowth theory calls this axiom into question by highlighting a fallacy in the traditional way of thinking about a company’s lifecycle.

If no one buys goods because an economic crisis hinders consumption, increasing production can no longer provide a solution; rather, it becomes vital to find ways to keep the business afloat.

With some adjustments, these considerations can also apply to agricultural products, for example when there is a famine, natural disaster, or plant disease that affects production. In these scenarios, the problem cannot be solved by increasing production, and a business can only keep its organisational set-up alive through the creation of a support network that allows work skills and technological means to be shared in order to overcome the crisis.

Any reduction in a company’s size or drop in production due to negative economic situations can be neutralised and "supported" more adequately by dividing the risks and losses between the network’s various "nodes" for the sake of mutual survival.

4. Aggregations of companies can increase the competitiveness of their participants, but they can also implement private forms of welfare, exceeding the single company’s limits. From this point of view, common programmes that entrepreneurs set for themselves can be understood as a specific means to carry out economic activity in a new way.

Solidarity between entrepreneurs could even exist during crises, "rescuing" employees who risk losing their jobs and retraining skills within the network, producing positive effects at both an employment and a social level.

Unlike traditional forms of aggregations between companies, when in so-called “co-opetition”, businesses are aware of being rivals but nonetheless pool their energies together to put them to good use, and exploiting the competition’s strength brings about mutual prosperity.

Maximum efficiency is not achieved by unilaterally and unconditionally adhering to a rigid model focused only on competition, but by creating a system of relationships that properly combines competition and cooperation.

Co-opetition arises when competing companies decide to collaborate on specific activities together or on one or more production phases, so as to divide the costs of research and development and more easily achieve an increase in the innovation sector, or in other specific areas that they view as crucial. Co-opetition can also occur within the various stages of production of agricultural and agri-food chains.

This theory is founded on the belief that it is preferable not to be "against" one another and instead maintain a collaborative approach to survive and prosper. The notion of total and permanent competition risks being disadvantageous for all contenders and is demonstrably inefficient, because it consumes precious resources even for the winning company.

Co-opetition mechanisms instead seek to attain a winning approach for all participants, in which no companies are defeated or excluded from the market, in adherence to the principle of possible growth for all.

These ideas are also the basis for the notion of a "cluster". The term indicates an aggregation between companies located in the same area, in which cultural and geographical proximity make it easier for businesses to trust each other and therefore cooperate. In a "cluster", personal contacts and common objectives generate opportunities for the entire geographical area.

The motivations that push companies to form a "cluster" in a given location might differ. The reasons are mainly geographical, related to proximity between businesses, but they can also be of a historical-political nature, or even a psychological one, born from comparisons between products and the desire to emulate each other for mutual enhancement.

One might say that capitalism is entering a new, solidarity-based dimension marked by a radically different perspective: companies still act for their own benefit, but, through their activities, also promote the interests of the other participants in the association.

In conclusion, the notion of a network is not just another useful tool for collaboration between companies, but one capable of altering the landscape of business relationships, creating something new by combining the global dimension with the local one.

How businesses will be able to take advantage of this precious opportunity remains to be seen.

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