This note is submitted by the European Union to the Competition Committee FOR DISCUSSION under Item XII at its forthcoming meeting to be held on 30-31 October 2013.
1. Introduction

1. A number of recent developments in the area of food and agricultural commodity markets in the EU and worldwide have prompted action by policymakers in general and competition authorities (at national as well as EU level) in particular.

2. First, since mid-2007 EU food prices have increased significantly at all levels of the supply chain. After a peak in mid-2008 and decreasing food prices in 2009, food prices rose again very steeply in the 2nd half of 2010. Since the 2nd half of 2011 food prices are stabilizing but remain at a higher level than before the EU economic and financial crisis. Key drivers of these price hikes included the rise in agricultural commodity prices and higher costs in food processing, especially caused by steep increases in energy costs.

3. Second, together with the increase in food price levels the volatility, notably of prices for agricultural commodities, has also increased.

4. Third, in many EU Member States asymmetries in the transmission of price changes throughout the food supply chain have been observed. Competition concerns were raised in cases where consumer prices (at retail level) kept on increasing when producer and/or commodity prices were already declining. Many National Competition Authorities ("NCAs") of the European Union have put a lot of effort in identifying anomalies in the price adjustments at any of the stages in the food supply chain.

5. Fourth, in the area of retail, the increased concentration of retailers, the existence of buying alliances as well as the rising successfulness of private label products, has raised concerns about the bargaining power of retailers in their commercial relationships with their suppliers and the perceived existence of unfair trading practices within the framework of such relations.

6. Finally, the atomistic structure and presence of many small-scale farmers at the primary level of the food supply chain has raised concerns in many Member States about the competitiveness of the agricultural sector, as well as the lack of balance in some of the relationships between farmers and their buyers.

7. In Europe, the NCAs and the European Commission ("Commission") have responded to these challenges by actively enforcing competition rules in the food sector and by closely monitoring the structures and functioning of food markets.
2. **Competition policy at the service of better-working food supply chains**

8. Competition policy plays a key role in maintaining a level playing field in the food supply chain by ensuring that competition is not distorted by any market player operating within the chain.

9. Consequently, the Commission, together with NCAs in the European Competition Network ("ECN") have been very active on food markets in the past years. As emphasised in the ECN Food Report of May 2012\(^1\), NCAs have initiated more than 180 antitrust investigations, close to 1300 merger control proceedings and have carried out more than 100 market monitoring actions at all levels of the food supply chain between 2004 and 2011 (cf. Section IV).

10. In parallel to the activities that NCAs led in their domestic territories and in addition to the joint work of the ECN in this respect, the Commission's Competition Directorate-General ("DG COMP") set-up a dedicated Food Task Force in 2012.

11. The Commission consequently launched in December 2012 a study managed by the Food Task Force, to assess the economic impact of modern retail on choice and innovation in the EU food sector ("retail study")\(^2\). In addition to this work, the Food Task Force monitors food markets, and investigates any alleged anticompetitive practices arising at European level. For instance it has launched the investigation of a possible cartel of sugar producers in April 2013. Finally, the Task Force is also involved in the process of reform of the Common Agricultural Policy, supporting the competition principles that lie at the core of a modern European agriculture, as well as in the policy debate on Unfair Trading Practices (cf. Section V).

3. **Trends and characteristics of the European food supply chains**

12. The food supply chain accounts for 5% of EU value added and 7% of employment, bringing together the agricultural sector, the food processing industry and the distribution sector. It is therefore a very important sector for the European economy, creating many jobs (also for low-skilled workers).

13. However, in practice there is no single, homogeneous, and common food supply chain at European level. Different products create different chains. Also, by their very nature, food markets remain predominantly national or regional in scope, all the more so in the case of fresh, unprocessed products.

14. Moreover, wide differences exist in terms of market structures, productivity and importance in the household expenditure of Europeans. For instance, while the share of food in the average EU household budget has fallen from over 30% in the 80’s to less than 15% today, wide differences can be observed across different Member States. In Belgium, food takes 13.5% of household expenses, while in Romania and Bulgaria food is the most important component of the household budget (44% and 32 % respectively).

15. The length and the degree of complexity of the food supply chains also vary. For certain products, production and processing are often closely integrated (for milk or sugar) and the product can be processed and sold through a rather short supply chain. For other products, especially for fruit and vegetables, retailers often deal with a plethora of wholesalers who in turn rely on a large number of atomized suppliers, especially in South-Eastern Europe. Before the product reaches retail level, it goes


\(^2\) COMP/2012/015 study on "The economic impact of modern retail on choice and innovation in the EU food sector", published in the Official Journal OJ/S S244 on 19/12/2012 (2012/S - 244 400412).
through a number of market players, which add a commercial margin at each step of the chain. The complexity of this type of supply chain implies a number of structural inefficiencies that are often coupled with low productivity.

Figure 1: Atomistic primary level in the area of fruit and vegetables

16. Primary producers are the least concentrated level in the food supply chain, which leaves them at a comparative disadvantage in terms of bargaining power (see e.g. the situation for fruit and vegetables in a number of EU Member States in Figure 1). Such suppliers are often unable to build a critical mass in terms of volumes and lack an efficient and speedy delivery infrastructure that would allow them to supply ranges of products within a given category and ensure stable volumes, enabling them to sell directly to retailers or processors. This is particularly true for new Member States, where history has created a negative image for farmer organisations which led to a very low degree of penetration of cooperatives (below 25% compared to 40% or above in old Member States)³.

17. Due to this fragmented structure and low efficiency in their marketing operations, farmers are often unable to directly supply retailers or food processors. In the case of cereals for instance, producers often sell to aggregators who in turn sell to traders or food processors. The agricultural produce is thus, in many cases, purchased and re-sold by a number of intermediaries before it can reach a processor or shop shelves.

18. While producers increasingly join forces in producer organizations ("POs"), wide differences remain across Europe as to the strength of such organizations. For example, in 2003, while in the Netherlands and Belgium more than 70% of all fruit and vegetable production was marketed through POs, the percentage was significantly lower in the three most important producing Member States: less than

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30% for Italy, 50% for Spain and 55% for France. In Italy, for example, according to the findings of the Italian Competition Authority, up to four different intermediary operators intervene in the fruit and vegetables supply chain.

19. By contrast, other levels of the chain - such as the food processing and manufacturing industry and the retail sector - are more concentrated.

20. Food processors are for example quite concentrated in certain sectors and areas: the largest dairy processor represents more than 50% of domestic production in Denmark, Sweden, and The Netherlands. Food manufacturers are also concentrated. For instance in many Member States more than 70% of baby food products are supplied by two manufacturers. The situation may nevertheless vary depending on the Member State concerned: for instance for chocolate products (tablets, confectionary) the UK, Irish and Polish markets are supplied essentially by two manufacturers whereas the French market is supplied by more than five manufacturers⁴.

21. As regards retail, Commission research of 2009⁵ found that retail concentration is high in a number of Member States at national level: e.g. Finland has a C2 ratio of 75%, the Netherlands has a C3 ratio of 83%⁶. A European Central Bank Report of 2011 reached the same conclusions⁷ - not only at the national but also at the local level - showing highly concentrated regions in many local areas in the euro area (HHIs above 2,000). Concentration measured at parent company level is especially high in countries like The Netherlands, Finland, Germany, France, and Portugal. Nevertheless, large differences can be observed, with a more significant presence of smaller traditional shops in South-Eastern countries (cf. Figure 2).

Figure 2: Local retail concentration measures in the euro area

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<th>Table 5 Downstream concentration measures using a local market definition – national averages of local HHIs computed at the store and parent company levels</th>
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<td><strong>Euro area average</strong></td>
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Source: ECB (2011), "Structural Features of Distributive Trade and their Impact on Prices in the EA"

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⁴ See Case COMP/M.4842 – Danone/Numico; Case COMP/M.5644 – Kraft Foods/Cadbury
⁶ The C(k) ratio is calculated by summing up the market shares of the k-largest firms in the industry.
22. Such concentration raises issues of buyer power. While the buyer power of manufacturers towards their suppliers has not been studied so far, the buyer power of retailers has been studied in many markets. The buyer power of retailers is particularly relevant for purchases from producers and small processors and manufacturers. The same is not necessarily true for purchases from large multinational suppliers. Indeed, such multinational suppliers are often producers of a portfolio of goods that are often "must-carry" brands, and such suppliers may have significant market power. In these cases, the buyer power of the largest retailers may be offset by, or even become less relevant, than the market power of suppliers.

4. Enforcement and market monitoring activities by competition authorities

4.1 Antitrust cases

23. The more than 180 antitrust cases investigated by the European competition authorities over the period 2004-2011 (cf. ECN Food Report, see footnote 1) cover a wide range of food markets, with particular emphasis on multi-products (21%), cereals and cereal-based products (18% of all cases), milk and dairy (12%), followed by fruit and vegetables (10%), and meat, poultry and eggs (9%). Other markets in which competition authorities have intervened include alcoholic drinks, coffee, soft drinks, sugar and confectionery, and fish and seafood.

24. The European competition authorities have scrutinised all levels of the supply chain, with the largest number of cases regarding the processing level (28%), followed by retail (25%) and manufacturing (16%). Interestingly, the transformative part of the supply chain (processing and manufacturing) accounts for about 44%, thus close to half, of all cases (cf. Figure 3).

Figure 3: Relative importance of antitrust cases in terms of level of the food supply chain (2004-2011)

Source: ECN Food Report of May 2012

25. In terms of types of infringements, competition authorities have focused on horizontal agreements among competitors, which account for about half of all cases investigated (49%). Competition

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authorities have detected horizontal infringements in the form of price fixing, market and customer sharing and exchanges of confidential information at most levels and for most products investigated.

26. In particular, cartels have been found between flour millers (in Hungary, the Netherlands and Portugal), baker (association)s (in Belgium, France, Italy, Slovakia and Portugal), and egg (in Lithuania and Hungary) and poultry (in the Czech Republic and Bulgaria) producers. While most cartels have been investigated at the national level by the NCAs, in some cartels several Member States were involved and the cases have been investigated by the European Commission (e.g. bananas, shrimps).

27. These cartels can be very harmful for the final consumer. This is for instance demonstrated by the pasta cartel in Italy, whereby the price coordination agreement between the main pasta manufacturers and their industry association over the period 2006-2009, led to an average increase in the wholesale price for pasta of 51.8 % while the retail price increased by 36 %.

28. Apart from horizontal agreements between manufacturers/suppliers, also buyer cartels have been detected (e.g. in the milk sector in Greece and Portugal, in the pork sector in France).

29. The European competition authorities have also investigated a number of cases dealing with vertical anti-competitive agreements (19% of all cases). Prominent examples are price-related anti-competitive agreements in particular resale price maintenance ("RPM") and exclusive purchasing agreements that restrict the freedom of the immediate customer to deal with other suppliers. Competition authorities found vertical restraints mainly in coffee, sugar and multi-products (retail) markets.

30. In the area of retail, RPM often takes place in the case of supermarkets working with franchise agreements. In particular, the Greek, Swedish, Finnish and Romanian NCAs have been investigating antitrust cases dealing with RPM imposed by large supermarket chains in their franchise networks. The French and the Belgian NCAs identified concerns about some barriers to exit related to franchise contracts (see below paragraph 53).

31. Finally, the NCAs have further investigated cases which involved abusive conduct by dominant operators (20% of all cases). These abuses mainly involved strategies to foreclose competitors, such as exclusivity obligations, minimum purchasing obligations, tying and refusals to supply, but also some exploitative abuses, such as unjustified contractual obligations. The large majority of these cases related to abusive conduct subject to Art.102 TFEU or equivalent national rules. However, some NCAs applied stricter national rules, beyond the scope of Art.102 TFEU, such as the abuse of economic dependency.

32. Sectors with the most abuse cases were dairy products (in Cyprus, Greece, Portugal and the Nordic countries), soft drinks (in Austria, Belgium, Bulgaria, Greece and Portugal), and multi-products/retail (in the Czech Republic, France, Hungary, Italy, Latvia, Poland and Slovenia). For instance the Belgian, Bulgarian and Greek authorities as well as the European Commission investigated a number of exclusionary practices of Coca-Cola companies (exclusivity provisions, fidelity rebates, discriminatory access to storage, preventing parallel trade or resale).

33. In a number of cases the NCAs have applied specific national laws which sanction abusive behaviours in situations of economic dependency or similar situations. This was especially the case in the area of retail where cases concerned abusive terms in contracts between retailers and their suppliers (such

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Note that Member States are allowed to have legislation on unilateral conduct that is stricter than Art.102 of the TFEU. While the concept of economic dependency is not recognized and cannot lead to an abuse of a dominant position under EU competition law, some EU Member States address conducts such as the abuse of economic dependence or superior bargaining power as part of their national competition rules.
as e.g. unfair risk-sharing terms, retro-active changing of contract terms, the abusive charging of certain fees). There were also a few cases in other sectors: the Cypriote NCA investigated an abuse of economic dependency, whereby a dairy cooperative, which delivered and sold milk, had illegally terminated its trading relationship with a dairy farmer who produced yoghurt.

4.2 Merger control cases

34. Not only antitrust enforcement, but also merger control plays a significant role in ensuring that markets remain competitive. The European competition authorities have analysed close to 1300 mergers in the food sector between 2004 and 2011, of which 83 mergers raised concerns mainly in the retail sector. Other problematic sectors include the dairy and meat sectors.

35. The European competition authorities have ultimately cleared most of the 83 mergers which raised concerns, but only subject to commitments from the merging parties. The main concerns were increased market concentration, elimination of an important competitor, and the need to ensure access of competitors to inputs at non-discriminatory terms.

36. The competition authorities have also prohibited 8 mergers raising serious concerns in the sectors of pastry products, cheese, meat, beverages and confectionery products. For instance, the Czech NCA prohibited a merger that would have led to a combination of the two biggest bakeries, which were the only sources of supply to Czech retailers. The Polish NCA prohibited a merger which affected the markets for the sale of vodka and wholesale distribution of spirits. Since the parties to the merger were the largest producer and the largest distributor of alcoholic drinks the NCA was concerned that third parties would no longer have access to some of the best-selling vodka brands in Poland.

37. This merger enforcement record shows that in some Member States, certain markets have reached such a level of concentration that further increases would risk a significant impediments of effective competition.

4.3 Market monitoring actions

38. Apart from competition law enforcement, the high priority given to the food sector by the NCAs over recent years is also reflected in the number of market monitoring actions. These actions have included sector inquiries pursuant to which the NCAs use extensive investigative tools (e.g. requests for information, inspections, etc.), or other market studies, reports, or surveys carried out on specific food issues. Sector inquiries and market monitoring actions are generally not used by the NCAs for concrete enforcement purposes to find and punish infringements of competition rules by individual undertakings, but rather to better understand how markets work.

39. Since 2004, 25 NCAs have carried out 103 market monitoring actions on food-related issues. Some of the investigations came to the conclusion that competition was working, while others have identified potential structural problems, which may negatively affect the well-functioning of the food supply chain. In certain cases, national sector inquiries have also revealed anti-competitive practices, which have led to the opening of infringement proceedings against individual companies.

40. The scope and focus of these monitoring investigations vary. For instance, of the 103 market monitoring actions, 9 have looked at the food supply chain and agro-food sector as a whole. Others have focused on specific products, in particular milk and dairy (which accounted for 16 monitoring actions), fruit and vegetables (10 actions) and cereals/cereal-based products (9 actions). The largest number of monitoring investigations has focused on the retail sector (with a total of 36 market monitoring investigations). Other sectors (e.g. alcoholic drinks, sugar and meat) and food-related issues accounted for 28 monitoring investigations.
41. Despite the diversity and high number of monitoring investigations undertaken by the NCAs, the issues and main aspects on which the NCAs have concentrated their efforts present significant similarities. For instance, many NCAs have focused to a large extent on the analysis of price formation and price transmission along the different levels of the supply chain (producers, processors/manufacturers, wholesalers, retailers), whether for one specific product or for multi-products. This has allowed them to have a better understanding of the different factors that influence price adjustments along the supply chain and to detect price asymmetries which may be indicative of potential competition problems.

42. These monitoring investigations have revealed that price developments along the supply chain are influenced by many factors. In some cases asymmetric price transmission is caused by a lack of competition or weakened competition at some levels of the food supply chain.

43. For instance, in its market study of 2010 the Lithuanian NCA observed that changes in producers' prices for dairy products and cereals did not fully explain the changes downstream at wholesale and retail level. It therefore concluded that the increase of food prices in Lithuania may not be fully explained by objective economic reasons but may be also caused by weakened competition. Also the Swedish NCA found certain asymmetries in price transmission: consumer prices were more prone to rise with higher input costs than to decline with lower input costs. One of the explanations for this observation was the use of market power by certain undertakings in the supply chain.

44. While anti-competitive conduct might be a good explanation for certain price developments along the chain in some cases, in many other cases these price developments were found to be rather of a structural or cyclical nature. These factors include, among others, fluctuations on worldwide commodity markets, increases in input costs for agricultural products, global supply and demand developments, availability of stocks, energy and labour costs, seasonal production of certain food products, length and degree of complexity of the supply chain, differences in bargaining power among market players, etc.

45. The vast majority of the NCAs' monitoring investigations that have analysed price formation in the food sector have been national in scope. However, a few investigations have also compared prices between Member States and identified significant price differences between neighbouring countries. For instance, a report of the Belgian NCA revealed a more than 10% price difference between retail prices in Belgium compared to the Netherlands and Germany.\(^{10}\)

46. Some NCAs have also focused on the analysis of the costs, prices and margins of the different players in production, processing/manufacturing and distribution of food products in order to identify potential price asymmetries that may be indicative of a potential malfunctioning at any of these stages. The most comprehensive study in this area comes from the Dutch NCA\(^{11}\), who investigated the pricing of eight basic food products along the food supply chain in the Netherlands (cf. Figure 4).

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\(^{11}\) See, NMa (2009), "Pricing in the agri-food sector”. Available at: [http://www.tweedekamer.nl/images/NMa_Rapportage_Prijsvorming_118-200762.pdf](http://www.tweedekamer.nl/images/NMa_Rapportage_Prijsvorming_118-200762.pdf).
47. The investigation examined in detail selling prices, costs and margins at different stages of the chain, and looked at the transmission of shocks\textsuperscript{12} in food commodity prices. The analysis revealed that costs are very much spread along the supply chain, whereby especially costs at the distributive trade level (wholesale and retail) are relatively high. Moreover, while the size of the absolute margin is highest at supermarket level, retailers do not always have the highest relative margins (margin expressed as percentage of the selling price). For instance apple producers had on average higher relative margins than supermarkets over the period 2005-2008.

4.3.1 Need to overcome inefficient market structures by pro-competitive means

48. Through their market monitoring investigations, many NCAs have identified structural shortcomings which may have a negative effect on the functioning of food markets and have proposed policy recommendations and guidance (in most cases beyond the remit of competition law) on how to tackle these shortcomings.

49. Among these structural problems, some NCAs have identified in particular the highly atomistic structures of agriculture primary production in combination with the small-scale of farmers in their Member States as factors which can hamper the overall competitiveness of the sector and the market position of agricultural producers. These NCAs have called for the restructuring and consolidation of the agricultural sector and have recommended market-oriented and pro-competitive mechanisms to achieve this goal, such as the promotion and creation of cooperatives and other efficiency-enhancing forms of cooperation among producers as a means of becoming more competitive and reinforcing their bargaining position in the chain. Some NCAs have also advocated the rationalisation of the chain (in particular at its intermediary stages) as a means of improving its functioning and efficiency.

\textsuperscript{12} By using "impulse response analysis" – based on specific models (such as the Vector Autoregressive (VAR) model and the Vector Error Correction (VEC) model) - it is examined whether and if so how an unexpected one-time shock in the price of a product in a certain link (‘price shock’) knocks on into the different prices in the supply chain.
50. The inquiry on food distribution carried out by the Italian NCA in June 2007 concluded that the supply chain of fruits and vegetables in Italy was characterised by a complex structure stemming from factors such as the different typology of products, the different number and features of the agents active in each stage of the chain, or the different variety, origin and destination of the products. It also found a number of factors having a negative effect on the efficiency of the sector, such as the highly atomistic and fragmented structure of primary production and the excessive length and complexity of the chain. For instance, it noted that distributors had to rely on intermediaries, in particular, in cases in which the agriculture primary production was fragmented or poorly organised. That had an impact on prices. The more intermediaries were involved, the higher end consumer prices were. Indeed, the increase of average prices (mark ups and production costs) could range from 77% to 300% (as compared with producer prices) as a result of the length and number of intermediary stages in the supply chain.

4.3.2 Problems arising from entry barriers to retail markets

51. Many NCAs concur that the retail sector has modernised and consolidated over recent years, which has led to high concentration of the sector in many Member States. These highly concentrated retail markets coupled with structural factors, such as regulatory entry barriers, stemming from planning or zoning laws or other administrative constraints (e.g. administrative authorisations required for the opening or extension of retail outlets) may limit or prevent competition in these markets by raising entry barriers. The relevant NCAs have advocated the removal of such regulatory barriers, so as to facilitate the entry of new players and improve competition (in particular in highly-concentrated local retail markets).

52. For instance, the French NCA - in its opinion 07-A-12 on the legislation on commercial planning of October 2007 - proposed to remove the system of authorisations based on economic criteria required for the opening or extension of commercial sites in France (insofar as it amounted to an entry barrier with negative effects on competition). The opinion led to a legislative change which removed the economic objectives as an element to be considered when authorising the opening or extension of new retail stores.

53. Contractual constraints which hamper the exit of independent retailers or switching retail networks have also been identified as problematic by a few NCAs. The French competition authority also indicated its concerns about several potential barriers to exit related to franchise contracts, such as the long duration, post-contractual non-competition clauses, etc. The Belgian NCA in turn recognized in its report on the price level in supermarkets that similar practices exist in the retail sector in Belgium13.

54. Other constraints of this type include contracts which limit the use and availability of land suitable for retail sites or other contractual arrangements implemented by large incumbent retailer groups. For instance, in its inquiry on the groceries sector, the UK Competition Commission ("CC") raised objections against restrictive covenants and other exclusive arrangements that retailers could use to limit access by (potential and/or actual) competitors to land suitable for grocery stores in highly-concentrated local markets. In order to address the concerns above, the CC enacted the Controlled Land Order of August 2010. The Italian NCA has been analysing two cases about market foreclosure by dominant retailers, who had allegedly impeded new competitors to enter the market by preventing them from access to the land or physical space necessary to open new retail outlets.

55. The NCAs which have addressed these issues have recommended modifications to such contracts and agreements to facilitate the entry of new players.

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4.3.3 Using the appropriate instruments for certain trading practices

56. In their monitoring investigations a large number of NCAs have also identified as an issue the existence of certain practices linked to imbalances of bargaining power between market players that are deemed unfair by many stakeholders. Although this is an issue which has been identified regardless of the level of the chain, particular focus has been devoted to this type of practice in the context of the commercial relations between suppliers and retailers.

57. Nevertheless, the NCAs have found that most of these practices usually do not fall within the scope of competition rules at the EU level or in most of the Member States. Consequently, a few NCAs have proposed alternative solutions to tackle them, such as the application of national laws against unfair trading practices or the adoption of codes of conduct with effective enforcement mechanisms.

58. A few NCAs (in particular the Spanish and Finnish NCAs) have also expressed concerns about the potential anti-competitive effects that certain of these unfair trading practices may have in the long term, should they ultimately negatively affect the competitive process in the supply chain or consumer welfare by reducing investment and innovation or limiting consumer choice.

5. Recent policy developments and initiatives at the EU level

5.1 Cap Reform

59. The question of the farmer's position in the value chain (the farming sector is, in general, highly atomised and dispersed) and particularly their lack of bargaining power vis-à-vis their buyers was at the heart of the recent reform of the Common Agricultural Policy ("CAP").

60. The solution ultimately retained consists in the introduction in the text of the new single Common Market Regulation ("sCMO") of an exemption from the application of competition rules for those farmers active in the olive oil, beef and arable crops sectors who are organised in Producer Organisation (POs) and would like to engage in joint selling (and implicitly price fixing) for part or all of their production. This exemption is however subject to market share thresholds not being exceeded (see below paragraph 64).

61. However, this exemption will apply only if certain conditions are met, and particularly if farmers also engage in other activities able to create significant efficiencies in order to counterbalance the negative effects of price fixing on the achievement of the CAP objectives.\(^\text{14}^\)

62. This specific condition is designed to encourage farmers to take concrete steps to increase their economies of scale and scope by, for instance, pooling together at the appropriate scales their input procurement, investments in storage facilities, output planning and production assets as well as by increasing their degree of vertical integration into processing of products which can add value. This would enable them to reduce their overall production costs and improve their margins, while enhancing their competitiveness.

63. The precise activities that farmers should engage into in order to benefit from the exemption will be set in the Guidelines that the Commission will publish in order to clarify the implementation of this new

\(^\text{14}\) The CAP has the following objectives: (i) to increase agricultural productivity; (ii) to ensure a fair standard of living for the agricultural community; (iii) to stabilise markets; (iv) to assure the availability of supplies; (v) to ensure that supplies reach consumers at reasonable prices.
rule. All interested stakeholders will have the opportunity to express their views in the context of the public consultation the Commission will organise when preparing for the adoption of these Guidelines.

64. In any event, the benefit of this exemption is limited to those situations where the quantity of production covered by such negotiations does not exceed 15% of the total national production of the Member State concerned (20% of the relevant market for olive oil). In addition competition authorities may intervene and sanction collective negotiations in case of exclusion of competition or if the CAP objectives are jeopardised even if these thresholds are respected.

5.2 Unfair Trading Practices

65. In the aftermath of the food price crisis in 2008/09, the European Parliament ("EP") has been repeatedly calling for action against the alleged unfair trading practices ("UTPs") by retailers (vis-à-vis their suppliers, farmers or small industry manufacturers). For instance, in its resolution of 19 January 2012 the Parliament asked for competition law enforcement including a sector inquiry on the issue.

66. In addition to the EP's resolutions food manufacturers and to some extent consumer associations also complain that choice and innovation have deteriorated in recent years due to the retailers' (unfair) commercial practices and their increased market power.

67. As a response to this pressure, an Expert Platform on B2B Contractual Practices within the High Level Forum for a Better Functioning Food Supply Chain (HLF) was set up by the Commission in 2010 to work on a solution to this issue. As a result, in November 2011 all operators in the chain agreed (through their European Associations) on a code of good practices, and in December 2012 all operators but farmers agreed on an implementation mechanism. In the course of 2013 the participants to this voluntary initiative have been working hard to implement this code of good practices, while maintaining the dialogue with Copa-Cogeca (farmers' association).

68. In parallel to this self-regulatory initiative of the HLF, the Commission issued, on the 31st of January 2013, a "Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe". The Green Paper lists a number of claims which - if proven relevant and correct - may justify action on UTPs at EU level: (1) unfair trading practices raise concerns about innovation in the industry and (2) different national unfair trading rules lead to a fragmentation of the internal market. The public consultation, launched by the Green Paper, aims at gathering opinions on the introduction of EU-wide regulation of B2B relationships, in particular in the EU food supply chain.

69. This input from different stakeholders will make part of an Impact Assessment ("IA") whereby the Commission will assess the issue of unfair trading practices and identify different policy options to tackle the alleged unfair trading practices in the B2B food supply chain. The findings of the IA are expected to become public by the end of 2013.

70. The retail study of the Food Task Force will provide quantitative evidence across European markets on the evolution of choice and innovation in food products. It will also identify the main drivers of that evolution, by analysing market concentration (at manufacturer and retailer levels), as well as other relevant factors such as shop type and size, private label penetration, and socio-demographic characteristics, to correct for other structural differences. It will also analyse whether certain areas of the sector are less competitive than others.

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16 Cf. footnote 2.
71. The purpose of this study is twofold: (1) building further on the work of the NCAs and other authorities in order to find out whether certain local areas and/or specific product categories face competition problems, and (2) providing quantitative evidence on the evolution of choice and innovation, which feeds into the debate on a regulation of unfair commercial practices.

6. Conclusion

72. The entire European food supply chain has undergone a profound transformation in the last decade in order to meet the demands of consumers and to adapt to the requirements of world competition. At the same time, the sector has also been hit by a severe crisis even before the unprecedented economic and financial crisis unfolded. It is understandable therefore that a number of tensions have arisen in this context, linked to concerns about buyer power, unfair bargaining practices, and sometimes anticompetitive behaviour.

73. The Commission, together with sister NCAs in the European Competition Network have been very active on food markets, as illustrated by the number of cases and policy initiatives pursued.

74. Europe's priority is now the return to growth and job creation, and it is more important than ever to have a modern and competitive food sector that delivers safe, high-quality and affordable goods. Competition principles - be they embedded in legislation or put to practice through rigorous enforcement action - can help achieve this purpose.