

European Commission
Mr José Manuel Barroso
President of the European Commission
1049 BRUSSELS

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DL/PH/10A-2020 strategy-EN4

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SUBJECT : Public consultation on the future "EU 2020" strategy

Dear Mr Barroso,

UGAL warmly welcomes your vision as to where and how the European Union should be in 2020. Indeed, there is a clear need to work out a new strategy for the coming years which will take into account the recent financial and economic crisis as well as other challenges which Europe has to face nowadays and in the near future.

The text of the consultation on the future "EU 2020" strategy is a broad and rich document which already includes important points and ideas necessary to give a new input and a new spirit for Europe.

Nevertheless UGAL is of the opinion that all the aspects mentioned in the consultation document should not be placed at the same level of importance and consequently that some of them merit to be stressed as priorities. In our view, they are the following issues :

I. BETTER REGULATION

→ *Impact assessment*

UGAL is of the opinion that each new legislative proposal or EU policy should be preceded by an appropriate impact assessment at every level of the decision-making process : during the drafting period of legislation and during each of its modification process at a later stage.

Furthermore an objective impact assessment would require in general an external body which would not contribute to the legislation drafting and would not be related to these debates. Unfortunately this aspect is today very often neglected and the impact assessment is almost always carried out by the services of the Commission or other bodies depending on it somehow. This often leads to the situation that the

key objective of an evaluation is rather to justify what the Commission proposed instead of coming up with objective conclusions which could shape and inspire a new legislation.

This in turn is likely to lead to the adoption of rules that are not effective, increase administrative burdens and decrease the competitiveness of European operators.

→ **Cooperation between Member States**

The Internal Market cannot exist without an effective cooperation between Member States and in particular national authorities. This is the only way to ensure the free movement of goods and that all consumers enjoy the best relationship between price / quality / choice for products whatever their countries.

Nevertheless, this cooperation is nowadays almost inexistent or very problematic. This in turn has very negative consequences for operators who pay for such a gap in the EU approach.

The lack of cooperation leads to increasing mistrust between national authorities vis-à-vis their neighbour colleagues as regards the controls they carried out and the law respect they ensure. For these motives they reason in terms of "national market" instead of "European market". As a consequence retailers buying products from operators established in foreign Member States are considered as producers in their respective countries and are charged with the same obligations and responsibilities as foreseen for the latest. Thus, the retailer – whatever his size – can be constrained to make further analyses, the costs of which will be very high, not to mention the fines incurred in case of non-conformity of a product with the EU legislation and the appeal costs against the real offenders ! Small and medium-sized enterprises in the commerce sector, which represent the large majority, do neither have the material nor financial capacity to carry out all these checks which are impossible in practice.

The possibility to hold retailers responsible for the compliance with Community requirements applicable to products made in other countries of the European Union, will encourage retailers to stop selling such products because they are unable to assess the extent of the risk that they will have to assume, or the size of the penalty that they risk.

As a consequence in order to avoid the increases of administrative burden as well as any barrier to trade, the Commission should support and encourage the cooperation between national authorities of Member States. This is also the only way to ensure that the Internal Market – which should be preserved not only from the consumer perspective but also from the operator's one – becomes reality and does not only remain a simple legal term.

→ **Enforcement**

Another important aspect is the enforcement of the existing Community rules. The Commission, being the guardian of the Treaty, cannot offload its duty of ensuring the effective and uniform application of Community law. Yet, there are still many cases where EU law is not implemented because Member States fail to transpose Community law into national law or simply do not respect it and the Commission does not sanction them. This in turns leads to the fact that in the end, operators have to go to court to assert their rights, yet they cannot always win in front of

powerful national authorities and legal proceedings are long, expensive and discouraging.

The enforcement of the existing rules constitutes a key element of the Better Regulation program. According to it, before taking any new legislative initiative, the Commission should be sure that the alleged need for rule could maybe not be solved by a simple enforcement of the existing rules.

II. SMEs

In spite of previous promises, actions and programmes of the Commission, the situation of SMEs on the European market remains unsatisfying.

They continue to face numerous disproportionate regulatory and administrative burdens in comparison with larger businesses, to have reduced access to multiple sectors (e.g. public procurements or bank credits), to face the challenge of globalisation and to be treated as the exception in the Internal Market, even if they constitute more than 90% thereof. In regards to the policy carried out by the European Commission, the implementation of the "Think small first" principle is thus far from the reality.

→ *Binding character*

The main reason why the Commission's initiatives and programmes introduced to help SMEs failed is undoubtedly their lack of a binding character.

Documents such as the "*European Charta for Small Enterprises*" or the "*Small Business Act*" represent an important commitment to improve the business environment, making it easier for small firms to start out and grow. Nevertheless Member States are not constrained to abide by those engagements. As a result, they remain on the paper as a mere political message and are not respected in practice by national policies. Nevertheless, the binding character of the programmes and projects relative to SMEs should be limited to their framework or obligation to implement them.

On the other hand, the measures on how to achieve and implement these initiatives should however remain in the hands of Member States. Such a flexibility would enable Member States to take into account the diversity of SMEs and their needs in different markets and countries. This solution, which reflects the subsidiarity principle, also protects enterprises from any undesirable decision of the Commission which could be favourable in one Member State but appear difficult in another.

→ *SMEs impact assessment and SMEs Representative*

UGAL is of the opinion that a specific SME's related impact assessment should accompany every new legislative initiative of the Commission. This SMEs impact assessment requirement is justified by the fact that there is no separate "SMEs policy". SMEs should not be treated as an exemption, but as the rule, which they are in reality. Indeed SMEs constitute the large majority of the European market and multinational companies are the exception. UGAL notes that SMEs concerns should be part of each individual EU policy and of the main priorities in each individual EU policy. This is the only way to success.

It is also in this sense that UGAL fully supports the idea to have an officer in charge of SMEs in every Directorate General of the Commission which could have impact on small enterprises (DG Environment, DG Competition, DG Trade, DG Energy, etc.). Such a solution is likely to guarantee that the interests and the needs of medium and small enterprises will be taken into consideration from the first approach of any new legislation on.

III. COMPETITION

One of the main aspects of the strategy 2020 should be the reinforcement of the operators present on the European market.

→ *Competitors' protection*

In this sense, the main key principles of competition policy should be adopted in order to also assure the existence of competitors. Indeed the driving concern of the Commission and national authorities on this topic seems to be consumer protection placed far above competitor's protection. However this ignores the fact that there is no competition if there are no competitors. Competition law needs to concentrate on sustaining competition in markets and protecting an environment where competitors can operate fairly and where best prices, variety, quality and choice are offered to consumers.

Today, competition policy is pursuing various objectives. Some concern consumer welfare and others the pursuit of allocated and productive efficiency. The reason is that competition policy is a reflection of the values and goals of the present-day society, which are changeable. For this reason, competition law must encourage and allow to promote and develop SMEs and in particular their different forms of cooperation.

→ *Same rights for everyone*

SMEs permanently face a challenging competitive environment, not least because of the growing presence and market power of big players which are usually integrated chain-store retailers. The quasi-only solution for SMEs to survive is to join a group of independent retailers in order to reinforce their power on the market. By being members of such a group, though, they can pool resources and in principle benefit from economies of scale and scope sufficient to allow them to be efficient and effective competitors. However, this ability is presently restricted, not so much by their own abilities or desires, but by legal impediments.

Specifically, EU competition policy and law currently frame the behaviour and relations between members within such groups in ways that are fundamentally discriminatory compared to the freedom enjoyed by wholly integrated retailers. Independent retailer groups are, for example, limited in the control they can exercise over retail prices and promotions, store-level stocking / range decisions, and purchasing requirements of members, thereby affecting group efficiency and the consistency of retail image / offer presented to consumers. They are also subject to stringent market share thresholds, resulting in further restrictions on their behaviour and greater legal uncertainty over their agreements as they grow in size. These restrictions do not apply to fully integrated retailer groups that have been, with few

exceptions, freely allowed to grow and increasingly dominate markets, often at the expense of independent retailers.

By their nature independent retailers may suffer these disadvantages compared to fully integrated chains. However, what is at issue are public policy and law that can exacerbate these disadvantages – merely because of the form of association and agreements they use as a mean of working together for a common good. Such policy discrimination, if not appropriately addressed, may adversely impact retail markets and harm consumers' interests by reducing diversity and plurality in the retail sector, which has for long been the mainstay and source of retail innovation, entrepreneurship and general competitive drive.

UGAL would like to emphasise that groups of independent retailers neither demand to be protected nor require special treatment in comparison with their competitors, but they claim for the same rights as those of other forms of commerce. They just need a level playing field, with requisite legal certainty over their agreements, to allow them to achieve sufficient efficiency benefits and consistency in their marketing image to enable them to compete on effective terms. If they can obtain this, then there is much greater prospect that procurement and retail markets across Europe will remain competitive to the definite and continuing advantage of consumers (1).

→ **Long-term benefit**

UGAL's experience in the past decades has shown that strategies adopted by the Commission in the field of competition mainly served to benefit the consumer in the short term. In the long term, in particular competition based on aggressive and predatory pricing has led to substantial structural changes. In the middle and long term this leads to an increase in the market shares of just a few already large-scale companies, the initial price advantages dwindle away without consumers actually noticing. However, the effects on the overall economy are substantial. What UGAL criticizes is the increasing desolation of our inner cities, the inadequate provision for consumers in rural areas, the decrease of advice and consultation services and thus in the long term a growing dependency among consumers on usually just a few large-scale sales outlets centralized in the built-up metropolitan areas.

UGAL is concerned that by focussing on the efficiency objection and a "more economics-oriented approach", these aspects might be overlooked and forgotten. These structural developments can only be ascertained over a fairly prolonged period. What is clear is that many firms that disappeared from the market cannot all be tarred with the brush of inefficiency and that the structures responsible for their disappearance do not deserve to be protected.

It is important for UGAL to point out the long-term effects. It seems to UGAL more than proper that this question should be examined in more details – especially when it is not altogether clear whether the Commission, when it speaks of market developments and disadvantages for consumers, is indeed paying enough attention to the effects described here.

(1) More details are to be found in the *Executive Summary and Report Overview* of the study "*Levelling the playing field. Competition policy to enable independent retailer groups to be efficient and competitive*" prepared by Professor Paul Dobson on behalf of UGAL, available on the UGAL website under <http://www.ugal.eu/document/en/7-DobsonA5-EN.doc>. The full study is available on the UGAL website too, under <http://www.ugal.eu/document/en/7-studyDobson.pdf>

➔ ***It is not only about the price***

One can have the impression that the only thing that matters in EC competition is "price". This is something that UGAL vehemently contests. Consumer welfare is not just about low prices, it is also about product and service variety, choice, quality and accessibility / convenience. When making an assessment about (dominant) behaviour the question should be : will consumers lose out in respect of higher long-term prices, less variety, less choice, lower quality than there would otherwise be, and reduced convenience and accessibility for consumers ?

In practice, there may be trade offs between these – as some may be negatively affected while some may be positively affected –, but this should not mean that a test be purely based on price effects alone.

IV. INTERNAL MARKET

UGAL has always been a strong supporter of the Single Market. In turn, consumers benefit from an increased choice of products at better prices.

Furthermore, the UGAL members active in the commerce sector being the closest link to consumers consider of utmost importance to ensure that their ability to continue to deliver low prices to consumers is not jeopardised by the piling up of unnecessary regulation.

UGAL really appreciates the recent effort of the Commission to better understand the functioning of the entire food supply chain, including analysing interactions between the various actors in this supply chain and moving away from comparing farm gate with consumer prices. On this occasion, UGAL would like to recall that with the important exception of well-known branded products, foods are essentially produced, purchased and consumed at national level. This has of course a clear impact on the structure of retail markets – which are essentially local – and prices.

Within the context of that statement and of the understanding that a supply chain is very different from one Member State to the other, we think that to make sense, any price monitoring tool should focus on price transmission throughout the entire supply chain and the methodology agreed with all the concerned operators. Indeed, a direct link between commodity prices and retail prices is difficult to make without an analysis of the product processing and distribution structure as well as the relative inputs cost. The higher the degree of processing, the lower the share of commodity price in the final retail price.

As a consequence, any price monitoring tool should focus on price transmission throughout the entire supply chain and be able to take into consideration and get information over all steps, be it for processed or non-processed products. For food, for instance, limiting the analysis to retail and farm gate prices would overlook the fact that manufacturers exert a dominant influence on price levels.

On their side, retailers are unable to negotiate on identical products on a cross-border basis (rather than on a national basis). As a consequence, purchase prices invoiced to retailers for the same products substantially differ from country to country, and suppliers manage to push through higher purchase prices.

We therefore warmly welcome the Commission recommendation to assess and take measures to address territorial supply constraints. The main beneficiary will be the consumer.

Yours faithfully,



Dr. Peter Hampl
UGAL President

*Established in 1963, **UGAL – the Union of groups of independent retailers of Europe** – is the European association that acts as an umbrella organisation for the main groups of independent retailers in the food and non-food sectors.*

These groups are set up like wholesale businesses by independent retailers and craftsmen. Their aim is not only to provide their members with the best purchasing conditions. What they are also seeking is to jointly contribute technical and material resources, together with all the services and the human capacity required to guarantee the operation and development of modern commercial and distribution enterprises for retailers to effectively respond to consumer expectations.

To achieve this, these groups seek economic performance through networks of points of sale – consisting of SMEs usually working under a common brand name.

UGAL represents more than 316.500 independent retailers, who manage more than 475.000 sales outlets. This represents a total employment of nearly 4.000.000 persons.

More information about UGAL under www.ugal.eu