COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.10.2009
SEC(2009) 1449

COMMISSION STAFF WORKING DOCUMENT

Competition in the food supply chain

Accompanying document to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

A better functioning food supply chain in Europe

{COM(2009) 591}

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1. INTRODUCTION

Following the unprecedented price hikes of 2007-2008, the European Commission has set up a Task Force to analyse the functioning of the European food supply chain. Although in 2008 the prices of certain commodities started to decline, the absence of a swift downward price trend has raised concerns regarding possible malfunctions of the European food supply chain. From a competition policy perspective, questions arose regarding the competitive structure of food markets and the regulatory hurdles that market entrants may face. Against this backdrop, key questions relate to the need to understand whether: (i) concentration in the food supply chain is more problematic than in other sectors, (ii) the food supply chain is prone to price stickiness and (iii) such alleged stickiness can be linked to competition shortcomings.

In this context, the Commission was given a mandate to improve its knowledge of food markets - both of processed food and non-processed agricultural products. To this end, DG Competition has carried out a Stakeholder Survey construed around a series of informal discussions with a selection of representative associations of food producers, processors, traders, wholesalers and retailers between April and July 2009 in Brussels. These associations were chosen across several product markets and sectors, in an attempt to grasp the specificities of different supply chains (e.g. cereals, breakfast cereals, milk and dairy, livestock and meat processing, pasta, confectionery, branded foodstuffs and beverages, fruit and vegetables, oils and oilseeds, sugar, poultry and eggs, etc.). The objective of these meetings was to obtain insights into the main stages and sectors that compose the overall European food supply chain, touching upon a number of economic developments that have characterised specific sectors of activity in recent years. This exercise further aimed at identifying potential competition-related concerns that may affect the functioning of food markets, to the ultimate detriment of European consumers.

In parallel, the Commission strengthened its dialogue with National Competition Authorities (NCAs) on food related issues. Three meetings with NCAs were held in Brussels in July and November 2008, as well as in July 2009. These meetings punctuated a continuous flow of information between Competition Authorities throughout the EU on recent enforcement, monitoring and advocacy initiatives undertaken at national and EU level on food markets[1]. In particular, this information exchange focused on a number of specific practices that occur with relative frequency in the food sector. Apart from hardcore restrictions of competition such as cartels and resale price maintenance, some practices have been singled out as potentially harmful for competition. Such practices, which may thus merit a closer assessment, always on a case-by-case basis, relate mainly to joint purchasing agreements ("buying alliances"); joint selling agreements; brand exclusivities including tying and bundling; and increased use of private labels.

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[1] To facilitate information exchange, DG Competition circulated several Questionnaires to Member States to which the NCAs promptly replied to over the course of 2008/2009.

The present paper is based on the main findings and key messages flowing from the Stakeholder Survey and from a number of specific written contributions submitted by NCAs over the last year.

2. PRELIMINARY OBSERVATIONS ON THE STRUCTURE OF THE EUROPEAN FOOD SUPPLY CHAINS

All the stakeholders and NCAs interviewed agree that a single "European food supply chain" cannot be defined or identified given the wide variety of agro-food products and the diversity of actors operating on food markets. Supply chains differ according to product, geographic and even seasonal markets in some cases. To reflect such diversities, an important distinction needs to be made between non-processed food (agricultural produce, perishable) and processed food (stockable).

2.1. The supply chains of non- processed food (agricultural produce)

The non-processed food sector is mainly characterized by a very fragmented structure, with a great number of suppliers and intermediaries that intervene at various stages. The length and complexity of this type of chain implies a number of structural inefficiencies often coupled with low productivity. Producers are the least concentrated sector in the food supply chain, which leaves them at a comparative disadvantage in terms of bargaining power (for example, in France there are around 87000 enterprises that produce fruits and vegetables[2]). 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, enabling them to sell directly to retailers or at least to rationalise the supply chain. This type of supply structure is perceived as archaic in comparison to modern retail trade and is often unprepared to meet consumer demand directly. Due to this fragmented structure and low efficiency in their marketing operations, farmers are often unable to enter into more direct negotiations with their retail counterparts. The agricultural produce is thus, in many cases, purchased and re-sold by a number of intermediaries before it can reach shop shelves. Even when producers join forces in producer organizations (POs), wide differences exist 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 30% for Italy, 50% for Spain and 55% for France[3]. This explains why an important number of intermediary operators intervene in such supply chains. In Italy, for example, according to the findings of the Italian Competition Authority[4], up to 4 different intermediary operators intervene in the fruit and vegetables supply chain[5]. Moreover, for each region and each product chain, fresh products go through

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2 "*Les modalités de formation des prix alimentaires: du producteur au consommateur"*, Rapport Lambert, France, 2009

3 DG Agriculture Factsheet on Horticulture, 2003, available at: http://ec.europa.eu/agriculture/publi/fact/horti/2003_en.pdf.

4 Italian Competition Authority Inquiry into the fruit and vegetables markets, June 2007

5 Moreover, there are important differences between fresh product chains in terms of the part that the agricultural product itself represents in the final price. For example, in Spain for apples and pears, the origin producer price (expressed in percentage of the activity of the producer of origin into the end price) represents around 29-41% of the end price. For clementines and lemons, it is around 28%, for beans it is 57% whilst for onions it is 17%.

different handling, transport and packing phases which all incur costs[6]. At each intermediary level, margins are added which impact on the end-price of products. Such intermediaries act as a filter in price transmission to end-consumers.

Broadly speaking, and leaving aside the purchases made by governmental marketing boards, an agricultural product may pass through a number of different marketing and distribution channels before reaching the ultimate consumer:

– in the shortest supply chain, which is an exception since larger operations are still difficult to develop, the product may be sold directly to the consumer if the producer himself sells at the farm gate or in a local village market or to local retailers (e.g. organic vegetables);

– it may be sold to a wholesaler who will then resell to any of the buyers mentioned above either directly or through other wholesalers or middlemen such as traders (e.g. cereals);

– in some sectors, producers have shown capacity to concentrate and have extended their geographic footprint accordingly, through the strengthening of producers organisations and cooperatives (e.g. milk sector in Northern Europe; for example in The Netherlands, Friesland Campina controls 80% of the milk collection and processing[7]);

– in some long supply chains, which involve some primary forms of processing, the product can go through a large number of phases over a relatively long period of time (e.g. for the meat supply chain, cattle is first bred, then sold to fatteners, then to slaughterhouses, after which it can go through a de-boning plant, and to successive cutting and packaging stages, before reaching shop shelves);

– moreover, important regional specificities intervene in price formation, per product chain. For example, in France, for pork, producer prices are determined by the exchanges on the Marché du Porc Breton; this market represents only 10% of the French pork transactions; however it gives the price orientation for the entire territory[8]. For French beef, prices are formed on a weekly basis mostly by the confrontation of offer (75 POs, 2500 private negotiators) and demand (370 slaughtering /deboning/processing houses)[9].

It must be recalled that for unprocessed food chains, intermediaries tend to exercise an aggregation function, by bringing together several varieties of the same product or complementary products to meet the needs of retail trade. This function is not fulfilled by producers directly and partly explains the length of the chains.

It appears evident that the farmers who need to sell their fresh produce over a limited number of days (e.g. the life span of a salad is about 3 days), are under more pressure to accept lower prices from their buyers in order to avoid the loss of their crop. On the

6 "*Análisis de la cadena de valor y de la formación de precios en los productos frescos*", Cap gemini/ Ernst & Young, Asociación Española de Distribuidores, Autoservicios y Supermercados, 2004.

7 "*Formation des prix alimentaires*", rapport Besson, France, December 2008.

8 UECVB (European livestock and meat trading union) data.

9 See footnote 8.

other hand, stockable produce, such as cereals, can be stored longer by producers and thus sold at more advantageous prices.

Overall, the non-processed food supply chains are characterised by atomised weaker suppliers and stronger buyers, who are often intermediary operators and rarely retailers. Such buyers are the often "unavoidable" trading partners for producers. Agricultural producers feel compelled to satisfy terms and conditions stipulated by their buyers – and that farmers often perceive as going beyond what is "fair" – so as not to lose these indispensable buyers.

The non-processed food chains are thus characterised by a form of structural archaism. Many historical factors, as well as intrinsic characteristics of the agricultural production process, may have influenced the structure of non-processed food chains and may have contributed to sheltering farmers from market pressures. In particular, in some specific sectors there has been no real integration of farming assets, and no dynamic search for enhanced cooperation between farmers at downstream stages of the supply chain, except for cooperatives that have developed at different speeds across Europe. Given the farmers' difficulties in aggregating their offer, there is still an intrinsic need for autonomous market players to perform an aggregation function. These numerous layers of intermediaries thus act as a bottleneck and may influence negatively price transmission to end consumers. Since 1992, the Common Agricultural Policy (CAP) has been going through a reform process with the objective of helping farmers to better respond to market signals and to face new challenges, whilst improving their incentives to develop more innovative and more market-oriented business models.

Given the wide differences between Member States and sectors and the impossibility to draw common conclusions across regions and product markets, future analysis should focus on those markets which present both a highly fragmented structure in terms of the number of intermediaries and stages along the chain, and a high level of concentration at certain of these stages. This would seem to be the case in particular for certain unprocessed sectors, key to consumers, such as milk (e.g. as announced by the Communication on the Dairy Situation of 22 July 2009), fruit and vegetables, meat and fish.

Issues related to a potential malfunctioning of this type of supply chain appear to be mainly linked to structural inefficiencies resulting in contractual tensions between weaker suppliers and stronger buyers. This has been confirmed by the recent experience of a number of NCAs (e.g. Hungarian NCA study of 2007 on the relationship between large retailers and their suppliers; Slovak NCA inquiry into retail chains; Greek investigation on the tomato sector). Such considerations are further detailed in Section 4 of this paper.

2.2. The supply chains for processed food

The supply chain for processed food is characterised by more direct negotiations occurring between producers and retailers, sometimes through the vehicle of buying groups. The food industry is more concentrated than agricultural suppliers, especially if large industrial multinationals are considered. For example, on the French breakfast cereals market, in 2007, Kellogg's held a 44.1% market share, Nestlé a 26.7% share and Jordan's a 4.9% share[10], which implies a 75.7% share for the top 3 suppliers. Similar high market shares were reported for the Spanish soft drinks market (top 3 suppliers having a market share nearing 90%), beer (the top 3 suppliers amounting to 75% of the market) and pizza market (the top 3 producers nearing 75% of the market) in 2005[11]. As recalled by the High Level Group on the Competitiveness of the Agro Food Industry, a nuance needs to be brought to such figures to recall that a great number of SMEs are also active in the European agro-food industry[12]. These companies are for example active in the production of secondary brands or niche products, and introduce competition on the market in terms of variety and price. When negotiations occur between retailers and large multinational suppliers, who are often producers of a portfolio of goods which are in some cases must-carry brands, suppliers may have significant market power. In such cases, the buyer power of even the largest retailers may be offset by the market power of the suppliers[13]. The profit margins of such “unavoidable” suppliers are generally higher than those of retailers. As an illustration, on average in 2006, the average net profit margins of European retailers were around 4%, whereas these same margins in the case of The Coca-Cola Company and the Group Danone were around 20% and 11%, respectively[14]. These differences in profitability can be explained by the fact that retailers compete mostly on price-related criteria whereas branded good producers compete on other factors in addition to price including brand image, product characteristics, consumer preferences for special flavours, etc. Furthermore, in the processed food and drinks industry, concentration has occurred earlier and some of the leading brands are supplied by a very small number of producers[15].

This inversed balance in bargaining power has contributed to an increased concentration of retailers and the development of buying platforms destined to pool purchase volumes together so as to negotiate better terms from such suppliers (See Section 4.2). It appears that only when suppliers are producers of complementary products, private labels or niche products, retailers can exert stronger buyer power within the processed food sector.

The processed food supply chains are characterised by the interplay between a relatively concentrated food industry having significant market power and the retail sector. Negotiations occur, for most operations, directly between suppliers and retailers. When suppliers are producers of "must-carry" brands, suppliers tend to hold a stronger bargaining position than their retail counterparts. According to retailers, they consequently make lower margins for such

[10] Data from AC Nielsen as supplied by Eurocommerce (Retail, Wholesale and International Trade Representation to the EU).

[11] Eurocommerce research.

[12] Available at: http://ec.europa.eu/enterprise/newsroom/cf/itemshortdetail.cfm?item_id=2954&lang=en&tpa_id=156.

[13] UK Competition Commission Grocery Inquiry, 2008, available at: http://www.competition-commission.org.uk/inquiries/ref2006/grocery/index.htm

[14] Data provided by Eurocommerce, Source: Deloitte, Global powers of the consumer products industry, fiscal year 2006.

[15] According to data presented by Eurocommerce, in Spain the top 3 retailers cover 56% of the market, whereas the top 3 soft drinks producers cover 87% of the market.

products[16]. A significant number of SMEs are also active in agro-food industries and contribute to the complex structure of the processed food chain. In this last case, the bargaining position could be the opposite, with the suppliers in a weaker position than the retailers.

Issues relating to possible malfunctions of this type of supply chains may raise competition-related concerns. Such potential concerns are tackled in detail in Section 4 of this paper.

2.3. The retail sector

The retail sector has followed an intense concentration trend over the last 20 years, hence the recurring image of retailers as gatekeepers to mass consumers. Data provided by stakeholders as well as by most NCAs converge to show that concentration ratios in the retail sector are high in many Member States (e.g. the UK top 4 retailers account for 65% of the market, the Finish top 2 retailers for 75%, the Latvian top 2 for 60%, the Dutch top 3 for 83%, the Slovenian top 3 for 63%, the Portuguese top 5 for 63%, the German top 5 for 90% etc; and in general the majority of NCAs define these markets as "oligopolistic"). However, there are also Member States which present a more atomised and not so concentrated food retail sector. Such would be the case, for instance, of Greece (where the 10 largest retailers account for 78.5% of the total sales) and Romania (where the top 10 retailers would have a combined market share of only 19% of the market).

Despite the high concentration ratios, it is essential to emphasise that stakeholders agreed that the retail sector is fiercely competitive. Supplier associations have unequivocally confirmed this statement in the course of the fact-finding exercise carried out by DG Competition, and further empirical data provided in this context strengthens this assertion[17]. It is interesting to note that NCAs have not quoted in their latest enforcement actions any case sanctioning retailers for taking part in horizontal anti-competitive agreements or abuses of dominance. This may corroborate the view that the retail sector is generally competitive. Retailers engage in frequent “price wars”, and this intense competition maintains a high pressure on them to deliver better prices for consumers. Such pressure may also have contributed to keeping retail price increases below general inflation (e.g. according to data presented by the retail sector[18], in Belgium, over the last 25 years the average yearly retail price increase has been of 1.47% whilst average yearly inflation was of 1.99%). This pressure is furthermore reflected on the net operating margins of retailers (broadly speaking such operating margins should be seen in conjunction with the business models of modern retailers). For example, the net operational margins of certain large retailers in 2006

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16 Eurocommerce and ERRT (European Retail Round Table) data.

17 CPB Netherlands Bureau for Economic Policy analysis, April 2008. The study on the Dutch retail sector reaches the conclusion that “(…) *competition on these markets seems to have become tougher and mark-ups lower over time (1995-2005). Furthermore, no significant empirical indications (were found) that supermarkets were able to use their buyer power to shift profits from manufacturers to supermarkets after 1993. Finally, (…), <u>in terms of welfare, consumers have benefited from fiercer competition in terms of lower prices</u>*.” For example, branded goods producers as represented in the CIAA (Confederation of Food and Drink Industries of the EU) and Livestock Meat traders such as UECBV reported that retailers fiercely compete on prices downstream.

18 Eurocommerce.

were as follows: Auchan France (4.3%), Carrefour France (4.6%), Casino France (4.7%) and Tesco UK (6.4%). Further data provided by retailers shows that for the same year, the real net margin of Italian retailers was of around 2.2%. It appears that concentration ratios do not prima facie affect price competition and that European consumers generally reap the benefits of this retail competition.

Moreover, European consumers are increasingly shifting from the traditional "one-stop-shop" approach for their weekly grocery shopping and now visit more than 3 shops on average for their food purchases[19] (modern trade supermarkets, discounters or alternative distribution channels). This seems to suggest that there is increasingly intense competition between different retail formats. The rise in single person households, the growing number of working women and changes in traditional family structures, coupled with a "back-to-town" phenomenon amounting to the re-population of urban centres has led consumer preference towards convenience proximity stores[20] (e.g. in Belgium, Proxy Delhaize). Rather than rolling out more supermarkets in an already saturated market, retailers have recently started developing new formats aimed at the general public and also at various consumer niches. These niche markets include bio/organic shops, stores aimed at providing proximity services or responding to the demand from low income households focused on cheap ready made meals, etc. Analysts believe that such trends will be confirmed in coming years and lead to more fragmentation of consumer experiences in retailing[21]. NCA experience confirms this emerging trend, though with regional differences. However, this is not always synonymous of increased competition since a large number of such stores are owned or franchised by the same large groups.

One of the key findings of the current exercise is that competition at retail level is fierce, both between retailers themselves and increasingly between different retail formats. This has also translated into lower net operating margins for retailers (e.g. according to data presented by the retail sector, retail margins are on average around 4%, even lower on fresh produce where they near 2%)[22] and has contributed to cheaper prices for consumers on the long term.

Such findings seem to contradict wide-spread perception that retailers currently have the highest margins in the food supply chain.

3. GAP BETWEEN PRODUCER PRICES AND CONSUMER PRICES

In the context of the soaring agricultural commodity prices of 2006-2008 and of their more recent downward trend since, much of the political debate has been focused on

19 Statement confirmed by branded goods producers represented in CIAA.

20 Institute for Grocery Distribution, European Private label growth: strategic responses for suppliers and retailers, 2006.

21 2008 Global Powers of retailing, Deloitte. The study mentions the new trend of "long tail" retailing: "*As a result of IT improvements, it is now possible to operate a portfolio of small, targeted businesses just as efficiently as one large business. Hence retailers seeking growth can invest in new businesses along the long tail (smaller income) rather than expanding existing mass market formats*".

22 "*Marges distribution-industrie sur 10 ans*", Natixis.A, September 2007, provided by Eurocommerce.

two key issues: (a) the overall high prices of food and; (b) potential price stickiness in the food supply chain.

Public perception has been, and to a certain extent continues to be, that food prices have increased more than other consumer goods and that they are generally too expensive. Price stickiness would be defined as the phenomenon of end consumer prices remaining high, despite the declining price of agricultural inputs. This would mean that farmers receive lower prices for their products, but in the same time consumer prices do not decrease. Such a phenomenon would thus indicate that the benefits deriving from cheaper agricultural produce are not passed onto consumers by means of cheaper food, and that profits are caught at certain stages of the food supply chain. In order to tackle such concerns a number of preliminary remarks must be made.

3.1. Addressing the perception of high food prices in absolute terms

Household expenditure on food remains very important at EU scale and ranges from 9.06% in the UK to 41.87% in Romania[23]. It is however important to recall that over the last three decades, food inflation has remained below general inflation. Furthermore, even in the current context and in the aftermath of rising food prices in 2007/2008, a certain nuance needs to be added to the general perception that food is too expensive. For example, 500g of pasta cost around €1 in Italy (average 4 servings amounting to 0.25 € per portion[24]), which is less than the price of certain packets of chewing gum. Further data show that a French consumer spends on average €0.90 a day to buy 600g of fruit and vegetables. To support the above assumptions, Interfel[25], the French fresh fruit and vegetables inter-branch organization, recently launched an information campaign aiming to correct the public’s perception that fruit and vegetables are too expensive. The campaign’s objective was to stimulate consumption in a context of an exacerbated debate on the excessive pricing of fresh produce.

It is also important to note that European consumers increasingly favour the purchase of processed foods in light of the requirements of modern life. Such food is often more labour-intensive and other factors such processing, refrigeration, transport and advertising etc., all influence its end-price. Expensive inputs such as energy should be taken into account in this analysis: it seems that in the 2007 food crisis soaring energy costs have contributed significantly to the rise in food prices. To the contrary, it may be useful to recall that, especially for processed food, the cost of agricultural input in the total end-cost is rather minimal. A simple example that is often quoted is that of a bread baguette: for an end consumer price of €1.00, wheat amounts for €0.05 of grain

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23 Commission Communication on *"Tackling the challenge of rising food prices; Directions for EU action"* of May 2008, COM(2008)321.

24 According to data provided by UNAFPA (Union of Organisations of Manufacturers of Pasta Products of the EU) and CONAD Italia. According to data provided by the Italian pasta industry, the "unavoidable" price raise of 2007-2008 increased the overall pasta expense per capita in Italy by less then €8 per year.

25 See http://www.interfel.com/fr/le-prix/. The campaign used slogans such as “*1 espresso = 1litre of home-made soup*”. It further reminded consumers that fresh produce is priced higher only when demand is for produce that is not seasonal.

ex-farm[26]. Furthermore, for branded goods, the cost of marketing sometimes represents as much as 50% of the end-price of the product.

Such examples indicate that the public may need further information about the pricing of food, so as to correct the perception that food is too expensive in absolute terms, across products, regions and seasons.

3.2. Price formation

A better understanding of price formation (and relevant costs incurred at every step of the food supply chains) is crucial before assessing whether price stickiness has indeed occurred in Europe in the aftermath of the food crisis of 2006-2008. In particular, price formation should be assessed against the backdrop of the structure of the different supply chains (as detailed in Section 2 of this paper).

A number of external factors (e.g. international commodity markets, futures markets, weather conditions etc.), as well as internal factors (e.g. number of intermediaries, market structure.) contribute to price formation at each level of the supply chains. For instance, the producers and traders of agricultural commodities[27] mentioned commodity prices are by nature volatile, given their different production and consumption patterns. Indeed, grains are harvested once a year, whilst they are consumed/used throughout the whole year. Between the signature of a commodity purchasing contract and the consumption of the final manufactured product, a two year cycle can be considered as normal. Prices for the same harvest may vary depending on demand/supply at the time of purchase. Prices of grains depend (apart from international demand and supply for the commodity as such) on a multitude of other factors such as freight and exchange rates and final prices of other products (inputs) such as seeds, fertilizers, energy and plant protection products. As some of the latter are purchased by farmers months in advance of sowing (for fertilizers about 6 months from purchase to arrival on farm can be counted), supply prices impacting on grain prices do not coincide with the commodities' market prices (spot prices) at the time of planting or harvest. It seems that fluctuations of international commodity markets may have a significant influence as regards price formation for certain products.

These international markets should be differentiated from other, more local, reference markets which appear crucial in setting the prices of certain fresh products. For certain products, it seems that the first stage in price formation occurs at wholesale level, and not at production level. In terms of price formation in the fresh/ perishable supply chains, the DG Competition survey found that "after-sales price setting[28]" occurs quite frequently. This term refers to a marketing technique whereby producers sell their produce to clients (wholesalers/ other intermediaries/ retailers) without knowing the price which they will receive from such buyers. The price is thus set after the buyer has, in turn, concluded the resale of the produce to his downstream buyers. This practice is highly controversial and leads to tensions between market players

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26 Example quoted by COCERAL (Committee of cereals, oilseeds, animal feed, oil and fats, olive oil and agrosupply trade of the EU).

27 COCERAL.

28 "Prix après vente".

since it allegedly drives the prices paid to producers downwards. Consequently, situations occur where at the end of the cycle, the producer receives a price which is lower than his production costs. It appears that this practice seems unavoidable in a number of Member States (e.g. Spain, Belgium, Italy to name a few), especially since it is applied for highly perishable products where the merchandise must be passed on rapidly (examples of products that were quoted in the context of the practice at stake were fruit and vegetables, but also meat, though the practice may be frequent in more product chains).

As mentioned in Section 2, in long supply chains, each operator adds a mark-up at every step which is reflected in the final price of products. The existence of a high number of intermediaries impacts on the prices paid to producers: it seems that the longer the chain, the lower the price paid to producers. According to data presented by the Italian Competition Authority[29], the share of the end price collected by a producer would pass from 60% in a scenario where the producer sells directly to the retailer, to 30% in a situation in which 3 intermediaries operate between the same producer and retailer, in that product chain.

The above considerations might partly explain the differences between producer prices and end-consumer prices. This assertion seems to be supported by research in a number of Member States and product markets, which suggests the existence of common monitoring and investigation patterns among Member States as regards food price formation issues. Indeed, a number of Member States have set up a series of pricing monitoring tools and observatories (Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Latvia, Poland, Portugal, Slovakia, Slovenia, Spain) or have assessed the gap between producer/ consumer prices for certain products (Denmark, Estonia, Hungary, France, Greece, Latvia, Lithuania, Spain, Slovakia, Slovenia). To date no NCA has found that this gap is directly linked to any competition infringements. Indeed, factors mentioned by NCAs as contributing to such gap are of structural or external nature, such as the number of intermediaries operating in the supply chains, the specific characteristics of the products, global price increase trends, higher raw materials purchase prices, or increasing labour, energy, production and marketing costs.

Price formation follows complex patterns in all supply chains. Transparent information on the structure of price formation should be further gathered by the Commission and Member States' Authorities in order to have a better understanding of the mechanisms and criteria currently used to determine food prices. This exercise would also allow all the stakeholders involved in the supply chain, as well as consumers, to have a more transparent overview of price formations mechanisms[30].

[29] Italian Competition Authority inquiry into the fruit and vegetables supply chain, June 2007.

[30] Representatives of the supply sector such as COPA-COGECA, CIAA, CEFS (European Committee of Sugar Manufacturers) etc and of the retail sector such as ERRT and EUROCOMMERCE would see this as useful.

3.3. Price stickiness as assessed by stakeholders

A number of explanations were provided to explain why consumer prices have not adjusted downwards, to follow the recent decline in commodity prices.

An explanation shared by a majority of stakeholders was that there is an understandable time lag between the demand for production inputs (such as fertilizers, plant production products and seeds), actual production and demand. Commodities are purchased by food and feed processors often months in advance in large quantities ("panic purchases" of 2007/08). Since inputs costs were higher in 2007/08, insufficient time may have passed for an effective pass-through to end prices. Other possible explanations related to the low share of the actual agricultural inputs in final food products' price formation, and the high energy and labour costs, in particular for the processed food that European consumers increasingly purchase.

The retail sector emphasised that overall price levels are heavily affected by regulatory and quasi-regulatory measures implemented at national level and which constitute a burden to free trade and an unnecessary fragmentation of the EU internal market (e.g. planning permissions, opening hours restrictions, codes of conduct, etc.)[31]. Food producers have also concurred in saying that increased EU requirements regarding food and feed safety, import controls, the use of fertilizers and other environmental concerns have a heavy weight in the end price formation of their products. NCAs have also highlighted in a number of studies and advocacy initiatives the negative impact that certain regulatory restraints may have on competition (e.g. see repeal of the Royer – Raffarin laws in France, retail Planning System in Ireland, regional laws in Italy, urban planning and zoning laws in Belgium, Portugal and the UK, administrative authorisations in Spain).

Notwithstanding the above structural plausible explanations of price stickiness, it is important to analyse the distribution of value added and profitability along the supply chains as a factor which may also intrinsically contribute to such shortcomings in pass-through to end consumers.

In light of an often exacerbated political debate, the retail sector has frequently been under the spotlight as the sector where the profit margins are allegedly highest, and where the most substantial amount is added to the formation of the final consumer price[32]. To counteract such allegations, the retail sector representatives recalled that their net operating margins are relatively low. For example, in 2008, in France, the price of a salad was structured as follows[33]: the end-consumer retail price per unit was

[31] See also a study on "*Market structure in the distribution sector and merchandise trade*", Working Party of the Trade Committee, OECD, 2007. The study confirms that regulation may lead to market fragmentation that may not be optimal from an efficiency point of view.

[32] According to representatives of retail sector, it should be recalled however that modern retailers are more than simple outlets in the sense that they add value as service providers though promotional and marketing activities, information to consumers, investment in customer proximity services, and innovation on new products. Such services incur costs and it is understandable, from a business perspective, that these costs are reflected to a certain extent in consumer prices. For example waste and shrinkage costs are often high in modern retail outlets.

[33] Data of the Fédération des Entreprises du Commerce et de la Distribution (FCD) available at: http://www.fcd.asso.fr/maj/upload/docs_fcd/communiques/91.pdf.

€ 0.83. Out of this, 47% of end price (€ 0.39) went to the producer/ seller[34]; around 25% amounted to various logistical costs and around 29% represented the commercial margin of the retailer. Out of this gross retailer margin of 29%, the net operating margin amounted only to 2%. The rest was absorbed by the cost of destruction of merchandise (8%), labour costs (8%) and other variable costs (11%).

The wholesalers, traders and food industry representatives also claim that their profit margins have not increased in the last years. This may mean that no single operator captures a high percentage of the value added. It may be the multiplication of the number of players on food markets, each adding a mark-up, which leads to a more rigid structure, acting as filter in price transmission to end consumers. In addition to this, the way the margins are determined might also have an influence on the difference between consumer prices and producer prices. For instance, it would seem that in certain cases intermediary margins are kept within a certain pre-established range regardless of the fluctuations of producer prices and other market conditions. If this mark-up phenomenon would multiply at each intermediary level, it is possible to presume that the end price would also be increased as a result thereof.

Stakeholders and NCAs explain the recent widening of the gap between producer prices and consumer prices by a number of factors mainly linked to the structure of the food sectors and to the different regulatory frameworks surrounding food markets.

This notwithstanding, a more accurate overview of the functioning of the supply chain, in particular, at its middle stage, in terms of competition conditions, regulatory constraints and other structural factors, may be therefore necessary. Analysis should focus on specific sectors (as identified in Section 2) such as fruit, vegetables, fish, meat and milk. In such sectors, given the relatively low degree of processing/ transformation involved, it may be easier to detect where price stickiness may arise and the type of malfunction that may occur.

Indeed, a better understanding by the Commission and Member States of the interplay of such factors, over an adequate period of time, may contribute to finding the adequate policy tools to tackle any possible concern as regards the functioning of the food supply chain.

3.4. Milk: a case for urgent action

After an unprecedented period of high prices for milk and dairy products in 2007-2008, European producers now face uncertain markets, currently characterized by a sharp drop in producer prices. The initial 2007 price hikes within the dairy supply chain first appeared on commodity markets, particularly on the markets for skimmed milk powder (SMP) and butter. From these internationally connected markets, the price increase was promptly transmitted to agricultural milk producers and to EU consumers. Regarding the following fall in commodity prices in 2008, the full transmission to the agricultural sector became evident in substantially lower farm gate

[34] Salad conditioned to be sold includes price paid to producer, conditioning fee and first seller margin.

prices for raw milk, while aggregated consumer prices still remain at comparatively high levels.

A number of farmer and milk producer protests were recently carried out throughout Europe. Farmers claim that their livelihood is threatened despite intervention mechanisms that the Commission and national governments have deployed. The price of 21 €/100kg is the so called intervention milk price equivalent, the 'value' of milk in case all milk were to be processed into butter and SMP and sold at their respective intervention prices. As an example, the cost of milk production in Northern Ireland, was 20.9 €/100kg in 2006 (before the increase in feed, fuel and fertilizer prices). It is estimated that increased input prices have elevated production costs to around 22.9 €/100kg. The current milk price appears lower than production costs, which from the producers' perspective is not a sustainable situation. Furthermore, since consumer prices of milk have remained high, European consumers may not fully benefit from lower end prices deriving from low production prices. This would mean that the value added is captured at certain stages of the milk chain.

Several national studies have recently analysed price formation in the milk supply chain, in broad terms. For example, in a study[35] regarding the milk chain prepared by the Spanish Ministry for Agriculture, it is observed that a number of factors influence the end price of milk. The study concluded that the structure of the value added chain for packaged liquid milk is quite rigid. In order to improve the functioning of the supply chain, the study observed that emphasis should be placed on improving the structures of the sectors involved. For instance, the efficiency of dairy farms should improve so as to make them less dependent on the variations of inputs, seasonal price tensions, over-production in exporting countries, etc. There should also be a further concentration of the milk industry to go in pair with a further rationalisation of the costs for collection and distribution, as well as perhaps allow for a shortening of the supply chain. A study of the Belgian Ministry for the Economy on the milk supply chain[36] also observed that "*the relationship that connects the end consumer to the producer is far from being mechanical, determinist, easily identifiable, foreseeable or immediate in time.*" It further stated that "*it would not be meaningful to compare the price of milk paid to the cattle breeder to the price paid by the end-consumer*". The study further noted that the revenues of cattle breeders depend increasingly more on the worldwide evolution of supply and demand. As for the costs these breeders incur, animal feed and energy constitute significant expenses that also closely follow international trends. Consequently the financial situation of breeders over the period of 2006-2008 has been mostly affected by the increase of such variable costs. On the basis of all the information gathered, the Belgian authorities concluded that "*divergences in pricing on short term are not to be necessarily linked to any anomaly*" in the milk supply chain and that "*no information was identified that would signify any irregularities at the level of price formation at any stage of the milk supply chain*".

The above-mentioned research highlights the wide differences that exist between the milk supply chains of the different EU Member States. Such differences are illustrated

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35 Food price observatory of the Spanish Ministry for the Environment, Study on price formation of bottled milk, April 2009.

36 "*Evolutions récentes des prix et des coûts dans la filière du lait"*, SPF Economie, October 2008.

in the diverse actions that Member States have undertaken to date. Indeed, a number of NCAs have investigated or are currently monitoring this sector in more detail (e.g. (i) enforcement actions taken against cartels and restrictive practices in Greece, Lithuania, UK and Ireland, (ii) sectoral studies in Belgium, France, Latvia, Lithuania, Romania, Slovakia, and Spain, or (iii) ongoing investigations in Germany and Denmark). It may be worth noting that the competitive process may contribute to realigning supply and demand, leading to a rationalisation of supply and stimulating innovation on the long term. In light of the urgency to address the difficult situation that the milk sector is undergoing currently, the Commission adopted in July 2009 a Report on the Dairy Market Situation. More information is currently being gathered by the Commission from Member States' Authorities on price formation and transmission in the milk supply chains. Such information may help the Commission detect possible endemic problems and better coordinate future actions.

As indicated in the Commission Communication on the Dairy Situation of 22 July 2009[37], the Commission and NCAs are considering the possibility of stimulating a focused monitoring of dairy markets, and where appropriate, envisage enforcement actions at EU or national level through the operation of joint working team with the European Competition Network.

4. PRACTICES SPECIFIC TO FOOD SUPPLY CHAINS

One of the key objectives of the current exercise was for the Commission to understand directly from business operators and NCAs whether they encounter certain practices that, on a case-by-case basis, may possibly raise concerns from an EC competition law perspective (entailing harmful effects on competition and consumer welfare).

It must be noted from the outset that NCAs have been very active over the last years in terms of their enforcement actions on food markets. This common trend has led to the finding of a large number of infringements of competition rules in these markets and the imposition of significant fines. In this regard, NCAs have mostly focused their enforcement actions on cartel activities. Indeed, NCAs have actively pursued collusive horizontal agreements affecting a number of food markets (among others, milk and dairy in Bulgaria, Greece, Lithuania and the UK; bread and pasta in Italy; poultry in the Czech Republic, etc.). NCAs have also focused on pursuing certain specific resale price maintenance cases also affecting food markets at local level (e.g. chocolates in France, flour in Denmark, ice-creams in Poland, etc.). A number of abuses of dominance cases have also been assessed in different Member States (e.g. Denmark, France, Hungary, Portugal, Sweden, etc), but they remained limited in scope and for the most part targeted the food processing industry. As already mentioned, to date no abuse of dominance against retailers has been found, even though certain ongoing investigations are been carried out at national level.

The above actions relate to "classic" enforcement actions deriving from Art.81-82 EC. This notwithstanding, the Commission Communication on Food Prices of December

[37] See also subsequent creation of High Level Expert Group on Milk in October 2009, at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1420&format=HTML&aged=0&language=EN&guiLanguage=en

2008 identified certain practices, specific to food markets, which may give rise to competition concerns, in particular circumstances: joint purchasing agreements ("buying alliances"); single branding obligations and tying; exclusive supply agreements; certification schemes and the increased use of private label products. For the sake of clarity and completeness, Section 4 groups these practices into two broad categories: retail-driven practices and supply-driven practices. Also, it must be emphasised that such practices are not per se anticompetitive and may entail efficiency gains that can justify their application. It is only in certain special circumstances that they may raise competition concerns.

Among the above listed practices, in the context of the DG Competition survey, stakeholders and NCAs have in particular singled out some practices as raising most frequent concerns on food markets, in particular circumstances: joint purchasing agreements, the increased use of private labels, tying and bundling and joint selling agreements. Given the relatively novel issues they raise, in parallel with the development of certain business models which are in constant evolution, Section 4 focuses mainly on them.

4.1. Preliminary considerations on the concept of "buyer power"

Over the last two years, intense public debate has focused on the alleged abuses of buyer power by large food retailers. An important caveat would need to be made from the outset in terms of application of competition rules to buyer power related issues. The primary objective of EC competition policy is to ensure well-functioning markets to the benefit of citizens and businesses in the EU. Competition Authorities consequently tackle buyer power to the extent that it harms, or could potentially harm, the competitive process and thereby consumer welfare.

In this regard, it should be noted that unequal bargaining power does not always present a "*buyer power*" problem, in terms of competition law; therefore, the two concepts should be carefully distinguished.

"***Unequal bargaining power***" is present whenever one party to a proposed contract, be it either the seller or the buyer, can "drive a hard bargain"; that is, can impose upon the other contracting party terms and conditions that are deemed unfavourable by that other party. There can be numerous reasons for the first party's ability to do so without risking that its counterpart decides not to enter into the proposed contract: significant difference between the relative sizes and turnover of the contracting parties (e.g., atomised small sellers), economic dependency arising out of long term business relationships (e.g., sole supplier/off-taker relationship), significant sunk costs already incurred by one of the parties (e.g., upfront investments), and last but not least changing supply/demand conditions in the relevant market. Unequal bargaining power often leads to commercial dealings that appear to be unjust, unfair or undesirable from a social or political point of view. This has in turn triggered legislative responses in many Member States such as, for example, the adoption of unfair trading practices laws aiming to subdue the behaviour of the powerful contracting party (e.g., Austria, Belgium, France, Germany, Portugal, Slovakia) or the introduction or envisaged adoption of codes of good practice establishing a set of rules in the transactions between large retailers and their suppliers (e.g. Czech Republic, Hungary, Lithuania, Portugal, Romania, Slovakia, Spain, UK). Section 4.4 below further tackles these practices (e.g. late payments, unilateral changes in contracts, ad-hoc changes to contractual terms, upfront payments as entry to fees to negotiations etc.).

"***Buyer power***" may have either beneficial or adverse effects on consumers. Buyer power is often exercised by buyers as a countervailing power to achieve better prices and terms from suppliers. When such savings are passed on to consumers downstream in the supply chain, buyer power has beneficial effects for consumers. Buyer power may also increase output in the upstream markets and thus increase the welfare of consumers on the long run. The exercise of buyer power which leads to lower prices upstream is therefore not to be considered per se anti-competitive. Generally, with sufficiently intense competition on downstream markets, lower prices obtained on upstream markets will be passed on to consumers. On the other hand, if a buyer possesses monopsony power (i.e., he is the only buyer in the relevant market) or considerable buying power/ market power on the upstream purchasing markets, which is coupled with significant market power on the downstream resale markets, a competition problem may arise if the buyer does not pass onto consumers any significant part of the benefits obtained on the upstream market from his suppliers. Moreover, if the exercise of buyer power is found to lead to a lower profitability for suppliers (e.g. suppliers' sale price being below their costs), this may, in specific circumstances, induce suppliers to invest less in new products and may lead to a loss in product diversity and quality for end consumers. This aspect is also taken into account by EC competition policy when assessing the impact of the exercise of buyer power on consumers. Consumer welfare encompasses prices, diversity and quality.

Abuses of buyer power are contrary to EC competition law where there is a proven detriment to downstream consumers. Much of the current political interest is in fact focused on issues of "unequal bargaining power" which should be distinguished from issues of "buyer power", and actually highlights problems faced by small suppliers in the context of contractual negotiations with stronger buyers.

Contractual imbalances associated with unequal bargaining power are tackled through policy tools other than competition law instruments, such as, for example, contract law, common agricultural policy, SME policy, or unfair commercial practices laws. Most Member States have already enacted specific laws dealing with such issues and have established legal protective mechanisms for all contractual parties in the context of their commercial laws. EC antitrust law is not concerned with particular outcomes of contractual negotiations between parties unless such terms would have negative effects on the competitive process and ultimately reduce consumer welfare. It is not the aim of EC competition rules, as currently devised, to interfere in the bargain struck between contractual parties, in the absence of proven competitive harm.

4.2. Retail-driven practices

The series of practices detailed below are therefore retail-driven in the sense that they are implemented by the buyers and they entail either the expression of buyer power or lead to its creation:

4.2.1. Joint purchasing agreements: "buying alliances"

In order to strengthen their buyer power, especially when facing strong suppliers, retailers have increasingly started to use the vehicle of buying alliances in some of their negotiations with suppliers. Such buying alliances now also regroup large EU trans-national retail chains (examples of such alliances are COOPERNIC, AMS, Agenor/Alidis, EMD, etc.). At their origin, such alliances aimed at pooling the required purchase volumes of their SME retail members together, so as to build a critical mass that would allow them to compete with large retailers (chains/groups). These alliances developed over time aiming to further obtain better negotiation terms from their strongest suppliers (e.g. often producers of must-carry branded goods). However, it seems that actual joint buying now also occurs with the aim of obtaining scale economies in the specification and procurement of private label goods. It seems therefore that some international retail alliances thus go beyond the mere concept of "buying alliances[38]". On the basis of the information gathered to date, the overall objectives identified for these modern retail alliances are to negotiate from suppliers international discounts based on the alliance's performance (in addition to national rebates), to provide international marketing services to their suppliers and to achieve economies of scale in the procurement of private label goods.

Purchasing agreements, when concluded among market players with the aim of achieving volumes and discounts similar to their bigger competitors are normally pro-competitive. Even if a moderate degree of market power is created, this may be outweighed by economies of scale provided the parties actually bundle volume. Competition Authorities have traditionally taken the view that such purchasing alliances would not be problematic from a competition standpoint as long as: (i) the low prices obtained by retailers are passed onto end-consumers, and (ii) there is sufficient effective competition between retailers downstream. Given the relatively scarce information on the operations of large buying alliances, DG Competition has asked stakeholders and NCAs for their opinion on this relatively new phenomenon. From the responses gathered, it would seem that, in certain specific cases, such large transnational buying alliances may raise concerns as to their effect on competition and ultimately, on consumers. In particular, certain stakeholders suggested that such alliances may, in some circumstances, facilitate market partitioning. Moreover, alliance members may have low incentives to pass onto consumers the revenues obtained from the payments made by suppliers in exchange of international marketing services provided to them by such retail alliances.

The market partitioning concern would imply that retailers would agree not to expand or agree to reduce their presence in the geographic territory covered by another member of the same alliance. Competition would therefore be reduced[39]. Such a possibility cannot be discarded since these alliances frequently have only one member per country. It must be recalled however that no antitrust cases of retail cartels have been sanctioned by any Competition Authority to date.

Another potential competition concern relates to the fact that the profits reaped from these alliances, resulting from considerable financial advantages provided by their suppliers, may be kept by alliance members and not passed onto consumers. It seems that retail alliances receive payments from suppliers in exchange for the provision of

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[38] Retail representatives confirm such overall activities of retail alliances.

[39] Commission Notice, Guidelines on the application of Art. 81 EC to horizontal cooperation agreements, (2001/C 3/02). Parag. 124 states "*purchasing agreements only come under Art. 81 (1) by their nature if the cooperation does not truly concern joint buying, but serves as a tool to engage in a disguised cartel, i.e. otherwise prohibited price fixing, output limitation or market allocation.*"

international marketing services (e.g. simultaneous product launches in all stores of the alliance, coordinated promotional campaigns, "access to people" information and provision of consumer data, etc.). These payments, based on end of year performance indicators of the alliance as a whole, are allegedly made at the end of the year, ex-post, after the services were provided and in the form of lump-sums paid to the alliance. These amounts are then split between the alliance members who have provided such services. Suppliers often perceive these payments as a necessary burden they need to incur in order to ensure that their products are distributed by the members of these alliances. Indeed, the fear of being delisted is a major recurrent concern of suppliers throughout the whole supply chain. It seems that there is no direct relationship between these lump sums and the retail products for which the services were provided by the alliance. A retailer may therefore be reluctant to reduce consumer prices in advance of a future payment he will receive at the end of the year from his suppliers. Such lump sum revenues may be independent of sales volumes and thus may not affect pricing decisions. They may hence be used by alliance members to finance other activities, and may thus not be passed onto consumers in the form of cheaper products. Furthermore, a direct link between (i) the initial provision of the marketing services by alliance members, (ii) the end-of-year lump sum payments made by suppliers and (iii) the end prices of the products for which the marketing services were provided in the first place is rather difficult to construe. Finally, suppliers may have incentives to recoup the losses they incur by the payments made to the alliance and therefore increase the price of their products. This would have a possible upward effect on consumer prices.

According to the Guidelines on Horizontal Agreements ("Horizontal Guidelines")[40], the primary concern in the context of such alliances is that lower prices may not be passed on to customers further downstream. This may cause cost increases for the purchasers' competitors on the selling markets because (i) either suppliers will try to recover price reductions for one group of customers by increasing prices for other customers or (ii) purchasers' competitors have a more limited access to efficient suppliers[41]. NCAs have confirmed that to date they have very limited experience with respect to joint purchasing agreements performed by large, transnational retail operators. In line with the Horizontal Guidelines, a key element considered by the NCAs to determine potential anti-competitive effects stemming from this kind of

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[40] Supra footnote 38.

[41] There is no absolute threshold which indicates that a buying cooperation creates some degree of market power and thus falls under Article 81(1) EC. However, as the Horizontal Guidelines indicate, in most cases it is unlikely that market power exists if the parties to the agreement have a combined market share of below 15 % on the purchasing market(s) as well as a combined market share of below 15 % on the selling market(s). It should also be recalled that joint purchasing may involve both horizontal and vertical agreements. In these cases a two-step analysis by Competition Authorities is necessary. First, the horizontal agreements have to be assessed according to the principles described in the Horizontal Guidelines. If this assessment leads to the conclusion that cooperation between competitors in the area of purchasing is acceptable, a further assessment will be necessary to examine the vertical agreements concluded with suppliers or individual sellers. The latter assessment will follow the rules of the Block Exemption Regulation 2790/1999 on the application of the Article 81(3) to categories of vertical agreements and concerted practices ("Regulation 2790/1999) and the Guidelines on Vertical Restraints (see Commission Notice, Guidelines on Vertical restraints (2000/C 291/01), parag. 29).

cooperation are the market shares that buying groups can reach both in upstream purchasing and downstream selling markets.

Given the reticence of operators to disclose information relating to the functioning of these buying alliances, it is premature to draw at this stage any definite conclusions as to their impact on competition. In certain theoretical circumstances, such forms of cooperation may harm the competitive process downstream and entail fewer incentives for their participants to transfer benefits gained from rationalisation processes upon their consumers, and their impact on innovation and product variety may also therefore be questioned. On the basis of the limited information available, the Commission and NCAs should continue gathering more extensive and accurate data in order to deepen their analysis on this specific area.

At this moment in time, and based on the available market share data, it appears however that such buying groups perform a countervailing force in order to build a critical mass in negotiations with multinational suppliers of branded goods, and that no direct link can be established at this stage with potential price stickiness effects.

4.2.2. Increased use of private label products

Broadly speaking, private label products encompass all merchandise sold under a retailer's brand. That brand can be the retailer's own name or a name created exclusively by that retailer. The initial rationale behind the creation of the concept of private labels is to provide retailers with a way to satisfy consumer demand for cost-efficient alternatives to branded products, while retaining product range and ensuring quality (since retailers could not afford to endanger their reputation as distributors if they provided poor quality own-products). Such private labels are also used by modern retailers to compete with discounters, in an attempt to offer relatively cheap goods. Private labels originate from a competitive dynamic, which, prima facie, can be beneficial to consumers. Furthermore, private labels are often produced by SMEs, and may have the effect of stimulating the growth of the latter, allowing them to expand together with the retailers that sell the end products, home and in other Member States[42]. In non-processed food markets, private labels act as a sort of quality certification by retailers, leading to the aggregation of supply more efficiently and entailing a faster ability for consumers to recognise and ascertain the quality of fresh produce. Furthermore, private labels may help rationalise the food supply chain since they allow retailers to enter into direct procurement and purchasing negotiations with their suppliers. As a consequence thereof, private labels may allow retailers to participate in the aggregation of supply, a function that is traditionally left to intermediaries in the sector. This can lead to efficiency gains and help reduce potential price stickiness by the shortening of the supply chains. Also, to a certain extent, retailers that offer private labels discharge their producers from the responsibility of these products vis-à-vis consumers. In processed food chains, where they are mostly used, private labels are competitors of established brands. The

[42] An example was provided of a - range of Italian origin products that are now also sold in France after the joint venture of Conad Italia and Centrales Leclerc.

increased use of these products may also help shorten the processed food chain since they allow retailers to directly participate in production.

A number of market operators and NCAs have however raised concerns with respect to the increased use of private label products by retailers. These concerns have mainly referred to the potential foreclosure effects and the impact on prices that may stem from such an increased use.

Indeed, from a competition policy perspective, the extensive use of private labels may possibly lead to foreclosure of existing and potential competing suppliers. This could restrict in-store inter-brand competition thereby reducing the number of product items available on shop shelves. Consequently consumer choice may be limited (both in terms of product availability and product quality). Such concerns can be raised when one considers that shelf space is limited. By stocking private labels on their shelves, retailers thus become direct competitors of their suppliers[43]. It can be argued that, the greater the share of private labels within the total turnover of a retailer, the less the retailer depends on branded goods' turnover. It seems that retailers increasingly stock one or two A brands of a particular product (premium reference brand for a category) and their own private labels, which may also be divided in subsequent categories. This may therefore result in a saturation of shelf space and therefore amount to foreclosure/ elimination of other secondary B, C, etc, brands (such brands may be regional brands for example, and it is argued by some that the diversity of the European food heritage can be gradually lost as a result).

In terms of pricing, retailers usually price their private label 20-30% below brand A[44]. Retailers may thus have an incentive to raise the price of the A branded product so as to maximise his margins on the sale of private labels. In addition, private labels may also entail other secondary effects on the pricing of competing branded goods. Indeed, when a private label appears on the market, it could be envisaged that, to a certain extent, brand manufacturers may be willing to give up serving the potentially "switching" consumers and would concentrate instead on customers loyal to the branded product. As a consequence it is possible that they could exploit brand loyalty and increase prices. This could entail that consumers would pay more for branded goods in the aftermath of a competing private label for that product segment.

Another potentially negative aspect entailed by private labels is that they may have a stalling effect on the innovation of branded goods suppliers. Indeed, such suppliers may stop innovating altogether from a fear of "free-riding" by private label producers. Whilst recalling the pro-competitive effects of private labels, the vast majority of NCAs agree that there is a need to better understand the impact of this growing trend on competition.

Moreover, within the processed food supply chains, it is important to note that certain practices may especially raise competition-related concerns if taken in a context of cumulative effects. Indeed competition concerns can arise in a context where there are strong suppliers as price setters that have as counterparts strong buyers. In such cases

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43 "*Retailer and private labels: asymmetry of information, in-store competition and the control of shelf space*", Pieter Kuipers, in "*Private labels, brands and competition policy*", Oxford University Press, 2009.

44 Retail representatives mentioned such pricing strategies of private labels compared to A brands.

there may exist a common interest between such powerful operators to maintain a market status quo, which de facto forecloses weaker competitors (actual or potential weaker suppliers/ buyers). This can be particularly pertinent in a situation where modern retailers have developed business models that include the marketing of private labels and where strong suppliers have developed "must-carry" brands tie or bundle several products within a category. Since shelf-space is limited, there may be an interest from both sides in allocating and maintaining that space for private label products, on the one hand, and a limited number of brands (mostly 2 or 3) marketed by leading food industry products, on the other hand. This may entail foreclosure effects as regards actual or potential suppliers of weaker secondary brands. This may also possibly foreclose weaker buyers who cannot build the critical purchasing mass so as to secure supply of such brands at as advantageous prices as their larger competitors.

Market operators and NCAs have expressed concerns related to the potential long-term anti-competitive effects of private labels on consumer choice, quality of products and pricing of food in general.

More solid information would be needed in this context in order to analyse the long-term effects of the increased use of private labels in a context in which retailers are increasingly viewed as competitors of their suppliers. When the extensive use of private labels leads a retailer and its competing leading brand supplier to coordinate their respective pricing and assortment strategies, in-store competition between brands may be restricted and, absent a sufficient competitive pressure from other retailers, consumers may suffer from higher prices or reduced choice for the relevant products.

However, since private labels are primarily the expression of a competitive dynamic which may contribute to rationalizing the food supply chain, more robust data would need to be gathered before reaching any conclusion on possible negative effects they may entail

4.2.3. Other retail driven practices: Exclusive supply agreements, Certification schemes, Slotting allowances, Category management

Exclusive supply is an extreme form of limited distribution in as far as the limit on the number of buyers is concerned: the agreement specifies that there is only one buyer inside the Community to which the supplier may sell a particular final product. Notwithstanding possible economies of scale in distribution as potential efficiency enhancing effect, the main competition risk of exclusive supply is foreclosure of other buyers[45]. The importance of the buyer on the downstream market is the main factor which determines whether a competition problem may arise[46]. If the buyer has no market power downstream, no appreciable negative effects for consumers can be

[45] Exclusive supply is exempted from the applicability of Art. 81(1) EC up to 30 % market share of the buyer, even if combined with other non-hardcore vertical restraints such as non-compete, see Regulation 2790/1999.

[46] The market share of the buyer on the upstream purchase market is also important for assessing the ability of the buyer to "impose" exclusive supply which forecloses other buyers from access to supplies.

expected. During discussions, no market operator reported particular concerns with exclusive supply agreements. The supply sector has not provided any information with respect to potential situations where suppliers would be tied to one distributor. Retailers concur to this opinion and have stated that they are not confronted to shortages of supply deriving from possible foreclosure problems resulting from exclusive supply agreements. Some NCAs have dealt with exclusive supply-related cases (e.g. Austria, Hungary), but such issues have not been at the forefront of NCA activities and have not resulted in the sanctioning of competition law infringements.

Certification schemes are required by retailers so as to certify the quality, safety and origin of food products that will be then marketed through retail outlets. Whilst their usefulness responds to a number of policy goals (e.g. health and safety), such schemes are often quoted by farmers/ food producers as representing a significant financial and administrative burden for them (given the multitude of such schemes and their sometimes overlapping requirements). Retail-driven certification schemes could indirectly compel suppliers to sell to only one buyer. The potential competition risks that this would entail as a consequence would be possible foreclosure of competing buyers. However, buyers interviewed stated that they do not have any shortage of supply concerns. This means that no foreclosure of competing buyers would seem to exist in practice stemming from the existence of certification schemes. Furthermore, NCAs have not mentioned having encountered concerns deriving from such schemes. It must also be recalled that such certification requirements are most frequently imposed upon the entire food supply chain by national and EU regulations for a number of policy reasons, such as the protection of health and safety.

Initially, the term "***slotting allowances***" was used to describe payments made by suppliers to retailers to support the introduction of new products. The term has gradually evolved to represent the payments made by suppliers for premium product placements on shelves and in-store. In any retail outlet, shelf space is limited and different positioning on shelve can influence the success/ failure of a product. The use of upfront slotting allowances may in many cases contribute to an efficient allocation of shelf space for new products. As seen previously, suppliers compete with each other and with the retailer's private label products for shelf space. The store shelves are therefore among retailers' most important assets in their relationships with suppliers. Retailers usually demand special compensation from suppliers for shelf allocation/ positioning on shelf. Suppliers also use slotting allowances to their benefit so as to ensure an optimal positioning for their products. Slotting allowances are therefore fixed fees that manufacturers pay to retailers in order to get access to their shelf space. The use of such practices may raise competition concerns in several circumstances. Slotting allowances may result in anticompetitive foreclosure of other retailers, in particular when these payments induce the supplier to channel its products through only one or a limited number of retailers. Possible foreclosure of competing suppliers can also occur if some suppliers are not able to pay these allowances with the risk of remaining out of the shelves. In terms of pricing, suppliers may recoup the losses incurred by these payments by raising the prices of their products, driving consumer prices upwards. Furthermore, retailers may not pass onto consumer the financial advantages obtained by suppliers, in the form of cheaper products. Such practices may also lead to less consumer choice. However, all such competition concerns need to be assessed on a case-by-case basis, taking into account factors such as the market power of suppliers and buyers. To date NCAs have only to a limited extent dealt with such issues.

Category management agreements are agreements by which, within a distribution agreement, the distributor entrusts a supplier (the "category captain") with the marketing of a category of products including in general not only the supplier's products, but also the products of its competitors. The use of category management ensures that the optimal quantity of products is presented timely and directly on the shelves. It contributes to achieve economies of scale by allowing suppliers to better anticipate demand and tailor their promotions accordingly. The extent to which category captains are used by retailers can vary widely across firms and product categories. At one extreme, some retailers do not use category captains at all, even though they undertake category management processes internally. Other retailers rely on a single supplier for advice about the management of the category and check this advice against the recommendations of other suppliers and their own data. At the other extreme, some retailers might delegate all category management responsibilities to the captain for one or more categories. Whilst category management provides the opportunity for major cost savings in the distribution of consumer goods, it also raises potential competition related concerns. A category captain can use its role to exclude rivals or otherwise to increase significantly rivals' costs of competing. A category captain can also use his role to facilitate collusion among rivals in the category or between competing retailers that the category captain serves. To date NCAs have only to a limited extent dealt with such issues.

The current exercise led to the conclusion that exclusive supply agreements are not a major concern for operators and NCAs.

To the extent that no foreclosure concerns are detected, considerations related to the proliferation of certification schemes and to the objectives they seek to achieve are best tackled by policy instruments other than competition tools.

Slotting allowances are currently perceived by the majority of operators as a requirement of modern trade and as an intrinsic characteristic of the business model of modern retailers. Overall, it would seem on the basis of the information gathered to date that slotting allowances are not among the major causes of concern to operators in the food supply chain, nor among the main concerns of NCAs.

Similarly, category management related issues do not appear to be of major concern to the operators that intervened in discussions, or to NCAs.

4.3. Supplier-driven practices

In order to have an as complete view as possible on practices which may circumstantially affect competition on food markets, a number of supplier-driven practices are detailed below. Most of such practices may occur in a context where suppliers have significant market power.

4.3.1. Supplier cartels, resale price maintenance

In terms of competition law enforcement related to the food supply chain, it seems that the last years have been characterised by recent supplier-side cartel activities that have arisen on food markets. Based on information presented by operators and on data continuously gathered by NCAs it appears that the supply sector has been prone to collusive agreements (e.g. pasta and bakery in Italy, canned fruit and milk in Greece, poultry in Czech Rep., beef processors in Ireland, milk processing in Lithuania, etc.). A relatively high number of other such cases are currently being investigated, at national and EU level. NCAs have also dealt with a number of resale price management agreements (e.g. olive oil in Spain, frozen vegetables in Greece, soft drinks in Czech Republic, chocolates in France etc…).

Cartel agreements have been rapidly identified, investigated and addressed by Competition Authorities, both at national and EU level. This cartelisation phenomenon may, to a certain extent, have contributed to the artificial maintenance of high food prices. NCAs have also promptly addressed restrictive resale price maintenance practices. This highlights that NCAs are well-equipped to tackle such "classic" competition concerns on national markets.

4.3.2. Single branding obligations and tying

From the discussions held with stakeholders, it seems that practices amounting to single branding (in the form of an obligation/ incentive scheme which makes the buyer purchase practically all his requirements on a particular market from only one supplier) do not occur frequently on food supply markets. Under certain limited circumstances, tying obligations may help to produce efficiencies arising from joint production or joint distribution. Competition concerns relative to such agreements would relate to reduced in-store inter-brand competition[47], amounting to lesser choice for consumers and possibly higher consumer prices. On the other hand, stakeholders have expressed concerns relative to practices amounting to tying, full range-forcing and bundling which seem to occur frequently in the food sector, especially in cases involving very popular or must-carry brands. This would allegedly occur when suppliers of very popular brands make the sale of these products to retailers conditional on retailer purchasing a bundle of products, which also comprise less popular products. Under certain circumstances, and taking into account the market position of the supplier, such practices may entail competition concerns since they may have foreclosure effects, rising rivals' costs and potentially leading to higher prices. Hardly any NCA has identified complaints received or actions taken with respect to single branding or tying obligations (e.g. ice-cream market in Portugal, herbs and spices market in Germany, or ongoing investigations in Bulgaria). An explanation of this could be that enforcement actions of NCAs in food and retail markets have focused to a larger extent, as above mentioned, on other hardcore practices either of horizontal (e.g. cartels) or vertical (e.g. resale price maintenance) nature.

Tying and bundling concerns are frequent in the food sector. Since Competition Authorities are well equipped to tackle such concerns, it should be recommended that they strengthen their vigilant monitoring and enforcement activities in this respect throughout the EU.

[47] See Guidelines on Vertical Restraints.

4.3.3. Joint selling

Commercialisation agreements occur with relative frequency in the context of joint selling agreements framed within POs/ farmers cooperatives in the non-processed food sector. Such agreements may entail significant efficiencies linked to economies of scale in distribution. They are also expressly acknowledged in the framework of the Common Agricultural Policy as a vehicle for strengthening producer cooperation. The principal competition concern about such joint selling agreements is price fixing between competing producers. This may eliminate price competition between parties and also restrict the volume of products to be delivered by participants. Such agreements are caught by the provisions of Art. 81(1) EC, even if parties are free to sell outside the agreement. However, it should be noted that, if the cooperation between parties is not limited to joint selling, but also involves upwards joint production (production joint ventures) or joint integration of assets to meet the demand of customers in an aggregated manner (e.g. fresh product assortments), the fixing of prices to immediate customers might be regarded as an ancillary restriction. Such agreements may thus raise questions in terms of the limits of joint selling, taking into account the specificities of the agricultural sector on one hand, and competition policy rules on horizontal agreements on the other. It appears that in some Member States such questions currently arise (e.g. milk in Estonia, vegetables in The Netherlands, citrus in Spain).

Further reflection would be needed by the Commission, together with Member States' Authorities on the interface between agricultural policy and competition rules, in light of the critical debate regarding the role of POs, cooperatives and other forms of horizontal cooperation between suppliers.

Such cooperation, subject to the limits and conditions laid down by competition rules, may help agricultural entrepreneurs to devise market oriented strategies, aggregate supply and integrate assets, as well as benefit of efficiency gains and reach synergies that may ultimately benefit consumers.

4.3.4. Hindrances to parallel trade

In the context of the current exercise, a number of concerns were reported, alleging that certain suppliers of processed food, and in particular of branded products, have set up exclusive distribution networks that prevent parallel imports. In this sense passive sales by appointed distributors to clients located in the territory of another distributor would be prohibited or seriously hindered. NCAs are also aware of such concerns.

4.4. Other practices linked to unfair trading

One of the main findings of this exercise is that, when asked to comment about the practices that they perceive as most seriously affecting their business, all of the suppliers mentioned practices related to unfair trading, rather than to breaches of EC competition rules. Such buyer practices amount, among others, to late payments, unilateral changes in contracts or ad-hoc changes to contractual terms, payments demanded in return of no real service being provided, upfront sums of money perceived as entry fees to negotiations, etc. A number of suppliers have conveyed the message that such practices amount to abuses of bargaining power from their stronger buyers, who are often perceived as gatekeepers to consumer markets. This means that suppliers are de-facto compelled to accept the conditions imposed by their retail counterparts who have therefore the capacity to strike advantageous deals from their suppliers, to the detriment of the profit margins of these suppliers.

As discussed in detail in Section 4.1 above, it is important to recall that EC competition rules are not in principle designed to address the above-mentioned practices, which in most cases amount to contractual imbalances and therefore pertain to the field of contractual or commercial law, as regulated by the laws of the different Member States. The above-mentioned practices do not prima facie entail direct consumer harm, but are rather revelatory of commercial tensions deriving from different bargaining positions. Such commercial tensions may be symptomatic of certain malfunctions in the food supply chain due to the difference between what supplier perceive as a “just price” for their products and the real price they obtain from the negotiations with their buyers. In this context, the concept of “just prices” becomes related to the socio-political sphere and departs from the economics of competition policy. Considerations related to “just prices”, if at all needed, should be tackled by national and possibly EU regulators on the basis of social interests, innovation and competitiveness of the EU food supply chain on world markets.

Contractual imbalances associated with unfair trading practices are tackled through policy tools other than competition law instruments, such as, for example, contract law, common agricultural policy, SME policy, or unfair commercial practices laws. Most Member States have already enacted specific laws dealing with such issues and have established an adequate legal framework in the context of their commercial laws. EC competition law is not concerned with particular outcomes of contractual negotiations between parties unless such terms would have negative effects on the competitive process and ultimately reduce consumer welfare. It is not the aim of EC competition rules, as currently devised, to interfere in the bargain struck between contractual parties, in the absence of proven competitive harm.

Considerations related to fairness concepts, if at all needed, should be tackled by national and possibly EU regulators on the basis of social interests, innovation and competitiveness of the EU food supply chain on world markets.

5. CONCLUSIONS

Competition policy plays a key role in maintaining a level playing field in the food supply chain and ensuring that competition is not distorted in the food sector by any market player operating within the chain: producers, processors, traders, wholesalers and retailers. For this reason, the roadmap set out in the Commission Communication on "Food Prices in Europe" of December 2008 called for a pro-active monitoring of the food supply chain and, where necessary, for a vigorous and coherent enforcement of competition rules in food markets by the Commission and National Competition Authorities.

As a follow-up to this Communication, and in order to implement its roadmap, the Commission launched a fact-finding exercise involving stakeholders and National Competition Authorities with a view to better understand the competitive structure, interplay of actors and degree of competition in food

markets. Firstly, the Commission held meetings with relevant European associations of producers, processors, traders, wholesalers and retailers representing several food sub-sectors, so as to obtain insights into recent economic developments and specific factors influencing competition within different food supply chains, including cereals and breakfast cereals, milk and dairy, livestock and meat processing, pasta, confectionery, branded foodstuffs and beverages, fruit and vegetables, oils and oilseeds, sugar, poultry and eggs. Secondly, given the national or regional scope of food retail markets, the Commission strengthened its dialogue with National Competition Authorities on food related issues in the framework of the European Competition Network (ECN). In particular, ECN members exchanged information on recent enforcement, monitoring and advocacy initiatives undertaken at national and EU level, as well as on policy issues raised by recurrent commercial practices which may affect the functioning of food supply chains.

As evidenced by the significant efforts deployed over the last two years by competition authorities, ECN members have granted due priority to case by case investigations, as well as to broader inquiries regarding food markets, which has led to the finding of an appreciable number of serious infringements, such as cartels and resale price maintenance cases. These infringements were swiftly remedied through cease-and-desist orders, accompanied where appropriate by substantial fines. Such cases spanned a variety of product markets, such as the dairy, milk, flour, bakery, pasta, eggs, poultry, beef, vegetables, fruit, olive oil, chocolate and herbs markets. A number of abuses of dominance cases targeted at the food industry have also been assessed in different Member States but remained limited in scope. Where National Competition Authorities applied EC competition law, the Commission ensured a consistent and coherent application of the rules.

Moreover, the information shared with the Commission by stakeholders and National Competition Authorities confirms the view that, depending on the type of products involved, food supply chains are characterized by a high degree of complexity and diversity in terms of market structures, number of intermediaries operating at different stages within each chain, size and market power of incumbent producers and retailers, degree of concentration, entry barriers and other factors liable to affect competition in the relevant markets. Such product-specific structural differences are further amplified by diverse market conditions prevailing across Member States. To reflect such diversities, an important distinction should be made between supply chains for non-processed food (agricultural produce, perishable) and processed food (stockable).

Overall, supply chains for non-processed food are generally characterized by atomized suppliers and stronger buyers who are in most cases intermediary operators, and more rarely retailers. Such buyers are often unavoidable trading partners for the weakest producers. Given farmers' difficulties in aggregating their output with complementary products so as to supply retailers directly with the required product ranges, such an aggregation function is still largely being performed by intermediaries who, however, operate mostly at local level and sometimes at sub-optimal scale. Where it still exists, such an overlap of several layers of wholesaling may result in structural inefficiencies which, in turn, may influence negatively price transmission to end consumers.

By contrast, within supply chains for processed food, negotiations generally take place directly between producers and large retailers. While suppliers of leading brands tend to hold a relatively strong bargaining position vis-à-vis retailers, a significant number of SMEs active in agro-food industries also enter into direct supply relationships with retailers, which adds to the complexity of the competitive interactions between producers and retailers within supply chains for processed food. These transactions may entail restrictions of competition depending on the nature of the agreements concluded between the parties and on whether the supplier, or the buyer, has sufficient market power to maintain prices at a supra-competitive level to the detriment of consumers.

Most stakeholders concur in saying that competition between large retailers is generally fierce, both between traditional supermarkets and increasingly between different retail models, including discounters. This has translated into relatively low net operating margins for retailers and has contributed to cheaper prices for consumers on the long term. It should be emphasized however that retail market structures strongly differ from one Member State to another, due inter alia to different regulatory constraints and local traditions, which implies that in certain countries or regions retail markets may display a lower degree of competition between distributors.

Against this backdrop, it appears that the ability of suppliers and/or buyers to exercise their market power in a manner that would distort competition to the detriment of consumers depends, primarily, on the type of supply chain and on local market conditions which, in turn, are the result of structural factors and regulatory barriers specific to each Member State. National Competition Authorities are therefore well placed to tackle possible restrictions of competition which could affect the functioning of certain food supply chains.

In accordance with its Communication of December 2008, the Commission has also examined the relevance of certain commercial practices both in terms of their likelihood to arise and their ability to raise competition concerns within the relevant food supply chains. In addition to classic cartels and resale price maintenance, other practices were quoted by certain stakeholders as deserving special attention by Competition Authorities in appropriate cases, and requiring a careful balancing of efficiency enhancing and potentially anti-competitive effects. Such practices include joint commercialization agreements, tying and bundling, joint purchasing agreements (buying alliances) and the increasing use of private labels. National Competition Authorities converge in recognizing that a case-by-case analysis is required for such practices, based on the specificities of local market conditions.

In supply chains for non-processed food, joint commercialisation or joint selling agreements occur with relative frequency in the context of producer organisations. Such agreements may raise concerns for competition when they lead to price fixing. However, when they entail an integration of complementary assets, they may help the supply of agricultural produce to become more efficient by cutting some of the intermediary stages that lengthen the supply chain and drive prices upwards. Competition Authorities can therefore assess such agreements in a way that can help farmers to grasp the efficiencies of their cooperation, whilst ensuring that benefits are passed onto end consumers.

For processed food, tying and bundling, often involving branded goods marketed by major industrial suppliers, are quoted by certain stakeholders as potential sources of concern. In certain situations, such practices may lead to anticompetitive foreclosure effects in the tied market, the tying market, or both at the same time, and may also lead to higher prices for consumers. In addition, foreclosure of competing suppliers may have a knock-on effect on the revenues of upstream producers of agricultural products by strengthening the market power of their industrial customers and, as a result, by weakening their capacity to negotiate prices with the latter. At the same time, however, tying obligations may help to produce efficiencies arising from joint production or joint distribution, and may also help to ensure a certain uniformity and quality standardisation. In absence of market power, such efficiency gains could be passed on to consumers in the form of lower prices or better products.

Additionally, certain stakeholders also refer to the development of transnational buying alliances, pointing out that, in certain circumstances, such forms of cooperation between large retailers may reduce the participants' incentives to expand into each other's domestic markets or may contribute to a standardisation of their purchasing policies, which could have a negative longer term impact on product variety and/or the ability of food suppliers to innovate. While joint purchasing agreements may give rise to important efficiencies, the extent to which such benefits are passed on to consumers depends on the specificities of each market, as well as on the scope and type of cooperation that takes place within each buying alliance.

Lastly, another concern raised by some stakeholders is the increased use of private labels enabling retailers to compete with established brands. In principle, private labels provide retailers with a way to satisfy consumer demand for cost-efficient alternatives to branded products, while ensuring value for money and quality products. Also, they are the expression of a competitive dynamic which may contribute to rationalizing the food supply chain by allowing retailers to enter into direct procurement and purchasing negotiations with their suppliers and participate in the productive process. However, when the extensive use of private labels leads a retailer and its competing leading brand supplier to coordinate their respective pricing and assortment strategies, in-store competition between brands may be restricted and, absent a sufficient competitive pressure from other retailers, consumers may suffer from higher prices or reduced choice for the relevant products.

It stems from the above that, as regards these practices, no sweeping generalisation can be made and a case by case analysis is necessary in order to establish the existence of a possible competitive harm. Competition Authorities will continue to ensure a rigorous enforcement of the rules in all cases where, after a careful balancing of efficiency enhancing and potentially anti-competitive effects, it appears that a significant harm for European consumers could result from these practices, be it at Community or national level.

For this purpose, and as explained above, National Competition Authorities play a key role in ensuring the application of competition rules to anti-competitive practices affecting both non-processed and processed food markets. Given the national or regional scope of such markets, the Commission considers that the European Competition Network (ECN) is the appropriate forum to further

develop an efficient and coherent policy to ensure sound competition in food markets throughout the EU. Therefore, further improvements in the cooperation between Member States and the Commission within the ECN will facilitate the development of a common approach to relevant competition issues, the swift identification of problematic cases and an efficient allocation of tasks amongst the ECN members.

In order to make the best use of the resources and competition expertise of the ECN, the Commission has invited National Competition Authorities to consider the possibility of creating where appropriate joint working teams dedicated to the analysis of specific practices and markets which may be critical for the functioning of the food supply chain. Going beyond the mere exchange of information, this approach would encompass monitoring, advocacy and enforcement actions geared towards specific product markets and coordinated by the Commission with a view to steering the collection of relevant information, identifying best practices for the prosecution of possible infringements. Through these comprehensive efforts, the Commission and National Competition Authorities should be able to better detect endemic problems specific to food markets and promptly coordinate future actions, so as to improve the functioning of the food supply chain to the benefit of European consumers.