



EUROPEAN COMMISSION

Directorate General Internal Market and Services

SERVICES

Free Movement of services and establishment II: retail and information services

Brussels, 1 December 2010
MARKT E2/CH/jz – Ares (2010) 983110
GS/050.200/0005.08

SUMMARY RECORD

OF THE CONFERENCE "TOWARDS A FAIRER AND MORE EFFICIENT RETAIL SECTOR IN 2020" 27 OCTOBER 2010

Background

The Retail Market Monitoring Report adopted by the Commission on 5 July 2010 identified a plethora of issues that are potentially preventing the retail sector from reaching its full internal market potential. The Commission organised the conference to stimulate a discussion on the fundamental issues that the retail sector is faced with and to provide the opportunity for all interested parties to present their view and prioritised the issues to be addressed for a sustainable, viable and vibrant retail sector. The debate was structured around four major themes: accessibility to affordable retail services, sustainable retail solutions, commercial practices between businesses and social challenges. The broad range of speakers facilitated a stimulating and interactive discussion throughout the day.

The conference was moderated by Guido Berardis, Director, DG Internal Market and Services and Jean Bergevin, Head of Unit E2, Free movement of services and establishment II: Retail and information services.

Commissioner Michel Barnier opened the conference, making the link between the Retail Market Monitoring Report and the soon-to-be-adopted Single Market Act, the focus of which is on generating growth and providing opportunities in a social market economy. The retail sector is particularly appropriate for the new multi-dimensional approach for the single market. Representing 4% of Europe's GDP and providing jobs for 70 million people, a better functioning and more inclusive retail sector will make the sector a driver for growth and employment. Commissioner Barnier stated that the report opened a debate on a number of issues. The consultation yielded many contributions, which are now being assessed, together with the results of the conference debate. Accessibility, one of the themes of the day, is important. By way of example, the number of small local grocery shops in Europe has gone down by nearly 4% between 2004-2009, which impacts on the aging or vulnerable segments of the population and on those living in isolated areas. In the area of e-commerce development is rather weak. To an extent, e-Commerce can make up for the lack of physical accessibility of shops. Another theme for discussion centres round sustainability. Measures to encourage green growth throughout the supply chain are needed, as are

measures for more transparent, ethical and viable labelling which would drive consumers to more sustainable consumption patterns. Small companies also have several requirements to meet, such as certification. Finally, reported unfair commercial practices need to be looked into inter alia because uncoordinated policy responses by the Member States hinder the internal market.

Jonathan Faull, Director General, DG Internal Market and Services explained the objectives of the Commission for a fair and efficient retail sector looking to 2020, the challenges ahead and the obstacles hindering innovation, accessibility and the move to more sustainable retail business model which are undermining productivity. These obstacles exist at EU, national and local level and need to be resolved. The retail market is a major driver of other service sectors like logistics or commercial communication and also encompasses e-commerce. Europe needs a well functioning sector, and one which provides consumers with affordable necessities. It is a sector that can drive the transition to a more sustainable economy and to more sustainable consumption patterns.

Anna Maria Corazza Bildt, Member of the European Parliament, responsible for drawing up Parliament's response on the monitoring of the retail market, expressed that her vision is creating jobs and developing growth. The adoption of the Single Market Act is highly welcomed because Europe needs to bring back the real economy into the policy debate. The Commission report provides the groundwork for work in the EP on this sector. MEP Corazza Bildt took the opportunity to welcome dialogue with interested stakeholders in compiling a concise, concrete and action-oriented report because, as she expressed, addressing the identified problems is a shared responsibility. The report will complement the Commission's work. It will look into issues not addressed and where action can be taken at Community level. It will identify concrete examples of existing obstacles. An ongoing problem is the restrictions which still exist in the free movement of goods. Restrictions imposed on price of products or on the actual selling of a product will be looked into, as will issues concerning private labels and unfair competition. Transparency is another issue to be addressed as there are price differences in Member States and between Member States. There is also the issue of excessive fees charged for cross-border payments. As to e-commerce, the debate is about how it can contribute to address the problems of accessibility and proximity. The report will also take up environment-related issues, such as packaging and waste disposal. It will not go into issues concerning local urban planning, given that its focus will be on what is needed at EU level. Stakeholder input is also encouraged when it comes to regulation, self-regulation or good practice. A workshop will be held in the EP internal market and consumer protection committee (IMCO). Following today's discussion, MEP Corazza Bildt stated she will seek to go more in-depth into issues. The report is envisaged to be adopted in the EP in March 2011.

Session 1: Accessibility to affordable retail services

The panel presentations focused on access to different retail outlets, development of e-Commerce and commercial property and urban planning. It became clear from the debate that both large and small outlets are warranted and that the needs of consumers in terms of choice, price and location should also be considered when it comes to commercial property development. Both types of outlet need to be competitive and sustainable, at national and European level. Whilst minimum regulation is called for, the EU is called on to ensure that regulations look at small shops not just large ones, and at cooperatives as well. When it comes to e-commerce, although websites are visited by consumers, only a small percent go on to buy online.

Jean Bergevin introduced the first session on accessibility, which is essential for citizens in terms of choice, affordability and sustainable products.

Michel Pazoumian, General Delegate, Federation for urbanism and development retail (France) focused on commercial urbanisation. It cannot be restricted to foodstuffs sold through large establishments like supermarkets or discount stores but must include smaller shops like specialist or local food shops, bookshops or restaurants which have differing objectives to the larger ones. Michel Pazoumian highlighted prevalent problems such as commercial density in peripheral town areas which can only be accessed by motor vehicles or the lack of a diversity of retail offer in town centres. Ongoing problems related to rent fluctuations were also raised, with some businesses being faced with higher rents in periods of limited economic growth. A clearer role for the State and elected representatives in urban planning is deemed necessary, so as to make better use of land and its development. The needs of consumers have to be considered in commercial development so as to provide broad access and diversity of the retail offer. There should be minimum regulation and this is the role of the State and its elected representatives. Those concerned with development should be better organised, such as elected representatives, developers and investors. In the area of e-commerce, although all the members of this federation operate a website, only 25% have a selling site. In the textile sector for example, although around 50% of physical consumers visit the online site, just 2% shop online compared to 15% who do so in the shop.

Tara Buckley, Director General, Retail grocery dairy and allied trades association (Ireland) presented the role of small shops and the need for such shops, which provide a diverse retail market. They are faced with problems of sourcing. However independent players can survive. In Ireland these enjoy 38% of the market share. Access to local shops and to local food is needed as is a route to the market. Independent supermarkets are at risk in this respect. Tara Buckley called for European legislation that takes small shops into consideration not just large ones, for the removal of red tape, for retail planning to respect green belt areas and consider potential problems such as parking and for small shops to remain affordable. More engaging communities are called for, ones that engage large and small shops. As regards out-of-town developments Tara Buckley expressed that big and small shops should be built together in retail town centres. Whilst e-commerce is deemed important, it is not felt that this can ever replace the experience of physical shopping.

Rodrigo Gouveia, Secretary General, EURO COOP aisbl explained the nature of consumer cooperatives which enable consumers to be the owners of the shops. EURO COOP consists of small and large shops, with around 3000 points of sale across Europe. Such cooperatives also mean that any initiatives undertaken act on the principle solidarity, when addressing problems such as accessibility. Another positive aspect for EURO COOP

is that revenue generated by the cooperatives remains in the respective region. EURO COOP called for regulation that creates a level playing field for cooperatives. As regards e-commerce, for Rodrigo Gouveia, although it may provide some solutions it is limited in the area of perishable goods like food, which need special conditions for storing and transport. He also considered that e-commerce would mainly grow in cities without necessarily bringing solutions for the rural areas, where the population does not always have access to internet or has little information on how to order products on-line.

Discussion: One of the concerns raised by a number of the participants is the need for greater balance between large and small businesses, as both types of business are needed by consumers. These businesses are not necessarily in direct competition. It was remarked that large supermarkets do enjoy market power and are therefore able to get competitive prices. However, all market players should have the opportunity to be competitive and to be able to offer choice to consumers and at competitive prices. Some participants expressed that it is not solely a question of survival of small shops but of their sustainability. Others raised the issue of protection of small players vis-à-vis market liberalisation. Another point raised is that obstacles related to accessibility also concern labour law. It was remarked that prices are not made only by suppliers or by the market, but also by employers, who may not always fully respect labour laws. Direct sellers are also faced with obstacles in seeking to operate across borders. In this respect, Community cohesion is deemed important. It was also pointed out that some consumers want to shop in cheap-priced outlets or in specialised small shops irrespective of their income. Minimum regulation at national and European level is called for especially in times of economic crisis. There is a problem of unfair commercial practice in Europe.

MEP Corazza Bildt expressed understanding that there are issues in terms of large versus small businesses and recalled the commitment of the EP on the implementation of the Small Business Act.

Jean Bergevin recalled the importance of franchising. It is a complex issue in the area of e-Commerce but nevertheless an interesting one.

Session II: Towards more sustainable retail solutions

The second session discussed i) the role of the retail sector and sustainable choices by consumers, ii) quality control systems and ethical schemes, iii) the product life-cycle approach and carbon footprint, iv) access to commercial communications and impartial information. Clearly, environmental responsibility is a general point of concern and whilst the retail sector does share responsibility in this domain, it is felt that more needs to be done to inform and raise consumer awareness including as regards ethical trade. Labelling is an area which requires due attention; information needs to be transparent, comparable and understandable and include geographic indication. Retailers should seek to collaborate more with manufacturers for sustainable products to reach the market. Companies are undertaking voluntary initiatives to take on their share of environmental responsibility.

Jean Bergevin opened the session by recalling that price is an intrinsic element in addressing sustainable retail solutions and sustainable consumption patterns. The issue lies in directing consumer interest to the environmental aspects of products.

Monique Goyens, Director General, BEUC, the European Consumer's Organisation focused on how to green consumption. Retailers share responsibility in helping consumers become greener, as they are the interface between manufacturers and consumers. Buyer behaviour can be influenced through the prominent placing on shelves of sustainable products. Retailers can put pressure on manufacturers for more eco-friendly products. Monique Goyens also sees a role for retailers on energy labelling which is becoming more complicated. Staff should be able to explain such information to customers. Information needs to be clear, comparable and credible. An example is food packaging labelling and logos, as the information is not easily understandable. The proliferation of green labels is an area that needs to be addressed due to misleading information, as are stand-alone carbon footprint labels. Monique Goyens urged for products which are not sustainable to be removed from shelves, phasing out should be obligatory for retailers but they also should have back-up on such initiatives. Lastly, sustainable consumption issues should include ethical working conditions and social considerations.

Hervé Gomichon, Quality Director, Carrefour Group (France) presented initiatives embarked on to be more environmentally responsible, stressing that cooperation with manufacturers is important because safety is also an issue. One initiative by Carrefour is the creation of a common standard to get certification. Although it is voluntary there are criteria to be met on a yearly basis. Carrefour has a range of products which are eco-friendly. Another point stressed is the need for more education in this domain at national level. Aspects that Carrefour is directly interested in at European level concern standards, information and training. Free circulation, mutual recognition and differing regulations are three points stemming from the Report that need to be addressed.

Sergi Corbalán, Coordinator, Fair Trade Advocacy Office explained the ongoing focus of Fair Trade on empowering marginalised producers and workers in the South. Sergi Corbalán underlined that there are repercussions for the South of the retail market upstream. Recommendations to the Commission include encouraging transparency across the supply chain, tackling excessive 'buyer power' and anti-competitive practices, looking at how markets function and buying groups, raising consumer awareness and assuring consumer confidence in ethical trade. An ethical fact-finding process on areas related to ethical claims, including consumer attitude, was undertaken with other international organisations between 2007-2010. Sergi Corbalán informed that a main conclusion of the process is that ethical claims need to be backed-up by a robust system, stressing the importance of good initiatives that either compare or seek to define criteria for ethical claims.

Discussion: The TESCO representative informed participants on their voluntary ethical initiatives. The company has invested €25 million in research on green consumption, it is committed to reduce its carbon footprint by half, working with suppliers to reduce this by 30% by 2020, it has saved around €100 million per annum through energy efficiency initiatives. TESCO agrees on the need for a common methodology for carbon labelling.

The discussion also focused on the need for more information and greater transparency for consumers, including on where the product originates from. The lack of geographical indication on labels or logos was deemed unfair by certain participants. Another unfair practice raised was the request by certain distributors for a fixed quantity of products at a stipulated price (so-called inverted auctioning). MEP Corazza Bildt acknowledged the importance of food labelling, and informed that though her report will not address the food sector, labelling is being addressed by the EP in other initiatives.

Session III: Commercial practices in business-to-business relationships

The third session focused on alleged unfair practices, their impact on sustainability and innovation and regulatory or other models to address these issues. Prevailing problems concern business relationships, small businesses, e-commerce, copycatting and sourcing. Voluntary codes of conduct and/or enforcement of existing national legislation are viewed as potential solutions, with emphasis being made on having measures in place which are implementable and enforceable. There is a diversity of national laws and potentially protectionist national legislation in this domain. Copycatting is viewed as a manifest malpractice, affecting investment of manufacturers and misleading consumers. As regards e-Commerce, this should complement offline commerce and increase consumers' choice. A recurring problem in both offline and online is price; small businesses are forced to compete on price rather than quality and are also faced with geographic price discrimination.

Jean Bergevin introduced the panel discussion on commercial practices, which is a major issue and which should be addressed in a horizontal manner. The report clearly suggests there are potential abuses of commercial practices throughout supply chains and not just in the food supply chain. Other issues are the lack of whistle blowing and enforcement.

Alain Galaski, Director General, AIM, European Brands Association prescribed fairness as key for businesses. Research has provided evidence that fairness within a company and in its business relationships contributes to competitiveness because it creates trust, cooperation and business continuity. Being fair also means being a responsible company, especially if it has invested in brand equity. Good practice is an important factor in combating unfair practices. AIM adopted a set of principles of good business practice based on 1) mutuality, whereby both parties can contribute to and benefit from the commercial partnership and 2) maximisation of consumer value, with manufacturers and retailers collaborating for a more sustainable and efficient supply chain. For Alain Galaski, look-alike packaging (copycatting) is a manifestly not an alleged unfair practice. A level playing field is called for where brand manufacturers are in direct competition with retailer customers because situations exist where retailers use the inside information a manufacturer would have shared on product development to copy the product and even place it on the market before the original product is launched. It is an example of malpractice affecting a manufacturer's investment and misleading consumers. AIM wants guidance at EU level because the diversity of measures at national level risks fragmenting the single market. Voluntary initiatives have been less effective, however, regardless of the method, enforceable proportionate measures are warranted, whether through legislation or codes of conduct. Businesses, large or small, have an interest in eliminating unfair practices.

Xavier Durieu, Secretary General, Eurocommerce does not favour a small versus large company debate. Commerce generates 11% of EU GDP and employs 31 million persons. It involves a range of inter-connected activities, technologies and services. Success of a business depends on meeting the needs of consumers and this encompasses price and product range. Retailers also provide services as part of the contractual relation, such as logistics, warehousing and marketing. Xavier Durieu concurs that some business practices are illegal throughout the supply chain, a case in point being the refusal to disclose sale conditions. A second point is that the market power of manufacturers often exceeds that of retailers. However, such negotiating power differences exist in any contractual relationship and should not per se be condemned. A third point relates to fees, for example for the delivery of services, that should not be deemed to be unfair. As regards regulatory issues

Eurocommerce is concerned with the business relationships in the new Member States where legislation is protectionist. The Commission is called on to undertake a comparative analysis of national legislation which may be hampering the internal market. Enforcement of legislation is viewed as key to addressing unfair practices.

Stefan Krawczyk, Senior Director and Counsel Government Relations Europe, eBay presented the company, an e-Commerce platform bringing together buyers and sellers and enjoying around 45 million users in Europe alone. The retail market today has to be considered in a larger context that includes online and offline commerce, with e-commerce being an intrinsic part of retail. The combination of both types of commerce increases transparency and consumer choice. Small companies are the turbo of retail, they complement their offline offer through e-commerce. Around 350,000 small companies use eBay, some of which only operate online and some solely through eBay. However, certain contractual practices by manufacturers and distributors are choking employment and curtailing cross-border business, especially for small businesses, rather than encouraging the increasingly diversified distribution channels. Geographic price discrimination and inappropriate use of exclusive distribution agreements are identified as barriers in the Commission's report on cross-border business-to-consumer e-Commerce. Increasingly eBay is receiving reports from sellers facing contractual restrictions on their online selling, such as imposed quotas, minimum prices or explicit anti-eBay clauses. The bulk of these reports concern mainstream product categories, though not only. An example was given of a sporting goods seller who on starting to sell through e-Bay was sent Cease and Desist letters from the manufacturer. The case was taken to the Munich District Court and the seller won. Stefan Krawczyk underlined that the internet is a transparent environment that leads to vigorous competition in terms of price and after-sales services. Studies have shown that the growth of online and offline commerce compliment and reinforce each other.

Madi Sharma, Member of the European Economic and Social Committee spoke about the problems suppliers are confronted with in their everyday business, especially SMEs having to compete on price rather than quality. A specific example is the copying of branded products of suppliers by larger manufacturers and retailers, and which the Commission is urged to address. Another example is suppliers who having produced the range and quantity requested then find they are not the sole supplier and consequently find themselves in competition with other such suppliers, namely on price. Late payments, strict delivery requests, cancellation of orders or the bearing of costs of waste and forecasting errors are further examples of everyday issues that suppliers are faced with. Often suppliers will not take their case to court simply because they also supply other retailers and risk losing all orders. Madi Sharma urged retailers to work with and take orders from smaller suppliers.

Discussion: The creation of a level playing field is favoured so as to solve the situation of not being able to speak out about malpractices because of potential risks of loss of clients. Whilst some favour a European solution that is enforceable and implementable, others prefer enforcement of existing legislation. Current competition law also needs to be clearer, all Commission DGs should work together as well as with national competition authorities. Some feel the Commission requires better tools to be able to understand and compare price differences between Member States, although it was expressed that differences in salaries and/or transport costs make such comparisons difficult. Some stakeholders favour having maximum terms of payment set for business relationships and a ban of a non-exhaustive list of unfair practices. The existence of retroactive discounts was highlighted as an example of malpractice. Another problem is delivery of products without actual contracts. Sourcing, which should be possible across borders within and outside the EU, was also identified as a prevailing problem. As regards brand copying, there are instances where this is an actual

product improvement on the original, should it therefore simply be removed? Voluntary codes of practice were suggested, which the report of the Economic and Social Committee proposes, together with the requirement of written contracts and at national rather than European level. However, others suggested that voluntary codes at the national level do not work. The setting up of an ombudsman was also proposed so that a supplier can complain in confidence. It was remarked that some of the alleged unfair practices are already prohibited, their respect not being, obviously, guaranteed.

As regards late payments, MEP Corazza Bildt informed on the work undertaken in the EP to include business-to-business contracts in the proposal for a Directive, thereby giving a legal tool for small businesses to be paid within reasonable timeframes.

Session IV: Social challenges the retail sector is facing

The panel presented their views on the importance of the retail services sector for employment in the EU, working conditions and mismatch or lack of skills. The Commission will present a Communication on skills and jobs and there will be consultation with the social partners. Working conditions, matching skills with job requirements, reconciling work-life balance, shop opening on Sundays and long opening hours were amongst the areas singled out as requiring further discussion. Another issue that was raised is the difference between Member States in terms of employment policies and working condition which potential hamper competitiveness.

Jean Bergevin opened the last session which focused on social aspects. Retailing is an extremely important pole for the European economy; it is an entry point for low-skilled workers and school leavers into the job market. This is a cost-driven market and one which needs to be competitive.

Jean-Francois Lebrun, Head of Unit, DG Employment, Social Affairs and Equal Opportunities, European Commission briefly informed participants on the developments and challenges for the retail trade that have been looked into, such as e-commerce, new technologies, mergers and the need for adjustment of human resources in this sector. It is an essential sector, encompassing 20 million employees, mostly women but also young people and self-employed for example, who are indispensable for its success. It needs labour which is motivated and has the required skills. Working conditions, social responsibility and competence are all related issues that need to be addressed. Avenues to resolve medium and long term issues are needed, in particular to reconcile work conditions, to increase employment and improve the competence of the sector. Jean-Francois Lebrun informed that a platform for social dialogue on commerce exists. This sector has the lowest level of unionisation. Social dialogue is a powerful instrument but needs to meet a series of conditions, one of which is trust. The Commission is working on a Communication on skills and jobs.

Jorgen Hoppe, President of Uni Europe Commerce, President HK Handel concurred with the Commission on the problems highlighted and on the goal of a fairer retail sector, a sector representing 12.8% of the EU workforce. There is a clear link between the quality of work and productivity and the retail sector can raise productivity and improve the quality of work. A higher level of skills is needed in this sector, especially for new technologies. Investment in new technologies requires investment in workers. Jorgen Hoppe expressed

that in the social dialogue they are looking into the mismatch of skills of workers compared to the needs of companies. There should be more focus on education, life-long learning and vocational training in the commerce sector. For Jorgen Hoppe, longer opening hours and Sunday opening only serve to spread consumer's spending over a longer period and to create a less attractive work environment for employees. As regards franchising, the Commission is called on to carry out further work on aspects of social dumping in this area. Some companies use loopholes to avoid labour law legislation and collective agreements which in turn threatens the internal market. Lastly, the importance of collective agreements and social dialogue was underlined.

Caroline McCarthy-Stout, Government Affairs Manager, Kingfisher plc briefly presented the company, which employ 80,000 workers and achieved retail sales of over 10.5 billion STG in 2009/10 with, 60% of the sales being outside the UK. As a home improvement retailer, the company's challenge is having the right skills and recruiting the right talent because this is vital to sustain a thriving business and to retain people in a diverse organisation. The company invests significantly in the flexible training and development of its employees and in promoting talent. A diverse workforce creates a mix of talents that in turn make a successful business.

Discussion: Employment issues should be looked into when addressing issues of unfair practices. Cooperatives contribute to long-term and fair employment. They require suppliers to meet international labour requirements. One comment is that the European institutions are taking limited action, as there can never be fair modern competitiveness in the market due to gaps between Member States on salary policies and working conditions. More needs to be done to reconcile work-life balance in this sector. The EP was called on to take up the social aspects in its report on the retail sector. As regards Sunday shopping or long opening hours, a concern is last-minute changes made to the working hours of shop assistants. However, there were those who expressed that you have workers who like to work on Sundays, that is, it is not just about the customer. Respect for the principle of subsidiarity when discussing social aspects was brought up. As regards potential criminality aspects, these exist cross-border. The Commission informed on studies on work evolution in areas such as the automotive or textile sectors, and that discussions of the social partners become mandatory through Council conclusions for example.

MEP Corazza Bildt stressed that though the employment issue is very important, the report being drafted to be adopted by the EP is only four pages long. The report will focus on the most controversial issues. There is also a clear need of dialogue and this should ideally be done through existing platforms, with additional ones set up if it is found that there is need for other platforms.

Jean Bergevin brought the conference to close, thanking all participants, including those viewing through web-streaming.

Feedback on the horizontal consultation can be sent to markt-retail@ec.europa.eu.

Details of the web-streamed conference can be found on:

http://ec.europa.eu/internal_market/retail/index_en.htm

[Signed]
Jean Bergevin

Contact:

Charmaine Hogan, Telephone: +32 2 29 52286, charmaine.hogan@ec.europa.eu

Cc:

Ms Jorna, Mr Arbault (Cabinet)
Ms François-Poncet (MARKT)
Mr Berardis (MARKT E)
Mr Bergevin, Mr Temmink, Ms Salonen, Ms Lecesne, Ms Lamotte,
Ms Boteanu, Mr Lysy (MARKT E2)