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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

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ROUNDTABLE ON MONOPSONY AND BUYER POWER

-- Note by the European Commission --

This note is submitted by the European Commission to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 21-23 October 2008.

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1. Buying power is an increasingly hot topic within the competition community. Recently it has been the focus of a number of conferences, studies and papers. On 19 February 2008 the European Parliament adopted a written declaration on "investigating and remedying the abuse of power by large supermarkets operating in the European Union". This declaration expressed concerns relating to competition, unfair commercial practices, consumer protection, employment and the environment and called on the Commission to investigate and address negative impacts arising from perceived concentration in the supermarket sector[1].

2. This interest comes against a background of food price rises worldwide and of ongoing mergers and increasing concentration between retailers. Although much of the current focus is on the retail sector, the principles applicable to buyer power must apply across all areas of competition law, and should not single out one particular sector. Nevertheless, there remains a correlation between the issue of buyer power and the retail sector, simply because retailers tend to be the last business buyer in the supply chain, just above the end consumer. Because of this, high concentration in the retail sector highlights the issue, and as a result it is in retail merger cases that it has been most thoroughly explored.

- ***What is buyer power?***

3. Negotiation power depends in principle on the opportunities of the other market side to switch to alternatives. Monopsony power emerges when a buyer, or a co-ordinated group of buyers[2] such as a buying alliance, purchases such a large share of an upstream suppliers' outputs that the suppliers ability to switch to alternatives quickly are limited. As a result, the monopsony buyer can obtain lower input prices or favourable contract terms, typically by withholding (or threatening to withhold) purchases.

- ***Should the Commission address buyer power?***

4. Much of the current interest in buyer power highlights the plight and problems faced by small suppliers. It is clear that some of these concerns relate to issues that are not a matter of competition law but rather highlight social or political concerns.

5. In terms of competition policy, the first question is whether competition between purchasers on the procurement side is to be protected to the same extent as competition between suppliers on the sales side.

6. European Commission policy is that the ultimate end user of any product – the consumer – should be at the centre of competition law. This means that ultimate focus should be on the demand side. It is competition that brings about low prices and better choice for consumers and guarantees that companies' offers adapt to the preferences of the demand side. It is also this process that drives efficiency, innovation and productivity benefits.

7. Nevertheless, there are certain potential situations where buyer power can lead to a competition problem if it has an effect on competition on the sales market – either in terms of higher prices or loss of choice or quality (for instance if there is significant supplier exit). These would lead to direct disadvantages for the consumer which should be addressed by competition law. The rest of this paper addresses how the Commission has done this so far.

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[1] A copy of the written declaration and response is attached at Annex A.

[2] Acting in concert, buyers can orchestrate their purchase decisions to achieve precisely the same results as a single monopsonist.

- ***How does the Commission assess buyer power?***

8. The most straightforward case of buyer power is that of a single input buyer (or buyer cartel) facing (perfectly) competitive sellers - so-called "pure monopsony". The economic analysis of pure monopsony is analogous to that of pure monopoly, but in reverse. A monopolist faces price-taking customers whose aggregate demand curve is downward sloping in price - i.e. at higher prices, fewer products are demanded. The monopolist raises price above the competitive level by restricting sales. A monopsonist faces price-taking sellers, whose aggregate supply curve is upward sloping – i.e. they will only produce greater volumes if a higher price is offered as marginal costs increase with the quality they supply. Turning this round, therefore, the suppliers will also charge a lower price for lower volumes, something a monopsonist can exploit by restricting demand below the competitive level (or threatening to do so).

9. However, it is relatively uncommon for there to be a single buyer as described in the pure monopsony scenario. More often a large buyer may coexist with a fringe of competitive buyers. Such dominant buyer can still exert monopsonistic power over its residual supply by withholding purchases. If the supply side is competitive but the demand side is oligopsonistic, then all other things equal, high buyer concentration generally results in lower purchases below the competitive level.

10. Although buyer concentration is no definitive proof of the existence of monopsonistic power and other factors need to be taken into consideration, it can serve as a useful first indicator. Prima facie, an assessment of market share on the sales side and procurement shares on the purchasing side may therefore appear to be a good place to look for evidence of buyer power. Where an undertaking has a large share of a downstream market, it can be expected to be taking a corresponding share of upstream supply.

11. With regard to Article 81, vertical agreements between undertakings at different levels in the supply chain are normally covered by the block exemption[3]. Where buyers at the same level enter a purchasing agreement, this is covered by the Commission's guidelines on horizontal cooperation. In reality, such agreements are far more likely to occur than pure monopsony. Here, the starting point is to determine if the parties have buyer power. This is defined in the Commission guidelines as "where a purchasing agreement accounts for a sufficiently large proportion of total volume of a purchasing market so that prices can be driven down below the competitive level." However, purchasing agreements are often concluded by small and medium-sized enterprises to achieve volumes and discounts similar to their bigger rivals. These agreements between small and medium-sized enterprises are therefore normally pro-competitive. It is therefore considered unlikely that a buying cooperation raises competitive concerns, when the participants have a combined market share of less than 15%. A market share above this threshold does not automatically indicate buyer co-ordination would raise concerns but requires a more detailed assessment involving factors such as the countervailing power of strong suppliers and efficiencies (which may lead to exemption under Article 81(3)). Nevertheless, it should be noted that purchasing agreements can constitute a violation of Article 81, when there are vertical restraints or when those agreements lead to competitive restrictions on downstream markets.

12. In some cases a firm may possess buyer power upstream vis-à-vis its suppliers but not also possess market power downstream. For example, when the geographic boundaries of the upstream and downstream markets differ, the merged entity may hold buyer power, without having any market power as a subsequent seller. This was the case in a transaction from 2005, which brought together slaughterhouses and meat sales activities of Sovion and Südfleisch. The Commission focused its investigation on the market for the slaughtering of pigs and cattle, in particular in Bavaria. The Commission verified whether, after the merger, the new company would have increased power as a major purchaser to depress the price

[3] Regulation 2790

paid to farmers delivering pigs to slaughterhouses, thereby forcing small farmers out of the market and ultimately reducing output to the detriment of consumers. To do so, the Commission investigated to what extent farmers and other suppliers of pigs and cattle can supply pigs and cattle to other slaughterhouses in Southern Germany and Austria. The Commission found that sufficient spare capacity is available at competing south German slaughterhouses and that slaughterhouses in neighbouring parts of Austria could serve as an alternative for pig and cattle farmers in south Germany. As a result, in the Commission's view, the market position of the merged entity did not allow it to determine or depress purchasing prices of pigs and cattle paid to Southern German pig and cattle farmers.

- ***When does the Commission consider buyer power to be a problem?***

13. Even in the situations described above, potential market position may not automatically lead to buyer power. Evidence has shown that larger purchasers do not always obtain the most favourable conditions – for example, small purchasers who can be flexible over volumes purchased may receive favourable terms where there is a surplus while a major buyer remains bound by pre-agreed contract.

14. It is also important to note that purchasing strength can also deliver benefits to consumers:

- If a lower price can be achieved without restricting supply, then in a competitive market place, any lower prices obtained by a powerful purchaser are likely to be passed on to consumers as part of a strategy to increase market share downstream.

- Although marginal costs may increase as production volumes increase, these may be offset to some extent by economies of scale, especially in transaction costs. Consider four examples. First, larger orders may allow the supplier to exploit economies of scale. Second, when buyers are able to demand several different inputs from the same supplier, they may be offered a discount if the supplier can benefit from economies of scope. For example, the supplier may have lower average costs because the different goods can be delivered together, saving on transport costs. (This is an economy of scope in distribution.) Third, as buyers become larger in relation to the market, the number of buyers that a seller has to deal with may decrease. This may reduce transaction costs, e.g. the costs of negotiating a contract, and thus allow suppliers to set lower trade prices. Finally, when orders are subject to random fluctuations, large buyers may be able to offer suppliers a more stable demand. Evidence has shown that suppliers will often bring themselves into the dependence of large buyers in order to realise lower costs and less complexity in transactions when compared with negotiation with a multitude of smaller buyers.

- If there is market power on the upstream supplier market, buyer power can exert important countervailing pressure against any increase in prices. This has been recognised in the case of buying co-operatives and was confirmed by the judgement of the European Court *Gøttrup-Klim e.a. Grovvareforeninger v. Dansk Landbrugs Grovvareselskab AmbA*[4].

15. Nevertheless, there are a number of possible problems that could lead to negative effects that the Commission addresses when looking at buyer power. The Commission guidelines for the assessment of horizontal mergers discuss two effects: the "output effect" and the "foreclosure" effect.

16. As simple example of the **output effect** can be given using the pure monoposny situation described above, a buyer may try and obtain lower prices by withholding demand, lowering output.

4 [1994] ECR 5641

Restricting supply in this way would also restrict sales downstream, leading to negative welfare effects as prices rise and/or quality or choice is sacrificed. To maximise profits, a buyer monopsonist would acquire an input up to the point when the marginal revenue from purchasing an additional unit just equals its marginal input cost. But the marginal revenue obtained from an extra input unit will depend on the degree of market power the buyer holds downstream. Two polar cases can be considered:

- The monopsonist buyer sells its output in an intensively competitive downstream market and takes the output price as given - if so, downstream consumers are not significantly affected – positively or negatively – regardless of the degree of monopsonistic power upstream. Logically, it is entirely consistent for a firm to have significant buying power versus its suppliers yet little influence over the price (or other terms) in the output market. There are at least two reasons for this. The geographic scope of the input and output markets can be quite different. For example, the buyer can be a retailer purchasing lettuces from locally independent growers and selling nationally in a competitive retail market. The substitutable alternatives in the product market (as opposed to geographic) can also be very different for suppliers and consumers . Suppliers may be unable to switch from producing the particular input bought by the firm, while consumers may enjoy good alternatives to the product sold by the firm. Another common case is where downstream competition is highly fragmented but buying in the input market is coordinated through cooperative buying or buyer groups[5].

- The monopsonist has selling power in its output market. Here, buying and selling power reinforce each other.

17. For a downstream monopolist, or in a concentrated market, there may be benefits to this strategy, as it would enable it to potentially obtain higher prices and lower costs (although the lack of downstream competitive pressure may also reduce the incentive to push hard for lower input prices if the balance of the monopoly profit would in any case be earned through higher prices rather than lower costs).

18. On the other hand, such a strategy in a competitive market would not work, as consumers would simply circumvent any price increase by buying from the undertaking's rivals. At the same time, if the purchaser has withheld demand, he or she may not be able to satisfy the quantity requirements of the downstream market at any price – leading to a possible reputational effect that would benefit rivals. Therefore, a competitive downstream market would severely limit any benefit from a short term abuse of buying power.

19. Additionally, even in a market where purchasing is concentrated at around or beyond the level of the "threat point", there may still be scope for other purchasers to increase their purchasing levels. If buyer entry is easy and timely, or if the buyer's existing rivals can readily expand their capacity, the supplier can reject the large buyer's attempt to buy less and cheaper. Increased demand resulting from revenue-raising by the first company would mean that rivals would consequently both need, and be able to buy a greater amount from suppliers. This would have the effect of increasing the rivals' market power in both the downstream and upstream markets. Of course, for this effect to take place it is important that substitutability between products is perfect; one area considered in the case of retail, in particular one-stop shop formats, is that consumers do not compare individual items but rather baskets of daily consumer goods. Therefore an increase in price of one specific product might not lead consumers to switch between retailers. However, if retailers were exercising buyer power in more than one product market then any effect would be felt in the wider basket.

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5 An example of a dominant position existing in both the downstream and upstream market was highlighted in the case British Airways, which has been a dominant buyer on the British market for air travel agency services.

20. In general, therefore, assessments by the Commission have reflected the fact that the outcome of this effect has been that any competition problems on the buying side were also present on the selling side. Therefore, it was also clear that the elimination of a competition problem on the selling side (for instance, by requiring adequate commitments) could lead at the same time to eliminate the problem of large-scale buying power. So far, assessments by the Commission have reflected this.

21. For instance, in the recent merger between REWE and Adeg[6], the most pressing concern was that end-consumers in the sales market would continue to have sufficient possibilities to buy from alternative supermarkets if the merged entity should increase prices or reduce output across the board. Thus there would be no output effect since the reduced output and the increased prices on the part of the merged entity would be outweighed by an increased sales volume of the rivals. Concerns only resulted from REWE's national pricing policy, and could be dealt with by remedies.

22. One caveat on the output effect is that it can only be evidence where the product supply curve is positive, with marginal cost increasing as volume increases. If the input supply curve is flat, the monopsonist cannot influence the input price by adjusting purchases. Thus, the conditions for exercising buyer power to produce an output effect are not present. In many cases, learning the true shape of an industry's supply curve is a daunting task, as information may not be complete. Nevertheless, in certain sectors it may prove highly useful. The "flatness" of the supply curve is related to the elasticity of supply. The elasticity of supply measures the responsiveness of the quantity supplied to changes in the price. It measures the ability of sellers to switch to other buyers of the product. Sellers that produce a "perishable" good or service, such as labour or perishable fruits and vegetables, have a very inelastic supply curve because inventories cannot be used to absorb shocks when prices do not clear the market[7]. For many goods, however, particularly in manufacturing industries, supply curves may not be upward sloping, limiting the ability for a buyer to restrict output.

23. The second effect of buyer power which is mentioned in the Commission's merger guidelines is the **foreclosure effect**. According to this theory, competition on the downstream market can be affected if the merged company uses its buyer power vis-à-vis its suppliers in a way that excludes rivals from the market. For example, a powerful buyer could force suppliers to stop supplying rivals (although such behaviour could be covered by provisions on vertical agreements) (perhaps the point of exclusive supply should be developed further). Alternatively, a large buyer (or merged company) may be able to pass on lower prices obtained from suppliers with the short-term intention of pricing rivals from the market.

24. A number of conditions must be present in a marketplace for a foreclosure strategy to work effectively. If these conditions are not met, then foreclosure is unlikely to lead to a significant decrease in the number of rivals, and, as a result, it will be end-users who benefit from both lower prices due to the buyer's purchasing power backed up by ongoing competitive pressure.

- Large and small enterprises must be alike apart from the purchasing conditions. Often small enterprises position themselves successfully in the market by providing better services compared to their bigger and usually cheaper rivals or by focusing on regional products. The described effects presuppose that there are no such differences.

- In the case of economies of scale, which reflect the size of a company, usually at some point countervailing cost effects occur. Large companies can in some areas obtain cost advantages

6 Case COMP/M.5047

7 The perishability of the goods also reinforces the risk of opportunistic behavior, since a supplier has very little time to find out an alternative distributor when a large retailer cancels its purchases.

due to their size, however, their costs rise in other areas. For example a larger and less efficient organisation of the company can result in increased costs. Smaller rivals are only increasingly pushed out of the market if such cost disadvantages do not occur.

- It must be difficult for a rival to re-enter the market after exit has occurred. Ultimately, the goal of any foreclosure action is to obtain a large enough market share to be able to obtain monopoly rents. Where market re-entry is easy, the possibility of achieving a monopoly is far more remote[8].

25. As shown, the standard of proof for this effect can be high. In British Airways[9], the Commission concluded that BA had infringed Article 82 by making so-called "marketing agreements with travel agents. These agreements had an exclusionary effect on rivals of BA. This exclusionary effect reduced competition on the downstream market without providing any corresponding efficiency or other economic benefits, and led, furthermore, to an unequal treatment of travel agents. The Commission's decision was upheld by the ECJ.

26. 1. A final area of ongoing discussion is the impact of any possible dynamic effects resulting from buyer power. An example of such an effect is where a monopsonist has sufficient control to give a small seller a choice between supplying a certain quantity at a price less that its marginal cost or nothing at all. Where demand from other buyers is inelastic (for instance if they could look elsewhere for supply, or simply withdraw from an existing sub-market) then as long as the price offered by the monopsonist remains above average cost, the supply decision ultimately becomes a choice between operating at the indicated quantity and earning just enough to break even or shutting down, losing fixed cost expenditures. Here, by exercising monopsony power the buyer may be able to obtain higher profits without restricting levels of supply. Alternatively, in markets which overlap, the buyer may be able to offer lower prices to consumers in order to bring about leverage in to the related markets. Such effects are purely distributional rather than absolute, but it may be argued that these distributional effects can lead to inefficiencies in the longer run. Lower input prices may slow the rate of innovation and the adoption of socially desirable product improvements. This would clearly be the case if such innovation and changes were not in the interests of the buyer when compared to the immediate short-term benefit. However, normally, innovations are also asked for on the sales market of the buyer and provide him with higher turnover. Therefore the company with buyer power would not have an interest in decreasing the innovative strength of its suppliers, especially if it has to be afraid of market entry of more innovative competitors outside his geographical market. Such market entry with more innovative products would not only diminish its profit, but would threaten its whole existence[10]. So far, evidence seen by the Commission does not point to such dynamic effects but we welcome the OECD's discussion of this aspect of the subject in particular.

27. In conclusion, therefore, buyer power is a factor that the Commission takes into account when assessing cases, in particular where it causes or strengthens competition concerns on the sales market. Commitments, which in such cases effectively eliminate competition problems on the sales market, have so far solved possible problems of buyer power.

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8 This point explains why both predatory pricing, and – in terms of buyer power – "predatory overbuying" are both high-risk strategies in that, if unsuccessful, they simply mean the alleged predator is carrying a loss.

9 IV/D-2/34.780 Virgin/British Airways

10 This competition by innovation and the "creative destruction" of powerful market positions by new and technologically more advanced products was well described by the economist Schumpeter.

ANNEX 1

DECLARATION OF THE EUROPEAN PARLIAMENT ON INVESTIGATING AND REMEDYING ABUSE OF POWER BY LARGE SUPERMARKETS OPERATING IN THE EUROPEAN UNION

The European Parliament ,

– having regard to Rule 116 of its Rules of Procedure,

A. whereas, throughout the EU, retailing is increasingly dominated by a small number of supermarket chains,

B. whereas these retailers are fast becoming “gatekeepers”, controlling farmers” and other suppliers” only real access to EU consumers,

C. whereas evidence from across the EU suggests large supermarkets are abusing their buying power to force down prices paid to suppliers (based both within and outside the EU) to unsustainable levels and impose unfair conditions upon them,

D. whereas such squeezes on suppliers have negative knock-on effects on both quality of employment and environmental protection,

E. whereas consumers potentially face a loss in diversity of products, cultural heritage and retail outlets,

F. whereas some Member States have introduced legislation attempting to limit such abuse, yet large supermarkets increasingly operate across national borders, making EU legislation desirable,

1. Calls upon DG Competition to investigate the impact that the concentration of the EU supermarket sector is having on small businesses, suppliers, workers and consumers and, in particular, to assess any abuses of buying power which may follow from such concentration;

2. Requests the Commission to propose appropriate measures, including regulation, to protect consumers, workers and producers from any abuse of a dominant position or other negative impact identified in the course of this investigation;

3. Instructs its President to forward this declaration, together with the names of the signatories, to the Commission, the Council and the parliaments of the Member States.

ANNEX 2

COMMISSION RESPONSE TO EUROPEAN PARLIAMENT WRITTEN DECLARATION

1. **Declaration tabled by Caroline LUCAS (Verts/ALE/UK), Gyula HEGYI (PSE/HU), Janusz WOJCIECHOWSKI (UEN/PL), Harlem DÉSIR (PSE/FR) and Hélène FLAUTRE (Verts/ALE/FR) pursuant to Rule 116 of the European Parliament's Rules of Procedure**

2. **EP reference number**: DCL-0088/2007 / P6-TA-PROV(2008)0054

3. **Date of adoption of the declaration***:* 19 February 2008

4. **Subject:** investigating and remedying the abuse of power by large supermarkets operating in the European Union

5. **Brief analysis/assessment of the declaration and requests made in it:**

The European Parliament has adopted a written declaration on "investigating and remedying the abuse of power by large supermarkets operating in the European Union" at the plenary session of 18-21 February 2008. The written declaration expresses concerns relating to competition, unfair commercial practices, consumer protection, employment and the environment. It:

i) calls upon DG Competition to investigate the impacts that concentration of the EU supermarket sector is having on small businesses, suppliers, workers and consumers and, in particular, to assess any abuses of buying power which may follow from such concentration, and

ii) requests the Commission to propose appropriate measures, including regulation, to protect consumers, workers and producers from any abuse of dominant position or negative impacts identified in the course of this investigation.

6. **Response to the requests and overview of the action taken, or intended to be taken by the Commission:**

Introduction

The Commission welcomes the attention drawn by the EP to the retail sector and outcomes for consumers, producers and employees in the sector and agrees on the importance of a better understanding of how the sector is working. There is a very large variety of situations in the different EU countries as regards concentration of retailing markets.

Concentrations are under constant control of both the Commission and National Competition Authorities (NCAs), in line with the effective EC and national merger regulations. In the antitrust context, any abuses of a dominant position are subject to Article 82 EC Treaty or its equivalent in national laws.

In respect of retail markets, which in particular tend to be national with differing legal, economic, political and cultural characteristics, NCAs are often well placed to act under the competition rules. In fact, some NCAs are investigating the issue of buyer power in the retail sector, for instance in the UK and in Austria.

Apart from EC competition rules, several other policies at Community level govern the conduct of supermarkets in particular or the functioning of the retail sector in general. These include inter alia EC internal market rules and EC consumer law.

Any national legislation should comply with relevant requirements of Community law, notably the principles governing the Internal Market.

Point 1: The Parliament calls upon DG Competition to investigate the impacts that concentration of the EU supermarket sector is having on small businesses, suppliers, workers and consumers and, in particular, to assess any abuses of buying power which may follow from such concentration.

The Commission has not in recent years received any formal complaints against big supermarkets which claimed violation of Articles 81 and 82 of the EC Treaty. The Commission considers it important to consider all relevant factors affecting these markets, and will continue to gather evidence regarding factual claims relating to retailers allegedly controlling farmers' and other suppliers' only real access to EU consumers.

The primary objective of EC competition policy is to make markets work better to the benefit of consumers within the EU. The Commission therefore tackles buyer power to the extent that it harms, or could potentially harm consumers. As highlighted above, it is important to note that alongside the Commission, national competition authorities are able to take action against anti-competitive practices that violate the EC competition rules.

According to OECD figures[1], during the last 20 years earnings and consumer prices for all items have increased to a much greater extent than food prices in all European countries where data were available. Moreover, some of the most retail-concentrated countries show the lowest increase in food prices. However, recent developments have shown significant price increases in agricultural products and ingredients for the food industry, as well as an increase in retail prices of some basic food goods in some national markets. This is a cause of concern for both the consumers and the industry. Further analysis of the competitive structure of the food supply chain, including concentration and market segmentation of the retail and distribution sectors, and monitoring of developments in food consumer prices at product level in each Member State would allow to better assess the situation. The Commission will continue to further evaluate the potential link between recent retail concentration and consumer prices.

Buyer power itself may have either beneficial or adverse effects on consumers and suppliers. With sufficient competition downstream, lower prices upstream can be passed on to consumers, which will be beneficial to consumers. When supermarkets use their buying power, suppliers, such as the agricultural sector, are put under pressure to sell at low prices. Commission figures[2] on producer prices show that the

1 Source*: OECD. Stat* website (http://stats.eocd.org/wbos/Default.aspx).

2 Source: EUROSTAT EC index of producer prices of agricultural products (website: http://epp.eurostat.ec.europa.eu/extraction/retrieve/en/theme5/apri/apri_pi95_proda?OutputDir=EJOutputDir_132&user=unknown&clientsessionid=EC27DD8478E0EDCC5B702FA892EF85BC.extraction-worker-1&OutputFile=apri_pi95_proda.htm&OutputMode=U&NumberOfCells=51&Language=en&OutputMime=text%2Fhtml&).

agricultural sector has contributed substantially to the low consumer prices. In the 8-year period 1995 – 2003 real producer prices in the EU-15 have declined by 18%.

It is important to note that building up a strong market position achieved through growth in a competitive environment is not necessarily problematic and may lead to efficiencies that benefit to consumers and businesses. On the supplier side, for example in the agricultural sector, the Commission recognises the important role producer organisations can play to help farmers working together to achieve various efficiencies. Based on the existing single market and competition rules, those organisations also play an intermediary role between individual farmers and retailers and thus enhance their bargaining position. The Commission is looking at this issue in the framework of the CAP Health Check.

The Commission will also gather additional evidence regarding factual claims that consumers potentially face a loss in diversity of products, cultural heritage and retail outlets. The evolution of retailing in the past fifty years seems to have led to a greater diversity of products and retail outlets. Additionally, there is no data as to whether or not consumers receive relatively lower quality products or have less choice in those Member States where retail concentration is the highest.

In terms of effects on employment or the environment, competition between undertakings is positive for long term employment opportunities and for creating a competitive economy able to face the environmental challenges. Competition law is not the appropriate instrument however to tackle certain employment or environmental concerns. These are better dealt with by *inter alia* labour and environment regulations which should address any legitimate concerns of society and EU citizens as a whole.

The retail sector plays an essential role in the Internal Market by allowing suppliers and consumers to access non - domestic markets and therefore benefit from the Internal Market. By facilitating cross-border selling, competition may be further strengthened and consumers may benefit from an increased choice of products and lower prices as a result.

Additionally, the Commission will touch upon the issue of the market power of distribution in the framework of a High Level Group on the Competitiveness of the Agro-Food Industry. This initiative will be launched by the Commission in order to analyse the food industry which in the recent years has faced new risks and challenges which questioned the sector's competitiveness.

Point 2: The Parliament requests the Commission to propose appropriate measures, including regulation, to protect consumers, workers and producers from any abuse of dominant position or negative impacts identified in the course of this investigation.

The Commission and NCAs are vigilant to any infringement of EC competition law by supermarkets. The Commission takes specific care to ensure that concentrations of a Community dimension between supermarkets will not significantly impede effective competition to the detriment of consumers and businesses. It will further investigate the particular issue of buying power issue in collaboration with NCAs in the context of the ECN.

If the exercise of buyer power is found to lead to a lower profitability for suppliers, this may in specific circumstances induce suppliers to invest less in new products and therefore lead to a loss in product diversity and quality for consumers. This aspect is taken into account by EC competition policy when assessing the impact of the exercise of buyer power on consumers: consumer welfare includes not only prices but also diversity and quality. (However, it is important to assess whether the claimed loss of diversity, if at all a reality, could be attributed to the expression of consumers' preferences when they choose lower prices at the cost of a loss in diversity or a change in the retailing structure.)

Other aspects of the functioning of the retail sector may be better addressed, if it found required, by other policy tools, such as consumer policy, employment policy tools and rules governing unfair trading. At the same time, in the context of the Lisbon Strategy, the Commission supports national plans to reduce and remove unjustified regulation in the retail sector that would restrict competition to the detriment of consumers.

In addition, the Commission's Single Market Review has identified retail trade as one of the sectors that warrants in-depth market monitoring given its key role for consumer and supplier markets and its current level of fragmentation. A monitoring report will be prepared for 2009 to analyse the reasons for malfunctioning of retail services seen from both consumers' and suppliers' perspectives.
