



EUROPEAN COMMISSION

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Consumer-goods markets: A litmus test for competition policy

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

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Ladies and Gentlemen,

I thank Mr Verschueren for the kind invitation I received to address today's conference.

I see that you have chosen a question to launch the debate about your industries' outlook. You ask whether the future can really be bright.

Of course, we are living in difficult times, but I am optimistic: my answer to your question is a resounding "Yes". As you can imagine, I am fully aware of the worrying problems we have to tackle. But I am convinced that we will overcome the challenge.

Building on what we have achieved so far, we Europeans are well equipped to learn the lessons of the crisis. And one of the clearest ones is the need to deepen our historical process of integration.

As the crisis moved from the US to Europe, it has revealed serious structural flaws in our model which had been there for a long time.

In a sense, the emergency situation has focussed our minds. We can now see better where the problems are and fix them.

I am thinking, among other things, of the role of the financial sector in our economies and of the governance of our common currency.

But our large-scale efforts to put Europe's economy back on track will also depend on our ability to enhance economic dynamism in a number of key industries, including those you represent.

It is clear that fair and keen competition in these markets is vital if we are serious about leading Europe out of this downturn. And apart from their economic size, your sectors are also vital because they are part of the daily lives of the vast majority of ordinary Europeans.

You will not be surprised if I say that Europe's competition authorities will watch closely the markets where your companies operate – as they have been doing in the past few years.

A report we published a year ago shows that the European Commission and the EU national authorities have been very active in the food and retail supply chain.

Let me recall here that both the Commission and the national competition authorities enforce the same rules in our Treaty designed to keep the Single Market a level playing field.

Considering the work of all the members of the European Competition Network – where the Commission and the national authorities co-ordinate their action – between 2004 and 2011, we counted more than 180 antitrust investigations, close to 1,300 merger reviews, and more than one hundred market-monitoring actions.

All levels of the supply chain were involved. Processing accounted for about one third of all the cases recorded, followed by retail with 25% and manufacturing with 16%.

The bulk of our action was against cartels between processors or manufacturers, which can be very expensive indeed for consumers and business partners.

Just think that a cartel among pasta producers uncovered in Italy had led to a 50% increase in wholesale prices and 35% in retail prices over a period of three years.

The report also showed that some manufacturers or retailers imposed price restrictions in their networks. In several cases, we had to intervene because the holders of a franchise could not offer discounts to their customers.

Given the national scope of retail and fast moving consumer goods markets, national authorities carried out a large part of the work in the period covered by the report; but the European Commission has not been idle.

In line with the report findings, we have seen quite a few cartel investigations in our practice, including cartels among beer producers and banana retailers.

Other cartel probes are on-going, for example in the shrimps sector. Last month, we also carried out surprise inspections at the premises of a number of producers of white sugar in several Member States.

There have been other types of price-fixing cases. Apart from the traditional cases where producers set prices for their resellers, we now have a number of cases where prices are agreed between suppliers and retailers.

Some of these investigations are now over – for instance in Slovenia and in the UK – and the culprits have been sanctioned. Others – such as in Germany and Belgium – are still on-going.

Finally, there have also been questionable exchanges of information. In Finland, the main supermarkets have been found to exchange detailed price information, which narrowed the scope for competition.

To have a fuller picture of competitive conditions in food and consumer goods and to respond to the many complaints received by the Commission, at the beginning of last year I decided to set up a special Task Force.

Since its creation, the Task Force has been monitoring the food supply chain and has been investigating alleged anti-competitive practices at European level.

In addition, the Task force is looking into recurring allegations that unfair trading practices would impair choice and innovation in the long term – I will come back to this point later.

The Task Force is part of a broader set of initiatives taken by the Commission.

Let me cite first the European Retail Action Plan, which aims to eliminate the obstacles that still hamper the creation of a genuine Single Market in retail.

The Action Plan addresses many practical issues that are important in your business, such as working-skills information, access to innovation, and the emergence of new forms of payment.

It also helps consumers fight food waste and keep them better informed through a database that people can use to compare the prices, quality and sustainability of goods and services.

I know I'm preaching to the choir here, because you have been working on some of these issues through the ECR platform.

In addition, back in 2010, the Commission established a High Level Forum on food, mostly devoted to unfair trading practices.

The initiative is producing results. Last year, a number of organisations representing all stakeholders except farmers agreed an enforcement mechanism that is now starting to be implemented.

The Commission supports this self-regulatory initiative. I believe that conducting a large-scale exercise to test flexible solutions to the unfair-trading issue is a good idea.

If you all implement the mechanism, this will produce results for everyone else in the chain, including the farmers. The ball is thus in your court now to make the mechanism work as intended.

Ladies and Gentlemen:

In parallel to this voluntary initiative, the Commission is exploring other solutions to the issue of unfair trading practices.

At the end of January, we launched a debate among companies, organisations and ordinary citizens with the publication of a Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe.

The goal is to understand whether some current business practices are really problematic and – if so – what to do about them.

The document was published for consultation, which closed at the end of April and the replies are being analysed as we speak. But we can already say something about the relation between competition policy and unfair trading practices.

Commercial relations can be unfair when the bargaining power of buyer and seller is too unequal. For example, an ambiguous contract that can be terminated easily by the stronger party. When unfair practices do occur, the implications can be narrower or broader.

Some national competition authorities have observed unfair trading practices in their monitoring exercises and have expressed concerns that these practices can have a negative impact on choice and innovation in the long run. Similar allegations have also been made in the High Level Forum.

But choice and innovation are also elements of consumer welfare which competition policy is designed to protect and enhance.

Factors such as the effects of the practices in the market or the dominant character of the party enjoying bargaining power are important to clarify whether we look at an unfair trading practice or at an infringement of competition law.

To check these concerns and allegations against the facts, I asked my services to prepare a study on the impact that modern supply chains have on choice and innovation in food products.

To the best of my knowledge, no similar quantitative research exists; and it is always better to look at the facts before exploring policy options.

The results of this study will be available by the end of the year. For the moment, I would like to discuss very briefly three issues that figure large in the analysis of competition in these sectors: concentration, private labels, and e-commerce.

You will not be surprised that I start with concentration – an issue which is debated very often. To clarify what I mean by this term, let me give you a few real-life examples.

- The largest dairy processors in Denmark, Sweden or the Netherlands represent more than 50% of domestic production.
- Two manufacturers supply more than 70% of baby food products in many Member States. A similar situation exists in some markets for hygiene products.
- As to the retail sector, there are a number of situations characterised by duopolies. The situation is not common at the national level but quite common at local level, which is what counts for the consumer.

So, while we wait for the results of our study, we can agree that concentration is a fact in these markets. It remains to be seen whether it is positive or negative for competition and consumer welfare.

On the one hand, concentration is a good thing if companies pass on to the consumer the benefits they gain thanks to scale. For instance, recent developments in retail have brought better logistical solutions which have improved product life and choice.

At the same time, concentration will always be negative if it weakens competition. For instance, if it's used to keep markets closed to competitors or prevent their emergence.

And when competition authorities conclude that this is the case, they must intervene to restore good competitive conditions.

The second issue I will discuss is that of private-label products.

These products are starting to have an impact on competition, especially because they often provide cheaper alternatives. In some member States they have now reached a share close to 50% in volume.

A 2011 analysis showed that this level of penetration has meant in some cases a significant reduction in the share of second-tier brands, while items sold under more exclusive, first-tier brands retained their share.

It is not clear yet what this means for competition in the long run, but one principle holds true: it is immaterial for us where the competition comes from as long as competitive conditions in a given market are satisfactory.

Finally, let me briefly touch upon e-commerce, which is something of a new frontier in your industries.

Logistics has been a significant challenge so far for the emergence of e-commerce in many consumer-product markets, but some initiatives are starting to be met with success.

I welcome these developments. I am always in favour of innovation, and I regard its protection and promotion as a major objective for a modern competition authority.

But I will need to intervene if I had good evidence that a company in your industries is erecting barriers against e-commerce to protect its traditional, brick-and-mortar operations. On this assumption, I would like to understand better what holds back – or *can* hold back – competition through e-commerce in your markets.

Ladies and Gentlemen:

I said in opening that I regard this long crisis as a good opportunity to fix old structural problems in our economy and I am optimistic that Europe will rise to the challenge.

But this is not to deny that, in many parts of Europe, the situation is extremely serious and worrying.

After five years, this crisis is taking a heavy toll on the people, and the companies and organisations you represent have a special responsibility towards the growing number of Europeans who see their standards of living fall.

Food and other consumer goods are a large part of what every European needs – day in day out – to lead a dignified life.

Despite the diversification of consumption that took place over the past decades, they still account for about 15% of total household expenditure. But the overall average does not tell the whole story. These products and services take a lot more room in the basket of poorer consumers. According to some estimates, their share reaches 30 to 45% in Europe's less affluent areas.

It has never been more urgent to find better, cheaper and more sustainable ways to bring consumer goods to market – to quote the mission statement of ECR. I encourage your efforts and I wish you every success.

As to the role of competition policy, let me repeat that we will continue to watch food and consumer-goods markets closely. In the current conditions, keeping these markets free from illegal and harmful anti-competitive practices is a litmus test for us.

At bottom, competition control is about consumer welfare. We will show to the people that competition control can bring real benefits when they most need them and bring benefits that they can touch first-hand.

Thank you.