

Remedies in retail competition

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Remedies in retail competition

- **Taking a competition economist's approach to the issue, not a legal one**
- **Consider four potential competition concerns**
 - Local store concentration
 - Buyer power
 - Below cost selling
 - Price flexing

Local store concentration

- **Number of recent merger cases looking at local store concentration**
 - e.g. Somerfield, Morrisons/Safeway
- **Local concentration should only be a concern when there are**
 - barriers to entry for new players; or
 - barriers to expansion for existing players
- **Potential barriers to entry and expansion include**
 - Planning permission/landbank issues
 - Clearly a focus of the current CC inquiry
 - Fear of anti-competitive retaliation

Local store concentration (*cont.*)

- **Possible remedies**

- Divestment of stores
 - Clean
 - Over-reaction in Somerfield case
- Price regulation
 - Very undesirable
 - Likely to prolong problems rather than solve them
- Lower barriers to entry
 - Change of planning laws
 - Use-it-or-lose-it remedy for landbank issues
 - Vigilant application of competition law by authorities

Buyer power

- **Economists start from the position that buyer power is usually pro-competitive as lower input prices are passed on to consumers**
 - More so when input price reductions are industry wide
 - Even a monopolist passes on some proportion of input cost reductions
- **But a problem if**
 - Suppliers squeezed so much that investment or quality or choice falls
 - Harm downstream competition
 - e.g. waterbed effect whereby small stores pay higher input prices because large stores pay lower ones, thus leading to a reduction in competitive constraints on large players
- **The use of private label is likely to increase retailers' buyer power, but ...**
- **... little empirical evidence in support of alleged detriments**

Buyer power (cont.)

- **Possible remedies**

- Hard to remedy buyer power concerns
 - Particularly relating to choice and long-term investment
- Code of practice, but current UK version toothless (what is “reasonable”?)
- Allow smaller stores to create buyer groups
 - Competition law issues under Ch1/A81
- Allow smaller stores to buy at same price that larger stores buy at
 - Highly interventionist
 - Hard to police
 - Access remedies only usually acceptable for essential facilities
- Structural remedy: break-up large retailers
 - Far too interventionist given current weak empirical evidence on harm

Below cost pricing

- **Economists typically think of low prices as being pro-competitive**
- **In general only anti-competitive if lead to exit of competitors and if then lead to higher prices than previously**
 - Exit of inefficient or sub-scale players is not anti-competitive
- **Below cost selling of private label to induce lower input prices from branded suppliers is not in general anti-competitive**
 - Key question is not whether it harms competitors, but whether it harms consumers (less choice, lower quality, higher prices)

Below cost pricing (*cont.*)

- **Possible remedies**

- Banning below cost selling
 - Can stifle retail competition
 - e.g. blanket bans in France and Ireland
 - Partial ban in Germany
- Standard competition law predatory pricing test
 - Does the retailer have substantial market power?
 - Are prices below avoidable costs?
 - Will they induce exit or reduce the ability of competitors to compete?
 - Will prices in the long-run be higher than they would have been in the absence of the exclusion?

Price flexing

- **Price flexing**
 - Has concerned the competition authorities
 - Does not in general concern economists, particularly if it does not restrict total sales
- **Different prices that reflect different costs of supply are not anti-competitive**
- **Only potentially a concern if different prices reflect local exploitation due to a lack of competition**
- **Possible remedies include**
 - Insisting on uniform pricing
 - Unlikely to be pro-competitive if there are underlying differences in costs of supply
 - Losers as well as winners
 - May facilitate tacit collusion
 - Remedy lack of local competition by lowering barriers to entry

Conclusions

- **Need to ensure that do not try to protect small retailers at the cost of efficiency and higher prices**
- **Issues such as increased local concentration, buyer power, below cost selling and price flexing are often pro-competitive**
- **Need good empirical evidence of anti-competitive harm before trying to remedy alleged problems**