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Assessing the competition effects of buying alliances

Institute of European and Comparative Law, University of Oxford

Fifteenth annual symposium on competition amongst retailers and suppliers

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Current ERA landscape



- AgeCore Ltd.
- Sale: approx. EUR 140 bn
- **EDEKA, Colruyt, Conad, Coop Schweiz, Intermarché, Eroski**



- AMS Sourcing B.V.
- Sale: approx. EUR 105 bn
- **AholdDelhaize, Dansk Supermarked, Migros, Jerónimo Martins, Morrisons, Booker etc.**
- Focus: **Private Label**



- Coopernic scrll
- Sales: approx. EUR 140 bn
- **Rewe, Leclerc, Coop Italia, AholdDelhaize**

Eurelec

- Eurelec Trading Scrll
- Sales: approx. **EUR 95 bn**
- **REWE, E.Leclerc**



- Horizon International
- Established 2018
- Sales: ?
- **Auchan, Casino, Dia, Metro**



- EMD Ltd
- Sales: approx. EUR 180 bn
- **Superunie, div. Markant, Euromadi, div. Kaufland etc.**
- Focus: **Private Label**



- Established 2018
- Sales: approx. EUR 170 bn
- **Tesco, Carrefour**

Main features

Members

- Usually national champions from **different** countries
 - High market shares in retail market
 - ... but usually no overlaps in national markets
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Targets

- **On-top bonus** (EU bonus)
 - No (real) counterparts :
 - Promotions to be negotiated on national level
 - Very limited value of central services (mediation, etc.)
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- **"Gatekeeper"** principle
 - w/o international deal, no national negotiations
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- s/times: **"Testudo"** principle
 - "All deal" or "no deal"
 - Coordinated de-listings

Why may retailers team up for buying?

EU competition law takes **liberal stance on joint buying**

- EU Horizontal Guidelines 2011 (HGL)
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Likelihood test

Restraint of competition is **unlikely** ...

- ... if market shares of retailers on both buying and downstream retail market are **below 15%** (safe harbour)

OR

- ... if retailers are **not competitors on the downstream retail market**
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In practice

- **EU Commission:**
 - Dawn raids at various players in Feb 2017 and May 2019
- **National authorities:**
 - Growing no. of investigations (last one: BE dawn raid on 20 May)
 - Only if overlap on downstream retail market
 - Limited number of decisions (France, Italy, Germany ..)

What are the borderlines?

Allocation of markets

(HGL 205)

ERA members may not allocate geographic markets

- **Implicit** market allocation?
 - Background: ERAs are only accepted under EU law if **no** overlap on retail market
- Do ERA members qualify as **potential** market entrants?
 - Some ERA members already operate in other geographic markets
 - Lidl/ALDI/Spar extend their presence w/o being ERA member

Aldi (Nord)



Lidl



Spar



What are the borderlines?

Information exchange

(HGL 215)

Internally (within ERA)

- Admissible to the extent exchange of information is **necessary** for the joint purchasing
 - ERAs usually only negotiate on-top bonus but not local terms
- ERA members may **not** exchange information about future business strategies beyond current geographic scope (expansion plans)

Externally (other ERA)

- Not admissible / overlap downstream

Co-ordinated de-listing

Necessary element of joint buying OR **excessive** restraint of comp.?

- Not decided yet – e.g. BKartA did not investigate Agecore/EDEKA/Nestlé
- EU COM: Car Battery Recycling Cartel
 - Fixing purchase prices prohibited - fined
 - Competition down stream
 - Joint de-listing same effects as fixed purchase prices?



What are the borderlines?

Foreclosure of other retailers

(HGL 212)

Do ERAs harm competitive position of other (SME) retailers?

- **Waterbed effect?**
 - CMA in Sainsburys/Asda:
 - *"... the Merger is unlikely to lead to customer harm through a waterbed effect"*
- **Spiral/Concentration effect?**
 - EDEKA/KT in application to minister:
 - KT forced to exit market following authority's refusal to approve proposed buying group and subsequent spiral effect
 - Effects similar to network effects?
 - High correlation between sales and purchases prices
 - Risk of tipping of market

Reduced innovation and quality

(HGL 207)

- CMA in Sainsburys/Asda:
 - *"... insufficient evidence ... that the Merger is more likely ... to significantly reduce incentives to invest and innovate on the part of suppliers."*
- BKartA in EDEKA/KT:
 - *"If level of competition decreases, consumers will suffer due to inferior product quality, reduced innovation and less choice ..."*

Thank you!



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