

Unfair practices in the grocery supply chain

Analysis and remedies across Europe

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BUYER POWER AND BARGAINING POWER

- Imbalance of bargaining power between grocery chains and suppliers an issue of concern
- Competition law regulates buyer power
- Bargaining power: A separate problem?
- Protecting small businesses
- The role of consumers

THE SHORTCOMINGS OF COMPETITION LAW

The Member States have employed several mechanisms to try and tackle the issue of unfair commercial practices, which differ according to the needs and legal traditions of the Member States. Although several Member States have chosen to deal with these issues through competition law, it is clear that the motivation behind competition law frameworks is inapplicable in the context of the food-sector. ... [C]ompetition law is unlikely to be the answer.

British Institute of International and Comparative Law: Models of Enforcement in Europe for Relations in the Food Supply Chain

- The problem: Control of quasi-abusive behaviour by quasi-dominant retailers

HOW TO REGULATE UNFAIR PRACTICES IN THE GROCERY SUPPLY CHAIN

- Adjusting the competition analysis?
 - Adjusting the dominance and/or abuse criteria?
- Or focus on fair dealing?
- Unfair competition rules applied to vertical relationships
- Unfair competition/unfair agreements: Two sides of the same coin?
 - Regulating the process and/or its results
 - Unfair competition rules in combination with (targeted) contractual law?
- Negative impact on competition as a condition?

THE STANDARD OF FAIR DEALING

- A set of principles for fair dealing as the starting point
 - Standards based on the principle that a retailer must deal with its suppliers fairly, lawfully and in good faith, without duress and recognition of its suppliers' need for certainty
 - Addressing the imbalances of bargaining power
- Combined with rules addressing specific conduct
- Hard law or soft law?
 - Binding framework regulating conduct
 - The role of retailers and suppliers in the standard setting
- EU directives to secure consistency

HOW ENSURE FAIR DEALING?

- In-house compliance officer
 - Self-correcting of unfair practices
- Soft Law dispute resolution framework
 - Voluntary, easy accessible
- Need for a dedicated adjudicator or ombudsman?
 - Arbitration of disputes
 - Anonymous complaints
 - Carrying out investigations, also ex officio
- Remedies?