



Institute of European and Comparative Law
in conjunction with the Centre for Competition Law and Policy

Trends in Retail Competition: Private labels, brands and competition policy

Report on the seventh annual symposium
on retail competition

Held in Oxford on 3rd June 2011

Prepared by David George
Associate
Bristows

Sponsored by

BRISTOWS

Contents

OVERVIEW	1
INTRODUCTION	2
OPENING REMARKS	3
Trends and challenges in the European grocery sector	
SESSION 1: PRIVATE LABELS, INNOVATION AND CHOICE	6
The economic benefits of private labels	
Private labels, innovation and SMEs	
SESSION 2: BUYER POWER – IMPLICATIONS FOR SHOPPERS AND SUPPLIERS	10
The balance of power in retailer relationships	
The consumer implications of buyer power	
Sources of power and future influences	
Roundtable discussion 1	
SESSION 3: COMMERCIAL PRACTICES – IMPACT ON SHOPPERS AND SMALLER BUSINESSES	15
Fair and unfair practices in the EU supply chain	
The perspective of smaller business	
Portuguese groceries market investigation: findings	
Roundtable discussion 2	
CONCLUDING REMARKS	22
Public policy – rising to the challenge for the shopper?	
ANNEXES	24
Annex 1: Biographies of speakers	

OVERVIEW

In recent years retail competition has received an increasing level of attention both at member state and European level. Private label continues to have a profound effect on retail trade in Europe – however, its impact is not uniform, retail markets in the various member states continue to evolve in diverse ways. Reports of national regulators have now begun to emerge in various member states and they shed light on these recent developments. A great deal of attention is being focussed on retail competition at the EU level too; the European Parliament and the European Commission are particularly active in this field. In the UK, the Groceries Supply Code of Practice (GSCOP) has been in force since February 2010, the establishment of a Groceries Code Adjudicator has been announced but is not expected to begin functioning until summer 2013. Building on a theme raised in previous symposia, this year's symposium explored in particular the effects of buyer power on smaller enterprises and consumers. This symposium was the seventh to be hosted by the Oxford Institute of European and Comparative Law in conjunction with the Centre for Competition Law & Policy and sponsored by the law firm Bristows. The symposium included three sessions of presentations as well as two roundtable discussions in which delegates were encouraged to participate. The event was held under the Chatham House Rule. The symposium was chaired by Professor Ulf Bernitz of the Oxford/Stockholm Wallenberg Venture.

INTRODUCTION

The following represents the programme for the symposium:

OPENING REMARKS

- 09.40 **Trends and challenges in the European grocery sector**
Jean-Jacques Vandenheede, A C Nielsen

SESSION 1: PRIVATE LABELS, INNOVATION AND CHOICE

- 10.10 **The economic benefits of private labels**
Robin Noble, Oxera
- 10.30 **Private labels, innovation and SMEs**
Dr Frank Bunte, LEI, Wageningen University and Research Centre

SESSION 2: BUYER POWER – IMPLICATIONS FOR SHOPPERS AND SUPPLIERS

- 11.15 **The balance of power in retailer relationships**
Javier Berasategi, Berasategi & Abogados
- 11.50 **The consumer implications of buyer power**
Dr Peter Davis, Competition Commission
- 11.55 **Sources of power and future influences**
Robert Steiner, American Antitrust Institute
- 12.10 **Roundtable discussion 1**
Chairman: John Holmes, *Which?*
Panel: Representatives of the competition authorities of Austria, Belgium, Germany, Spain and the United Kingdom

SESSION 3: COMMERCIAL PRACTICES – IMPACT ON SHOPPERS AND SMALLER BUSINESSES

- 14.00 **Fair and unfair practices in the EU supply chain**
Marek Lysy, DG Internal Market & Services, European Commission
- 14.20 **The perspective of the smaller business**
John Harold, former MD, Combe International
- 14.35 **Portuguese groceries market investigation: findings**
Manuel Sebastião, Autoridade da Concorrência, Portugal
- 15.40 **Roundtable discussion 2**
Chairman: Deborah Price, *Which?*
Panel: Representatives of the competition authorities of Hungary, Ireland, Portugal, the United Kingdom and of the European Commission

CONCLUDING REMARKS

- 16.35 **Public policy – rising to the challenge for the shopper?**
Anna Maria Corazza Bildt MEP, European Parliament

OPENING REMARKS

Trends and challenges in the European grocery sector

Jean-Jacques Vandenheede, *A C Nielsen*

Global trends

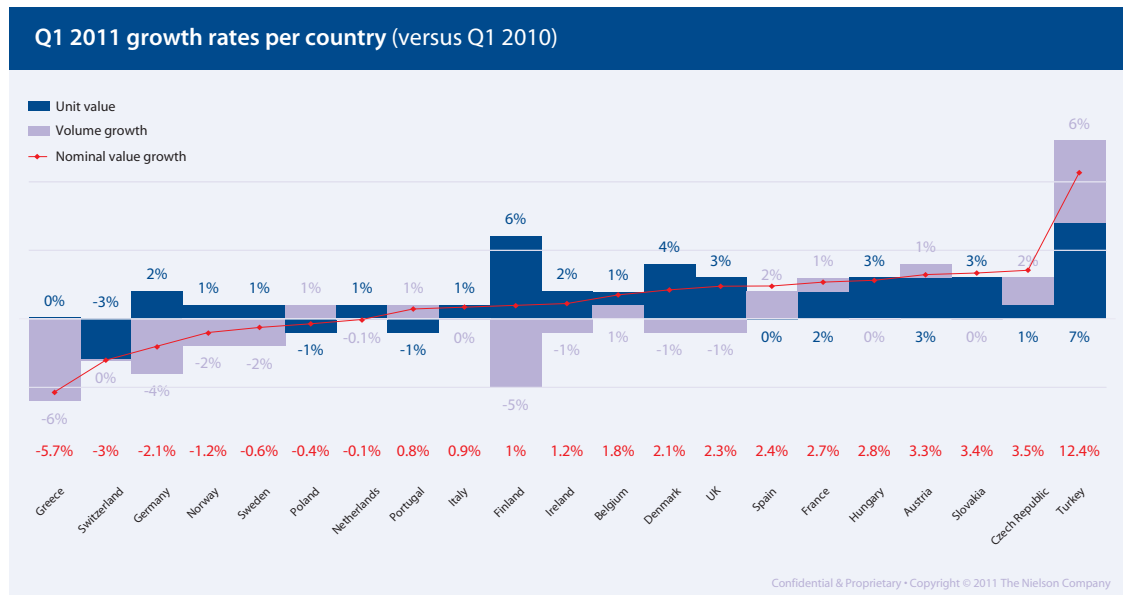
Six overall trends affect the global grocery sector:

- Demographic shifts – as average age steadily rises across the globe
- Geographic shifts – with the rise of economies in the East
- Retail and shopper transformation – changing shopper behaviours
- Brand structure – brands become increasingly global
- Casino economy – consumers react to increasingly volatile global markets
- Media revolution – consumers become increasingly well connected

Consumer trends

Consumer confidence has been low across Europe, particularly in France. Consumer confidence fell to a low in the first quarter of 2009 and is yet to recover to 2006 levels. Consumers also report a strong perception that they suffer from a lack of disposable cash. Survey evidence shows that between 2006 and 2010 there has been an upward trend in the number of consumers agreeing with the statement 'I have no spare cash'. In the UK the proportion of consumers agreeing with this statement rose from 19% to 27%. Consumers saved more during 2009 (perhaps because of the lack of confidence) but saving levels are now lower, at similar levels to those in 2006.

The changes are in part explained by the spike in the level of inflation in food products during 2008. This spike in inflation had a follow-on impact on volumes. Although overall growth in the fast moving consumer goods (FMCG) sector in Europe has declined steeply in recent years (from over 6% during 2008 down to around 2.5% during 2010), wide disparities exist between countries. It is difficult to find a causal link between a global trend and an impact on a specific market. As the table below illustrates, although similar trends have affected all markets, the rate of growth in each of those markets varies greatly. Some countries have seen volume growth, others have seen volumes shrink. Others have seen unit value grow, whilst yet others have seen a decline in unit values.



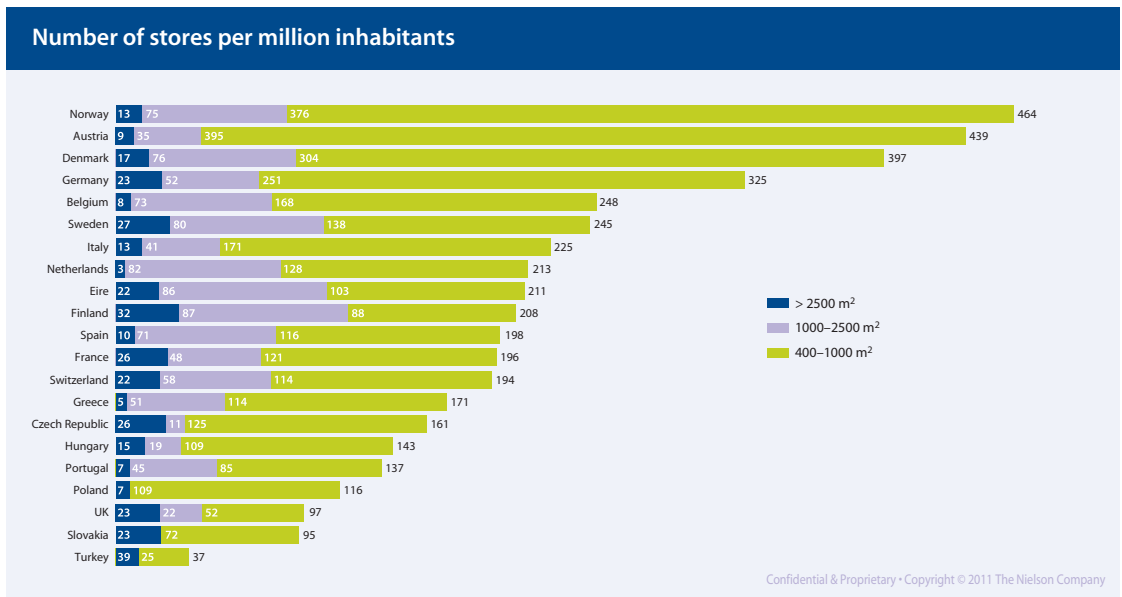
Are consumers changing?

Although consumers are spending slightly more during their shopping trips, frequency of shopping trips is generally stable. Habit is a very strong factor for consumers in the groceries sector. Surveys confirm that in most European countries most consumers (two thirds or more) agree with the statement 'I shopped at the same store I always do'.

Are retailers changing?

The number of all types of grocery store (small supermarkets, large supermarkets and hypermarkets) has consistently and steadily increased since at least 1990. The greater number of stores means that it has become easier and easier for consumers to find a store, while the continuing upward trend appears to indicate that the market is not yet saturated. The format of the structure of the stores (i.e. proportion of small, medium and large stores) has remained steady for over a decade, although within the categories of store the make-up of stores has changed, in particular discounters have become increasingly prominent. Despite relatively stable shares, turnover of hypermarkets has declined slightly in recent years, whereas smaller stores' turnover has increased gradually.

The table below illustrates the great disparity in the number and format of stores across Europe, with consumers in some countries such as the UK having almost five times less choice than a consumer in Norway.



The variance in format is a reflection of retailers' strategies. In some countries the hypermarket has been employed more successfully than others. As a result consumers shop differently, adapting to retailers' strategies rather than the reverse.

Other trends

Habit is very strong in consumers, but there is some evidence that habits are changing. In recent years increasing numbers of consumers are switching stores to benefit from promotions and the value of stock on promotion has increased in most countries, particularly the UK. Also, increasing numbers of shoppers are shopping for groceries online.

Private label continues to grow. This is a structural change which is not yet complete, as retailers grow bigger they rationalise their product assortment and eliminate the no. 2 and no. 3 brands, replacing them with private label. The leading brands remain, but no real battle occurs between these brands and the private label product. Private label is most popular with more affluent, larger households who make frequent shopping trips, whereas less affluent, smaller households tend to purchase more branded goods.

SESSION 1: PRIVATE LABELS, INNOVATION AND CHOICE

The economic benefits of private labels

Robin Noble, *Oxera*

There is significant debate about the effects of private labels (also known as retailers' own-brands) on competition. Various EU member state governments, and regulatory and industry organisations, have expressed views about the impacts of private labels. It is an area which has generated numerous books and articles. The European Retail Round Table ('ERRT') commissioned Oxera to produce a report assessing the benefits of private labels. The aim of the report was to contribute to the debate by identifying the benefits brought about by private labels, and to address common misconceptions about the impact of them (a full cost-benefit analysis was beyond the scope of the report). The report focuses on the impact on suppliers, retailers, and ultimately consumers. It uses publicly available sources of evidence, supplemented with information provided by ERRT members. The report focuses primarily on the groceries sector, but also draws insights from other sectors, such as clothing retail, electrical retailing and DIY stores, which have varying levels of private label penetration.

Historically, private labels emerged as low-quality, low-price rivals to 'quality' brands. Over time, private labels have become increasingly sophisticated, with many being regarded as brands in their own right. Retailers invest significant sums in research and development and market-testing of products prior to subcontracting production to a third party supplier. Private label producers are also sometimes viewed as smaller entities – but this is no longer always the case. Very large private label manufacturers now exist, meaning that a manufacturer is not necessarily in a weak position vis-à-vis the retailer.

Private labels can stimulate competition and innovation between retailers because they add an additional dimension on which retailers compete against each other. If a retailer can develop an attractive range of private label products it can differentiate itself from rival retailers and win custom from consumers. Retailers also have an interest in working closely with suppliers to source products that consumers demand.

The impact of private labels on retailer-supplier bargaining power is not straightforward. In some cases the existence of private labels may lead to increased retailer bargaining power vis-à-vis suppliers, but this is not always the case. A retailer's bargaining power is derived not so much from its scale, but from the outside options it would have if contractual negotiations broke down, and also the outside options available to the supplier. Where a supplier has fewer alternative options, a retailer will have a stronger bargaining position.

Oxera's report found that the effects of retailer bargaining power can be positive for consumers. A strong bargaining position can allow retailers to obtain the best deals from suppliers to the benefit of consumers. The negative consequences of bargaining power need to be considered carefully: retailers have no long-term interest in forcing efficient suppliers out of the market. On the contrary, retailers have an interest in maintaining fierce competition between their suppliers and, for example, will submit third party comments to oppose mergers between suppliers where it affects the retailer's interests. Private labels can also provide a very important route to the mass market for small suppliers, because the retailer –

¹ Oxera (2010), 'The economic benefits of retailer own-brands', prepared for the European Retail Round Table, September.

² ERRT members are Asda/Wal-Mart, C&A, Carrefour Group, Delhaize Group, El Corte Inglés, H&M, IKEA, Inditex, Kingfisher, Marks & Spencer, Mercadona, METRO Group, Royal Ahold, and Tesco.

rather than the supplier – bears the costs and risks involved in developing the private label brand. These retailer–supplier relationships can be very long-term.

The report also found that, in general, significant price differentials existed between private labels and branded goods, with private labels being cheaper on average. However, this was not uniformly the case. Over time a hierarchy of premium private label brands has been developed – with several positioned at price levels above those of some brands.

Consumers who purchase private labels will often benefit directly from lower prices. Consumers who purchase branded goods also benefit indirectly, since brand suppliers are subject to competitive pressure to lower prices. Private labels also increase retailer–retailer competition as retailers develop their private label offering to encourage consumers to switch to their stores. Even consumers who do not switch stores will benefit from this rivalry between retailers.

There are wide differences in the shares of private labels in different segments. For example, in the UK, historical data suggests that private labels have had a low share in the baby food and tobacco segments, but a very high share in the milk and meat segments. This may suggest that competition favours different balances of branded goods and private labels in different segments, according to consumer demand. Private label growth is, of course, not unlimited: for example, private-label-only supermarkets remain niche players in the UK. Consumers continue to demand branded goods. Suppliers and brand owners continue to innovate and develop strategies to compete with retailers across a range of price/quality combinations.

Private labels, innovation and SMEs

Dr Frank Bunte, LEI, Wageningen University and Research Centre

The European Commission commissioned a consortium led by LEI to carry out a study to find out what effect private label products (PL) have on the competitiveness of the European food processing industry. It also sought to identify possible lacunae in existing legislation, or the enforcement of that legislation. The study also queried whether or not producer indications would improve innovation.

The study sought to test two hypotheses:

- 1 whether PL increases or decreases consumer choice; and
- 2 second whether or not the growth of PL would affect the growth, sales and profitability of smaller suppliers.

The study drew on research from economists from 5 countries: Hungary, France, Italy, the United Kingdom and the Netherlands. The study analysed the impact of PL on supply chain structures.

Effect of PL on SME suppliers

The study found that in many cases the number of SME suppliers declines as PL grows. However, this general trend does not hold true in all subsectors and in all countries. For example, in the food processing sector, between 2002 and 2007 the number of SMEs declined in Germany, Spain and smaller member states, but remained static in the UK and actually increased in France and Italy. There was little evidence that the profitability of food processors had been affected by the growth of PL. Profitability remained relatively stable in virtually all member states, with the exception of the Netherlands which experienced an unexplained spike in food processing profitability in 2004/05.

The study found an inverse correlation between the penetration rate of PL and the market share of SMEs. For example, in France between 1999 and 2006 the penetration rate of PL grew from 22% to 29% and in the same period the market share of SMEs in food production fell. However, although the overall market share of SMEs in food production fell, the market share of SMEs in PL production grew, which would indicate that while some SMEs exited the market others switched from brand production to PL production. This trend would appear to be particularly strong in certain segments. The growth of PL has therefore not been entirely negative for SMEs, while some may have lost market share or exited the market, others SMEs may have benefitted from the new opportunities presented by the growth of PL.

Effect of PL on brands and innovation

Examining the growth of PLs, the study found that the PL market share increased rapidly in Spain and Central Europe. The effect of growth of PL was to 'crowd out' secondary brands, but not primary brands – these continued to remain popular. For example, in Italy the number of brands in dairy and cereals grew with the exception of homogenous products like butter and whole milk segments. This trend was reflected in the rate of new companies entering these segments, with an overall increase and a slight decline in the number of butter producers.

Although there was a negative impact on secondary brands, the study found that PL increased innovation (measured in terms of new products introduced): between 2005 and 2009 the number of new product introductions grew in all countries studied, with the exception of Spain. The study also found that the PL share of product introductions grew in every country except the UK. The study found that innovation increased because retailers had significant resources to invest in new products; retailers were also able to use their position to maintain high levels of manufacturer effort both by cooperating and competing with food processors. The impact of PL on innovation would therefore appear to be positive in general, even in Spain, where the number of new product introductions fell. The latter is not necessarily the result of less innovation, but rather the popularity of supermarkets which deliberately choose to offer limited lines of products. Nevertheless, there was evidence that some retailer practices reduced manufacturer's efforts to innovate; for example late payments, excessive risk-shifting, unfair buy-back arrangements.

Possible remedies

Where market imperfections arise, the following roadmap sets out the options for tackling these problems:

- 1** voluntary codes of conduct
- 2** efforts to create countervailing (manufacturer) power
- 3** legal requirements placed on retailers and access to court given to manufacturers
- 4** public law inspections and sanctions

Conclusions

Overall, the evidence gathered by the study would suggest that innovation remains vibrant and has even improved through the growth of PL. Although SMEs have lost market share, the competitiveness of SMEs is not at stake: SMEs can continue to enter the market and grow, although many may now choose to produce PL products rather than branded goods. The reduction in SME market share illustrates the fact that now retailers perform more activities in the supply chain at the cost of food processing. Although the outlook is generally not bad, there may be good reason to address some negative business practices of powerful retailers.

SESSION 2: BUYER POWER – IMPLICATIONS FOR SHOPPERS AND SUPPLIERS

The balance of power in retailer relationships

Javier Berasategi, *Berasategi & Abogados*

Traditional competition law analysis fails to appreciate the power that accrues to retailers through their role as 'gatekeepers to the market' and the negative impact that this can have on competition. Grocery stores often accrue excessive power which they exploit to the detriment of suppliers and consumers.

A competitive national market or a series of local monopolies?

In theory, consumers benefit from the competition between different chains of grocery store: each chain competes to attract consumers through the pricing and quality of their products. Reality is somewhat different: consumers are creatures of habit; parallel pricing and information asymmetries mean that consumers rarely switch stores based on these factors. Rather than a competitive national market, consumers are faced with a series of localised monopolies or oligopolies.

Proximity, rather than price or quality, is the key factor underpinning competition between grocery stores. If a grocery store wants to win over consumers from another store, it will normally have more success doing this by opening a new outlet closer to the consumers than by trying to offer better or cheaper products from its existing outlets. Unfortunately, the scarcity of land and the existence of significant entry and expansion barriers (e.g. planning rules) mean that in practice incumbent stores face weak competitive constraints and can effectively operate as a local monopoly or oligopoly.

The adverse impact of local monopolies on consumers and suppliers

Competition within these local monopolies is unhealthy. Consumers find themselves locked-in to a single grocery store. In-store they are manipulated by the retailer. The tendency of consumers to be 'single-homed' (i.e. shop at only one store) gives retailers inordinate power over suppliers.

Survey evidence indicates that proximity to the relevant store is the key factor in shopping decisions. In Spain, 74% of consumers spend close to 100% of their grocery budget at a single grocery store. Survey evidence also indicates that many consumers become 'locked-in' to their local store. If the store does not have a product they want to purchase, only a minority of consumers will shop elsewhere to purchase it. Information asymmetries mean that consumers are less likely to switch stores: compared with the grocery stores, consumers cannot easily compare the prices of most products. Grocery stores are able to compare prices and they frequently adjust their pricing by region, this means consumers face parallel prices at their local stores.

Grocery stores manipulate the in-store purchasing decisions of consumers through several strategies. Grocery stores frequently position their PL products in more prominent positions and allocate more shelving space to these products than the PL products' market share warrants. Survey evidence suggests that such discriminatory shelf-positioning affects consumers' purchase decisions. The packaging of grocery stores' PL products is frequently designed to mimic that of the leading brands. Placed beside the

genuine brand, consumers purchase these 'copycats' either by accident or because of a false association of quality. Grocery stores also control the pricing of PL and branded goods and manipulate these prices to their advantage, frequently setting artificially wide price differences and cross-subsidising in favour of the PL.

Grocery stores act as a competitive bottleneck. Compared with other EU member states, Spain is the country where market access is the most difficult, in part because of the unusual popularity of mid-sized stores which offer a more constricted choice of products. Suppliers need to achieve scale to be able to operate efficiently. To reach all consumers the supplier must ensure its products are sold in each chain of grocery store ('multi-home'). Each retailer is a gatekeeper to its single-homed customers. The one-stop trap (i.e. consumers' unwillingness to shop around to purchase a brand) gives the retailer power to deny or degrade access to suppliers. Control over access allows grocery stores the power to charge significant listing fees for access. These listing fees are often justified on the basis that the grocery store takes a risk by stocking the product, but it is notable that the fees are not repaid if the product is successful.

Because of the importance of proximity for attracting new consumers, grocery stores have little incentive to compete on price. Rather they charge higher prices and delay payments to suppliers to fund new outlets. This has a negative impact on innovation – Spain has experienced a decline in new product launches in recent years; a negative impact on the Spanish economy; a negative impact on prices and a negative impact on consumer choice as the growth of PL increasingly crowds out branded goods.

Conclusions

Traditionally retailer power, PL and vertical integration have not been viewed as a competition law problem. Article 102 does not bite on the unilateral actions of retailers, as no single retailer is dominant. There is however an emerging trend in the EU and member states which views these phenomena as regulatory issues. It is worth querying whether it is really true that competition law is unable to be of use. Perhaps it is a mindset problem – if existing competition law were applied differently it might yet have teeth. Perhaps it is possible to reconcile the theory of market definition and market power with the reality revealed in consumer surveys and the reality of the grocery stores' 'gatekeeper' function. It appears that there is a case to say that there are many localised markets where a single grocery store is dominant. Competition law could usefully be applied to ensure non-abusive access is granted to suppliers and unfair in-store practices are curbed.

The consumer implications of buyer power

Dr Peter Davis, *Competition Commission*

Background

Economic theory is ambiguous about the net welfare effect of the exercise of buyer power. On the one hand, buyer power could lead to 'demand withholding' whereby a monopsonist buyer exercises its power to extract lower unit prices from suppliers and limiting supply at the expense of final consumers. On the other hand, buyer power could benefit final consumers if the reduction in unit price is passed on so that final goods prices are also cut. Although economic theory cannot explain the implications of buyer power in the abstract, it does provide helpful 'if-then' propositions that can be related to specific cases.

Stonegate-Deans (merger inquiry, 2007)

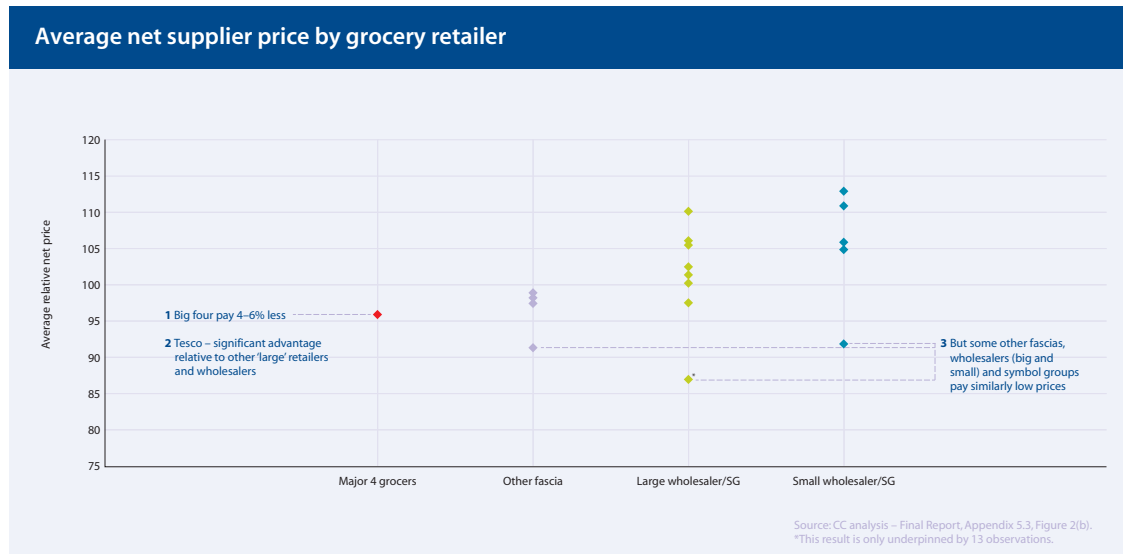
The question of buyer power arose in the Competition Commission's (CC) Stonegate-Deans merger inquiry of 2007. Stonegate and Deans were two leading 'egg packer' firms. These firms purchased eggs from farms and packed them to sell to supermarkets. The firms were partially vertically integrated as they also operated some of their own farms and had supply from others under long term vertical supply contracts. The CC noted that Mintel had estimated the firms had market shares of about 28% and 44% before the merger, whilst the rest of the market was fragmented. The CC found that the merger would substantially lessen competition downstream in the sale of packed eggs and also upstream due to increased buyer power in the market for eggs. The CC considered that the merged entity had an incentive to reduce output and could do so profitably. The CC found that although the downstream purchasers (supermarkets) had some countervailing buyer power, this buyer power was limited since eggs were a 'must stock' item and it was difficult to switch to other sources of eggs (smaller UK suppliers and non-UK suppliers). The CC therefore ordered that the merger be unwound.

Groceries Market Investigation (market investigation, 2008)

The CC exercised its statutory powers to investigate the UK's groceries market. Annual grocery sales in 2006-07 were around £110 billion, of which the 'big four' supermarkets accounted for 65% of sales, 20% of sales went to the other four large supermarkets, and the rest of the market was split between 3 major discount chains, numerous symbol groups (franchise-type operators) and smaller retailers.

The investigation found that the groceries sector was generally functioning well for consumers but identified a horizontal issue concerning barriers to entry which could result in local market power and, of particular relevance to this presentation, a vertical issue concerning the effect of buyer power combined with ex-post hold-up and contractual incompleteness which the CC found could lead to misalignments of incentives for investment in the supply chain, which could result in consumer harm.

The evidence gathered by the CC indicated that in general suppliers consistently achieved lower margins trading with the big four supermarkets compared their trade with other retailers.



Overall, the evidence indicated that bigger retailers were able to obtain lower unit prices from the suppliers, although some smaller suppliers did manage to achieve still better prices. The bigger retailers were less able to achieve lower prices from the leading branded goods, which is evidence consistent with the notion that the producers of leading branded products are able to resist retailers' buyer power.

Although there was evidence that larger retailers were able to obtain lower unit prices from their suppliers, there was no evidence of a systemic problem with the viability of food and drink manufacturers as a result of this buyer power. On the other hand, the investigation did find evidence of what economists have called contractual incompleteness (unspecified contractual contingencies), ex-post renegotiation of contractual terms (e.g. prices) paid to suppliers and apparently misaligned incentives in supply relationships. The CC found that these meant risk was transferred from retailers to suppliers and that this transfer of risk could dampen suppliers' incentives to invest. As a consequence the CC imposed an Order to create a legally binding Groceries Supply Code of Practice (GSCOP) and recommended that the UK government legislate to introduce an Ombudsman/Adjudicator to resolve disputes under the GSCOP.

Conclusion

Although economic theory does not provide a rule of thumb explaining the implications of buyer power, it does provide useful 'if-then' propositions to decide whether consumer harm occurs in a given case. The proper threshold for intervention of course can be an important question in a market investigation: is it sufficient to demonstrate that the incentives for investment were affected or should there also be evidence to show actual effects on market outcomes?

Roundtable discussion 1

Facilitated by John Holmes, *Which?*

This section sets out briefly the most important points made during the first roundtable discussion that followed the presentations in sessions 1 and 2.

- It was noted that it is a common assumption that a supplier will prefer to produce its own branded goods rather than private label on behalf of a retailer. However, survey evidence suggests that this assumption is not always accurate.
- Many suppliers prefer the security offered by working for retailers and can grow by scaling up to meet the retailer's demands. Such preferences tend to vary by product category.
- In some product categories it is arguable that strong relationships between suppliers and retailers can lead to innovative new private label goods.
- It was emphasised that private label does not pose a problem in itself. Private label has existed for a long time. Concerns arise because of the combination of private label in the hands of retailers who are able to exercise buyer power.
- It should be noted that retailers do not appear to be able to exercise buyer power against all suppliers. There is little evidence that retailers can exert significant buying power vis-à-vis 'must have' brand suppliers.
- There is much stronger evidence that retailers exercise buyer power against the mid-tier brands and that these brands are pushed out of the market. The issue of foreclosure in vertically integrated markets is therefore a serious one.
- However, it is unclear that private label pose significant threat to SMEs. Private label has mixed effects on SMEs: some grow, some remain stable, yet others exit the market or go out of business.
- It is easy to establish that private label 'might' pose a problem. A key question to consider is therefore what threshold should be passed before competition law is engaged. Arguably, a *prima facie* case must be established before action can commence.
- The difficulty of using competition law raises the question whether other instruments might be more suitable to tackle the issues related to private label. For example, 'copycat' designing might be more successfully approached through intellectual property rules.
- Aside from private label other matters have a considerable impact on retail competition. For example, in some member states planning laws and opening hour laws favour mid-size supermarkets over hypermarkets. This has an effect on consumer purchasing habits, notably by constricting geographic markets as consumers are less willing to travel longer distances to stores.
- In some member states there is evidence that competition is being restricted through the co-ordination of retail pricing between retailers. For example, retailers may try to agree optimised price differentials or parities between different branded goods.

³ The Chatham House Rule applied to the discussion, and so the contributors are not named.

SESSION 3: COMMERCIAL PRACTICES – IMPACT ON SHOPPERS AND SMALLER BUSINESSES

Fair and unfair practices in the EU supply chain

Marek Lysy, *DG Internal Market & Services, European Commission*

In its efforts to improve the smooth functioning of the internal market, the European Commission has in recent years focussed attention on the retail market. While the Commission wishes to eliminate existing barriers to establishment of retail outlets and the cross-border provision of these services, it is at the same time analysing all elements that ensure good performance of the sector, not only in economic terms, but also taking into account social and environmental aspects. One key question under consideration is whether and how to deal with unfair business-to-business practices. This issue has been addressed within the Commission's High Level Forum for a Better Functioning Food Supply Chain (the 'High Level Forum'); DG COMP's study on national rules on unfair practices; DG Justice's proposed European Contract Law; the Retail Market Monitoring Report and the forthcoming Communication on Unfair Business to Business Commercial Practices.

The High Level Forum

The High Level Forum was established by Commission Decision of 30 July 2010 and first met in November of that year. Its terms of reference include the evaluation of the performance of the food supply sector. The High Level Forum is not restricting itself to the analysis of the business to business practices of the food retail sector but also other issues such as the sector's competitiveness and price transmission throughout the supply chain.

Retail Market Monitoring Report

In early July 2010, prior to the establishment of the High Level Forum, the Commission published its Retail Market Monitoring Report. The report identified some 20 major issues, including:

- Accessibility, especially for the disabled, elderly and those who do not possess a car;
- Lack of efficiency of commercial planning rules, possibly with malfunctioning of the commercial property markets;
- Insufficient development of e-commerce;
- Underdevelopment of commercial communications and independent information services;
- Differences in working conditions caused by different labour laws;
- A mismatch between the skills needed by companies and those of the staff;
- High energy consumption; and
- Lack of rules governing unfair commercial practices in the supply chain.

The report examined the role of private label and noted the positive potential of private label vis-à-vis consumers. However, the report stated that unfair practices between retailers and private label suppliers might be a problem also for consumers.

European Parliament's Report

In a separate development, the European Parliament has, of its own initiative, in July 2011 adopted a resolution on a more efficient and fairer retail market. The resolution highlights priorities that should be dealt with at EU level and, notably, highlights concern about unfair practices within the supply chain and denounces 'practices that misuse power imbalance between economic actors and affect true freedom of contract'. The resolution calls for greater self-regulation in the first instance and calls on the Commission to adopt an action plan on retail.

Communication on Unfair Business to Business Practice

The Commission is preparing to issue a Communication on Unfair Business to Business Practices. The Communication is a policy document by the Commission to define the problem and outline possible avenues of action at EU level. The Communication will not call for legislative action at this stage so as not to pre-judge conclusions of other initiatives. Rather, the Communication seeks to assess the need and prepare the way for another initiative that, if required, would contribute to achieving an internal market for retail services that is more efficient and fairer for all parties. In particular, suppliers should be able to sell products which are competitive in terms of price and quality and to reap the rewards of their innovation.

The purpose of the Communication is to map out national regulations or voluntary codes addressing unfair practices, to define the perceived problem from an economic and Internal Market perspective and to examine the enforcement of rules on unfair practices and the transparency of business-to-business relations. The Communication might also examine the concepts of 'economic dependency' and 'gatekeeper power'. It is intended that the Communication will cover not just food, but all retail. It will also address issues at each step within the food supply chain from farmers to retailers, including questions relating to private label.

The perspective of the smaller business

John Harold, former MD of Combe International

John Harold spoke about the supplier-retailer relationship from the perspective of the smaller business. John drew on his personal experience gained through more than 20 years acting as the managing director of Combe International (Combe), the SME behind several well known personal care brands including: Just for Men, Odor Eaters, Vagisil, Seabond and Lanacane.

For a smaller business it can be very difficult to get face-to-face with a major multiple. Retailers are primarily interested in turnover and volume. Many smaller businesses will have neither; such businesses must therefore find other ways to capture retailers' attention. One method is to deal with retailers via a distributor, using the distributor's size, expertise and influence to meet with the retailer. Another method is for the supplier to deliberately distinguish its offering from that of rivals. Combe approached retailers via distributors but also successfully sought to distinguish itself by producing niche products aimed at satisfying previously unfilled consumer needs and using TV advertising to become instantly recognisable. In Combe's experience persistence is crucial – even if the retailer is not interested at first it is important to keep the retailer up-to-date with latest advertising and sales- and share growth figures to make clear that a meeting will be worth their while.

Even once a business relationship has begun, working with a large retailer has pitfalls. Larger retailers' decision-making can be slow and inflexible; retailers sometimes fail to balance internal and external demands effectively. A retailer might, for example, make an unannounced change to its distribution methods to tackle a perceived distribution issue. The change might be very disruptive to the suppliers' business and fail to address the distribution problem because of the lack of consultation; it might even make matters worse. Once the change is in place it can take a long time for the retailer to review or correct the decision. Similarly, some retailers make listing decisions only during an annual range review – it can be devastating for a smaller business to miss this vital window of opportunity. Retailers also want results quickly – they will often delist a product if it fails to turn a profit within 3 months; this can cause problems, especially for new products which may become very successful in time but which take a while to establish demand. For example, Combe's 'Touch of Gray' hair-dye product is targeted at male customers. Men tend to be very brand-loyal, however, it takes a while to build a base of customers – three months can be insufficient time to establish a sufficient customer base to generate a significant profit. This short-term decision-making can also stifle innovation.

To respond successfully to a retailer's demands a smaller business needs to understand the retailer's aims and motives. Some retailers focus on maximising margins, others focus on turnover or market share; yet others prioritise high levels of service. It is important that the supplier adapts to these demands and tailors its offering to fit the retailer's expectations. Providing constant updates about a product's success will help remind the retailer that its expectations have been met. During negotiations a retailer will generally have a much stronger bargaining position than the smaller business; the smaller business must therefore expect to have to make concessions. Nevertheless, the supplier needs to stand up for its interests – it must pick its battles carefully, and always defend areas of true importance. Where a concession is given the supplier should consider whether it is possible to use the concession to obtain something in return from the retailer, for example, additional promotional effort, better shelf position, greater depth of distribution or some other advantage. Sometimes a concession is simply too great to

concede. In such instances it is important not to give in and instead consider carrying on without that particular account. Occasionally stubbornness is called for, if the retailer sees that the concession is genuinely unacceptable, it may revise its approach. It is also important to understand the retailer's motivation. Sometimes a demand originates not from the retailer's buying department but from its finance team. If this is the case, it might be possible to ask the buying team to negotiate internally with the finance team to obtain additional flexibility to allow an acceptable compromise to be achieved. Finally, it is important not to lose objectivity during negotiations; taking things personally will not help.

A retailer code of practice is a great idea provided the retailer abides by it. Transforming policy into reality is however difficult. A code only works to the extent that it is likely to be enforced. The Groceries Supply Code of Practice (GSCOP) and its predecessor, the Supermarkets Code of Practice (SCOP), were both set up to protect the consumer – but both require enforcement action by suppliers. A supplier will generally be extremely reluctant to make a formal complaint against a retailer because it knows that to do so would damage that important business relationship. This is even more the case for smaller businesses which will be particularly wary of damaging their reputation as a reliable business partner by invoking a code of practice. A supplier is only likely to use the code as a last resort where the alternative is insolvency. Unless anonymity can be guaranteed – perhaps through complaints by trade associations on behalf of members – such codes are unlikely to be fully effective.

Portuguese groceries market investigation – findings

Manuel Sebastião, *Autoridade da Concorrência, Portugal*

The Portuguese Competition Authority ('PCA') has recently completed a market study to analyse the commercial relations between food suppliers and food retailers. The market study analysed data from nearly 50 entities covering the period 2000-2009, including the 9 largest retailers which together represented 85% of Portuguese FCMG ('fast moving consumer goods') retail sales in 2008. During the market study the PCA interviewed many of the key stakeholders. The PCA published a preliminary report in December 2009 and, following feedback from stakeholders, published its final report in October 2010. The report contained eight chapters including one on the effects of PL.

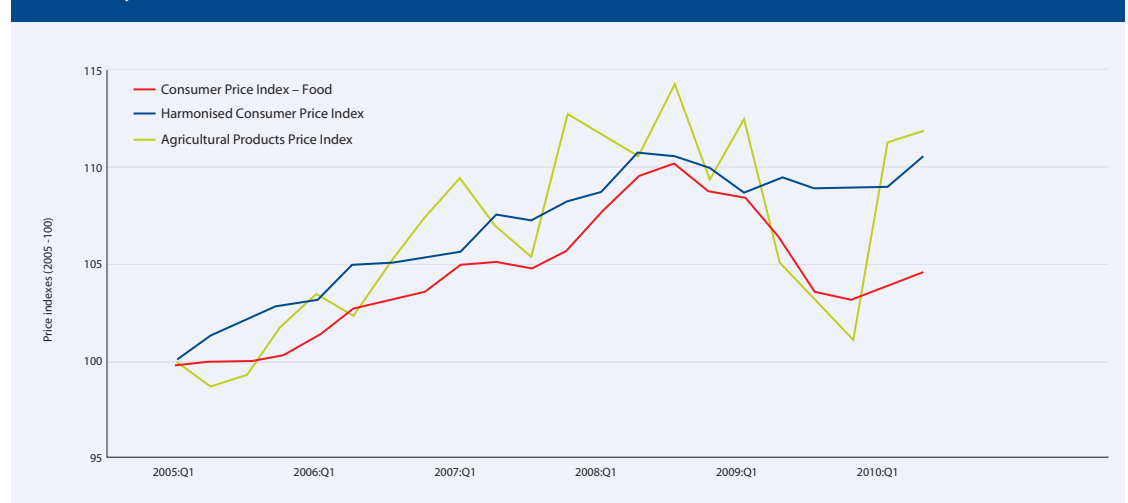
Background to the market study

There are four main factors which explain why the topic of grocery supplies is very controversial: the very significant commercial interests of the large retailing groups (LRGs); the imbalance of power between those retailers and their suppliers and producers; the on-going reform of the EU Common Agricultural Policy (CAP); and the high volatility of the prices of many foodstuffs.

Food producers told the PCA that agricultural products are affected by higher price volatility compared with other products. The diagram below compares the Harmonised Consumer Price Index, the Consumer Price Index for Food and the Agricultural Products Price Index between Q1 2005 and Q2 2010.



Quarterly evolution of the HCPI, CPIF and APPI – Q1 2005 to Q2 2010



The statistical evidence shown in the diagram would appear to support the common perception that there is higher price volatility of agricultural products compared with food and general consumer products. However, due to seasonality effects, it is perhaps not surprising that prices upstream might exhibit greater volatility. The diagram also fails to reveal how the risk at each stage of production might be compensated later on meaning that it is difficult to draw general conclusions on overall risk allocation.

Suppliers' concerns

Suppliers indicated that they had numerous concerns about their relationship with retailers. There are overall four areas where the imbalance between food suppliers and LRGs would seem to be most acute:

- 1 the unilateral imposition of contractual conditions (that is, negotiations within a pre-set purchasing agreement);
- 2 discounts and related mechanisms;
- 3 penalties; and
- 4 payment terms.

These key concerns do not fall within the scope of competition law under article 101 and/or 102. No individual retailer is dominant and none of the above practices – though they might be described as 'unfair' – distort competition as such. Nor would it seem that the Portuguese competition law concept of 'abuse of economic dependency' (an additional provision to articles 101 and 102 TFEU) applies – it being very difficult to establish the requisite of 'economic dependency'. Some of the practices did fall under Portuguese unfair trading rules, which do not require harm to competition: the prohibition on sales below cost and certain abusive bargaining practices fall into this category.

Recommendations of the study

The PCA's primary recommendations are:

- the strengthening of the sector's existing self-regulation by giving greater legal force to the existing code of conduct;
- the establishment of a committee to promote better regulation of 'unfair' practices which fall outside competition law and the existing code of conduct; and
- the gathering of further data from across the food supply chain to allow a better understanding of the functioning of this sector.

Additionally, the PCA recommended that: greater emphasis should be given to the enforcement of legislation on restrictive practices; the implementation of measures to encourage the creation of small/medium-sized commercial units in local markets; further analysis of the impact on consumer welfare of 'look alike' and 'copycat' products; that the government should prioritise the transposition into domestic legislation of the next directive on payment terms for commercial transactions; the Portuguese authorities should take a pro-active part in the work undertaken by European institutions dealing with issues related to the food supply chain and food retail sector.

⁴ TFEU: Treaty on the Functioning of the European Union.

Roundtable discussion 2

Facilitated by Deborah Price, *Which?*

This section sets out briefly the most important points made during the second roundtable discussion that followed the presentations in session 3.

- A key issue which has emerged during the Symposium is whether or not competition law should be used to tackle 'unfair' practices and, if so, how.
- First, it was noted that unfair practices are difficult for an external observer to detect, with the possible exception of selling below cost. Any regime aimed at tackling unfair practices would be reliant on victims being willing to speak out about misconduct.
- Second, it was noted that EU competition laws are framed in general terms. This allows competition rules to be applied in very varied circumstances. By contrast unfair practices tend to be context specific, normally with 'blacklisted' practices prohibited.
- A rule framed in the form of a blacklist can sometimes be evaded through the careful reframing of the contract or business practice: 'form' matters more than substance.
- By contrast a prohibition on the distortion of competition cannot be evaded by changes of form. Such a prohibition, based on a consumer welfare standard, is also less likely to be used to benefit market participants as opposed to consumers.
- Several panellists expressed the view that voluntary codes of conduct in various member states had lacked success. It was agreed that the difficulties in gathering evidence was a key barrier to the effective enforcement of both competition rules and codes of conduct.

⁵ The Chatham House Rule applied to the discussion, and so the contributors are not named.

CONCLUDING REMARKS

Public policy – rising to the challenge for the shopper?

Anna Maria Corrazza Bildt MEP, *European Parliament*

The interview, delivered via pre-recorded video, explained the European Parliament's resolution on a more efficient and fairer retail market. The resolution identifies five areas of concern for the European Parliament in respect of the EU retail market: 1. increasing levels of protectionism; 2. the 'real economy' slipping down the political agenda; 3. the retail market being a crucial component of the Parliament's commitment to relaunch the Single Market; 4. the retail market's capacity to make a key contribution to increasing sustainability and meeting climate change targets; and 5. prevailing low levels of cross-border online trade. These five areas are addressed in six sections of the resolution, although each section is not devoted to a particular identified concern.

A vision for more competitiveness, growth and jobs

The resolution highlights some of the key positive aspects of Europe's retail sector, including its contributions to economic growth and job creation, particularly for young people, before outlining some of the problems in the sector. The problems identified include sub-optimal efficiency, transparency and fairness, and the existence of obstacles to the retail sector achieving its full potential in both online and offline trade.

The institutions of the EU are called upon to give the retail sector high political prominence as a pillar of the Single Market Act and to reinforce cross-policy coordination as part of a holistic, long-term approach. Before new regulation is considered, the EU's focus in addressing the sector's problems should be on effective enforcement of Treaty principles and existing internal market rules and instruments.

Removing obstacles to free movement of goods and services

The obstacles include restrictive national rules, divergent interpretation/inadequate enforcement of European legislation, non-recognition of certificates and standards, and territorial supply constraints. Obstacles such as these create extra costs for consumers and retailers, particularly SMEs, and limit the usefulness of the Single Market.

The Commission is called upon to further analyse the reasons for price differences in the EU to ensure greater price transparency and comparability for consumers, which would encourage cross-border trade. It is also suggested that faster bank transfers within the EU should be made possible. Member States are urged to fully and correctly implement internal market rules/legislation and the Commission is asked to monitor Member States' transposition of European legislation more closely.

Opening up market access for business and consumers

The resolution recognises the concern over the increase in shopping centres and decrease in local shops and markets particularly in remote areas. Member States are urged to implement retail planning which encourages sustainable local communities and the growth of SMEs.

The Commission is asked to take action to develop cross-border online trade by improving: internet access in the EU's most remote areas; the security of online payments; and information relating to consumer rights. It is suggested that the Commission should act more firmly against Member States which infringe internal market principles, particularly in respect of national trade and tax laws that discriminate against retailers attempting to establish themselves in foreign Member States.

Addressing contractual and commercial practices in business-to-business relations

A number of competition law issues are considered here. It is recognised that there is widespread concern over the market dominance of some large businesses which may distort competition through mechanisms such as selective distribution, geographical segmentation and price control. Use of these practices could be reduced by raising SMEs' awareness of their contractual rights. In respect of private label, it is said that they should be developed so as to improve consumer choice, transparency, quality of information and diversity. 'Parasitic copying' is condemned as an unacceptable practice and the Commission's investigation of it is welcomed.

The resolution stresses that national competition authorities must be strengthened to enable them to prevent large businesses abusing positions of dominance, and suggests that communication and cooperation between national authorities and the Directorate-General for Competition should be improved.

Enhancing efficiency and sustainable consumption – innovative practices

Parliament considers that social and environmental issues should form a greater part of 'corporate responsibility'. In particular, stakeholders are called upon to undertake further measures to reduce food waste. The resolution considers improving working conditions, combating the informal economy, and maintaining employment levels and competitiveness by better matching workers' skills to retailers' needs, to be some of the major challenges facing the retail sector.

The way ahead

The Commission is asked to prepare a European Action Plan for Retail which sets out a strategy to build on achievements to date and address outstanding issues in the sector. Parliament expects that further optimisation of purchasing and sales processes throughout the retail supply chain can improve the sector's competitiveness, drive down prices for consumers and improve service quality.

Annex 1

Biographies of speakers

Jean-Jacques Vandenheede

AC Nielsen

Jean-Jacques is the senior retail industry analyst for ACNielsen Europe. In this role he uses the comprehensive resources of the Nielsen Company globally, with a special focus on Europe to map the changes that affect the grocery retailing industry.

He analyses format realities and the change drivers. He looks in a prospective way towards developing markets. Special attention is given to new developments within formats and channels.

Private Label and discount retailing remain research fields in terms of shopper response and shopper expectations. In recent years ShopperTrends has become a primary research tool. With comparable material gathered over 50 countries we are detecting new shopper insights and shopper expectations. The global scope of this material gives Jean-Jacques innovative perspectives and insights. He discusses and shares his findings in consultancy projects, workshops and seminars.

After 34 years with Nielsen he remains passionate and curious to discover new angles and perspectives to this fascinating chameleon we call the consumer.

Robin Noble

Oxera

Robin is a Managing Consultant at the economic consultancy Oxera. He specialises in competition economics, is listed in The International Who's Who of Competition Lawyers & Economists, and has been involved in a wide range of retail matters at various levels of the value chain. Cases span such matters as grocery, pharmacy and travel agency mergers, pricing analysis for branded manufacturers, restructuring of wholesale markets, analysing abuse of dominance allegations in tobacco manufacture and retailing, and cartel analysing cartel behaviour in the dairy, livestock and apparel industries. He was one of the lead authors of a report prepared for the European Retail Round Table (ERRT) that examined the economic benefits of retailer own-brands.

Frank Bunte

LEI - Wageningen UR

Frank is senior researcher at LEI - Wageningen UR. At LEI, he works at the Markets & Chains Department where he specializes in supply chain co-ordination issues with a focus on pricing and competition between food retailers and their suppliers. The research in this area involves assignments from the European Commission, the Dutch Competition Commission and the Dutch Ministry of Economic Affairs, Agriculture & Innovation. Frank obtained his MSc and PhD in economics at Maastricht University where he specialized in industrial organization. He worked / works as assistant professor at Maastricht University, Utrecht University and Wageningen University. He was seconded to the OECD to study pricing issues in the food supply chain.

Javier Berasategi*Berasategi & Abogados*

Javier Berasategi is the founding partner of Berasategi & Abogados, a competition and regulatory boutique based in Spain. He is the former chairman of the Competition Authority of the Basque Country (Spain). Previously he was a competition lawyer with Stanbrook & Hooper and McDermott, Will & Emery in Brussels, having also provided consulting services to the Spanish law firm Garrigues. He has been involved in high profile EU mergers (e.g., MCI/WorldCom, KPMG/Ernst&Young, KPN/Unipetrol, Dow/Degussa, Starwood Hotels/Le Meridien, Boeing/Lockheed JV) and cartel cases (e.g., Methionine, Nordic GFU, Organic peroxide, Tar pitch, etc.). At the Basque Competition Authority, he authored the study on 'Retailing of consumer goods: Competition, Oligopoly and Tacit Collusion' (2009). He also authored the infringement decision against Telefónica (February 2010), the first ever decision in the EU on abuse of collective dominance in an oligopolistic setting. He holds a degree in law and economics, postgraduate studies in European economics and a LLM in European Law (College of Europe, rank: 2nd). He is adjunct professor, competition law, at the IE Law School and a regular lecturer on competition law in other post-graduate programs. He has researched and written extensively on competition law and the retail sector.

Peter Davis*Competition Commission*

Dr Peter Davis was appointed Deputy Chairman of the Competition Commission (CC) in 2006 and was previously on the CC's academic panel of expert economists from 2004. He received his PhD from Yale and served on the faculties of MIT and then LSE before joining the CC. In addition, he currently serves as President of the Association of Competition Economics (ACE). He has published widely, and last year his book *Quantitative Techniques for Competition and Antitrust Analysis* (co-authored with Eliana Garces-Tolon) was published by Princeton University Press. Recent cases include the Payment Protection Insurance market investigation; the Mobile Phone Wholesale Termination Charges Appeals; the Stagecoach/Preston, Zipcar/Streetcar and Stena/DFDS mergers; and the Sutton and East Surrey price determination appeal.

Robert Steiner*American Antitrust Institute*

Robert is currently Independent Economist and Senior Fellow, American Antitrust Institute. He has authored over 40 articles in the Economics, Antitrust, Marketing, and Advertising literatures. Following a B.A. at Dartmouth College, Phi Beta Kappa and Magna cum laude and an M.A. in Economics at Columbia University in 1948, he entered the diversified Cincinnati-based family manufacturing business. Businesses included soap, soft drinks, house wares and OTC drugs and, most importantly, Kenner Products Co., the toy maker. He started as salesman, later becoming VP Advertising and eventually President of Kenner. He worked for General Mills after the family sold Kenner to it in 1967. Retiring active business in 1972, Robert began a career as consultant. He taught at the University of Cincinnati Graduate School of Business and in 1978 was invited to join the Bureau of Economics, FTC, as 'Visiting Professor' and staff economist. In 1983 he left to concentrate on consulting and writing on the consumer goods economy, based on his business experience and a reading of the scholarly literature.

John Holmes (Chairman, Morning Roundtable)

Which?

John is Principal Economist for *Which?*, the UK's Consumer Association, providing economic advice on a range of consumer market and competition issues that concern UK consumers. Recent work has included a review of hidden charging practices, merger cases in the energy, telecommunications and event ticketing markets and campaigning work on energy, housing and banking. John represents *Which?* at a number of forum, including the competition sub-group of the European Consumer Consultative Group, the Competition Law Forum and has assisted the Internal Competition Network as a peer reviewer. Originally John trained as a development economist, qualifying with a Masters from Nottingham University, and before joining *Which?* worked for the UK's energy regulator (Ofgem) and the Office of Fair Trading enforcing anti-trust law.

Marek Lysy

DG Internal Market and Services, European Commission

Marek Lysy is a legal officer in the Business to Business Services Unit of the Directorate General for the Internal Market of the European Commission since January 2007. He is a senior member of a team of officials whose task is to work on the Commission's policy and/or legislative initiatives in the area of retail services. He was a member of the core group preparing the Commission's 2010 Retail Market Monitoring Report and now is involved in projects that follow up on it, such as the forthcoming Commission's Communication on Unfair Commercial Practices in Business to Business relationships scheduled for this autumn.

Prior to joining the European Commission, Mr Lysy worked in a private law firm (2001-2006) and as a civil servant in the Slovak administration (1996-2001).

John Harold

Former Managing Director, Combe International

John holds a BA Hons in Russian from Nottingham University. Following a period on the sales team of Proctor & Gamble, he held brand management responsibilities for Boots, No7 and Sweetex, and later for Norcross. Following his appointment as UK Marketing Manager for Combe International, he was promoted to European Sales Promotion Manager, UK Managing Director and VP UK and Export Operations, growing turnover from £1 million to £20 million and opening export markets in the Middle East and Eastern Europe which accounted for 20% of total turnover. John is past Chairman of CTPA (the Cosmetic, Toiletries and Perfumery Association) and past President of PAGB (the Proprietary Association of Great Britain, the OTC medicines trade association). His other interests include tennis, golf and travel.

Manuel Sebastião*President, Portuguese Competition Authority*

Manuel Sebastião was appointed President of the Portuguese Competition Authority in March 2008 for a term of five years. Prior to this appointment, he was a member of the Board of Directors of the Portuguese Central Bank (Banco de Portugal) from 2000 to 2008, having joined the institution as a staff member in 1986. He was a member of the Board of the Portuguese Insurance and Pension Funds Supervisory Authority from 1998 to 2000, a member of the Board of Directors of the state-owned bank Banco de Fomento e Exterior from 1992 to 1996, and an economist with the International Monetary Fund from 1988 to 1992. He has been a lecturer in economics and finance at various Lisbon Universities during his career. Mr. Sebastião has an undergraduate degree from the School of Economics, Technical University of Lisbon in 1973, a Doctorate 3ème cycle from Université de Paris I, Panthéon-Sorbonne in 1978, and a Pd.D in economics from Columbia University in the city of New York in 1986. He was born in Luanda, Angola, in 1949.

Dr Deborah Prince (Chairman, Afternoon Roundtable)*Which?*

Deborah is Head of Legal Affairs at *Which?*, the independent consumer organisation and publisher of *Which?* magazine. Having studied Biochemistry at Imperial College, London, Deborah worked as a science journalist in Hong Kong before studying law. She spent many years at Baker and McKenzie providing IP law advice on such cases as the Levi Strauss parallel importation case that was referred to the ECJ. She then moved in-house to Tesco where she was sole counsel for Tesco.com before being appointed Head of Litigation, Corporate and Commercial Law.

In 2006, Deborah moved to *Which?* where she and her team provide legal support for *Which?*'s diverse publishing and campaigning activities. Key campaigning issues include safeguarding consumer rights, a fair banking system and a consumer-orientated digital economy.

University of Oxford
Institute of European and Comparative Law
St Cross Building
St Cross Road
Oxford OX1 3UL
UK

Tel: +44 (0) 1865 281 610
Fax: +44 (0) 1865 281 611
Email: jenny.dix@iecl.ox.ac.uk
www.iecl.ox.ac.uk