



UNIVERSITY OF  
**OXFORD**

Institute of European and Comparative Law, University of Oxford

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

Report on the thirteenth annual symposium on  
competition amongst retailers and suppliers

Held on Friday 9<sup>th</sup> June 2017  
at Mary Sunley Building, St Catherine's College Oxford

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# Contents

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<b>OVERVIEW</b>	<b>2</b>
<b>PROGRAMME</b>	<b>3</b>
<b>PRICING</b>	<b>4</b>
Guidance on vertical price fixing	4
The US approach to RPM and predatory pricing	5
Pricing, buyer power and territorial approaches	6
<b>UNFAIR TRADING PRACTICES</b>	<b>7</b>
Decoding the Australian Food and Grocery Code of Conduct: impetuses, interests and implications	7
GSCOP seven years on	8
Fair Trade movement considerations for policy on Unfair Trading Practices and competition	9
Discussion on Unfair Trading Practices	10
<b>HORIZONTAL AND VERTICAL GUIDELINES</b>	<b>11</b>
Key outcomes from the e-commerce market investigation	11
Brand competition and parallel trade in a post-Brexit world	13
Selective distribution and its role in brand reputation, choice and competition	14
Discussion on the changing competition landscape	15
<b>SPEAKER BIOGRAPHIES</b>	<b>16</b>

## OVERVIEW

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This report provides an overview of the thirteenth annual symposium discussing Trends in Retail Competition. The symposium considered pricing, unfair trading practices and the horizontal and vertical guidelines.

In the morning programme, perspectives were presented on vertical price fixing, the US approach to RPM and predatory pricing and the interplay between pricing and buyer power. The session on Unfair Trading Practices featured an assessment of the Australian Code of Conduct, the performance of the UK's Groceries Code of Practice and the perspective of the Fair Trade movement, closing with a panel discussion.

The afternoon programme concentrated on the horizontal and vertical guidelines, featuring presentations on the European Commission's e-commerce market investigation, parallel trade and selective distribution.

A panel discussion on the changing competition landscape closed the symposium.

The event was hosted by the Oxford Institute of European and Comparative Law in conjunction with the Centre for Competition Law and Policy and was sponsored by Bristows LLP. The event was held under the Chatham House Rule.

## PROGRAMME

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09.30 Introduction  
*Professor Ulf Bernitz*

### **PRICING**

09.35 Guidance on vertical price fixing  
*Gunnar Kalfass, Bundeskartellamt*

09.55 The US approach to RPM and predatory pricing  
*James O'Connell, Covington & Burling*

10.15 Pricing, buyer power and territorial approaches  
*Kadambari Prasad, Compass Lexicon*

### **UNFAIR TRADING PRACTICES**

10.50 Decoding the Australian Food and Grocery Code of Conduct:  
impetuses, interests and implications  
*Caron Beaton-Wells, Melbourne Law School*

11.20 GSCOP seven years on  
*Andrew McCarthy, British Brands Group*

11.40 Fair Trade movement considerations for policy on  
Unfair Trading Practices and competition  
*Sergi Corbalán, Fair Trade Advocacy Office*

12.00 Panel discussion on Unfair Trading Practices

### **HORIZONTAL AND VERTICAL GUIDELINES**

14.00 Key outcomes from the e-commerce market investigation  
*Zsuzsa Cserhalmi, DG Comp, European Commission*

14.20 Brand competition and parallel trade in a post-Brexit world  
*Stephen Smith, Bristows LLP*

14.40 Selective distribution and its role in brand reputation, choice and competition  
*Robert Schulz, BSH Hausgeräte*

15.20 Panel discussion on the changing competition landscape

16.30 Closing remarks  
*Professor Ulf Bernitz*

## PRICING

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### Guidance on vertical price fixing

Gunnar Kalfass, *Bundeskartellamt*

On 25 January 2017, the German Competition Authority published draft guidance on the prohibition of vertical price fixing in the brick-and-mortar food retail sector. This development follows a number of recent investigations carried out by the Bundeskartellamt concerning resale price maintenance (RPM). These investigations resulted in 38 individual fines on 27 companies in the markets for coffee, confectionary and beer (with a clear focus on retailers).

The guidance note characterises RPM as a hardcore restriction and addresses the application of the law in a number of areas:

- **Recommended retail prices (RRP).** Suppliers may give their opinions on retail prices and retailers may (autonomously) decide to follow that recommendation. However, the parties should not agree on retail prices, for example, by the retailer informing the supplier that it intends to adhere to the RRP or by the supplier using pressure or incentives.
- **Quantity management.** Suppliers may require information in advance regarding the promotional activities of retailers but this should not generally include information on promotional retail prices.
- **Guaranteed margins and renegotiations.** Expected retail prices and margins are a normal part of commercial discussions. However, guaranteed margins are likely to arouse suspicion as they may imply that retailers have given assurances that they will follow the RRP.
- **Termination/refusal of business relations.** There is a thin line between the general freedom to refuse to supply and RPM because a willingness to supply under the condition that a RRP is respected may result in agreement on retail price.
- **Data exchange.** The provision of data on (past) retail sales prices and quantities is generally allowed. However, data may not be used to coordinate or monitor pricing strategies and sharing current data may be problematic if, for example, deviations from a RRP are followed by interventions of the supplier.

The Bundeskartellamt will focus on enforcement of clear-cut infringements against those undertakings most involved in the infringement. In addition, in selecting cases for enforcement, the authority will look at the market structure (market position, concentration etc.), product properties (complexity, pre-sale services required, innovativeness etc.) and a number of other factors (extent of harm, obstruction of new distribution concepts etc.).

The draft guidance note is currently under consultation and the final version is expected in the near future.

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## The US approach to RPM and predatory pricing

James O'Connell, *Covington & Burling*

### Antitrust and select pricing issues

Over the past several decades, the application of US antitrust law has come to focus on evidence-based analyses of economic effects, with the ultimate goal of maximising consumer welfare, rather than on presumptions or on the impact of conduct on particular competitors. In particular, there is general recognition that maximising inter-brand competition (competition between brands), even if at the expense of some intra-brand competition (between sellers of brand), should take priority when determining whether restraints imposed by manufacturers on distributors and retailers are appropriate under the antitrust laws. This trend can be seen in the willingness of the U.S. Supreme Court to eliminate the application of the “per se rule,” the more strict of the two standards of review under US antitrust law, from cases involving such vertical restraints, in favour of “rule of reason analysis,” a fact-specific assessment of both the anticompetitive effects and the likely procompetitive benefits of the conduct at issue.

Below is a summary of the US approach to RPM and predatory pricing:

- **Maximum RPM.** For much of the 20<sup>th</sup> Century maximum RPM was considered per se illegal. However, in *State Oil v. Kahn* (1997) the US Supreme Court held that maximum RPM should instead be subject to the rule of reason. The judgment recognised that maximum RPM could lead to lower prices, which are good for consumers. Notably, since *Kahn*, no US court has addressed a claim challenging a maximum RPM agreement under the rule of reason.
- **Minimum RPM.** In *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007), the US Supreme Court overturned its own, century-old precedent, and ruled that minimum RPM should also be subject to the rule of reason analysis as RPM can enhance inter-brand competition. This is in contrast with the position in the EU where minimum RPM is a ‘by object’ restriction. Despite the landmark ruling in *Leegin*, the practice of companies in the US has not changed significantly as: (i) the standard applied at the state court level is somewhat unclear (each US state has its own antitrust law and not all are adjusted automatically to reflect the state-of-the-art under comparable federal law); and (ii) global companies still need to comply with EU and other foreign laws which can be stricter.
- **Predatory Pricing.** Predatory pricing is subject to rule of reason analysis. It is therefore necessary to allege and prove that the undertaking in question has monopoly power and that it has engaged in exclusionary conduct. The relevant test was established by the US Supreme Court in *Brooke Group v. Brown & Williamson Tobacco Corp.* (1993). Under the *Brooke Group* test, a plaintiff in a predatory pricing case must prove that the alleged predator:
  - is charging prices which are less than an appropriate measure of its costs, and
  - has a reasonable prospect, or a dangerous probability, of recouping its investment in below-cost prices, because below-cost pricing is capable of driving rivals from the market, and the market is susceptible to sustained monopoly pricing following that exit.

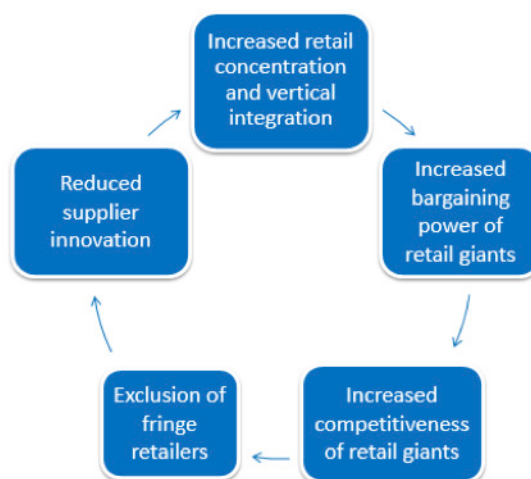
In the EU, there is no requirement to show recoupment, and generally less skepticism than in the US about the extent that predatory pricing can be harmful.

## Pricing and buyer power

Kadambari Prasad, *Compass Lexecon*

In recent years there have been three key changes to the market structure in the retail sector: (i) an increase in retail expansion; (ii) an increase in retail concentration; and (iii) an increase in private labels. This may impact prices and innovation on the market.

- **Wholesale prices for large retailers are likely to reduce** – the bargaining position of large retailers may have improved as a result of an increase in retail expansion and private labels whereas the bargaining position of suppliers may have deteriorated as a result of an increase in retail concentration.
- **Wholesale prices for fringe retailers are likely to increase** – as a result of the waterbed effect (where decreases in prices to large retailers are recouped by increases in prices to other retailers). In addition, the bargaining position of fringe retailers may have deteriorated as a result of the expansion of large retailers.
- **Upstream innovations are likely to reduce** – the incentive and ability of suppliers to invest is reduced by a reduction in upstream profits (reduced cash flows and lower appropriability where investment upstream isn't monetised as well as it was before).
- **Retailer innovations may not increase** – the incentive and ability of retailers to invest may be increased, but not necessarily, as retailers have other strategies to compete (i.e. differentiating vertically and engaging in head-to-head competition by managing their product portfolio).



There are strategies available to suppliers which may avoid the above impact of changes in the market structure in the retail sector:

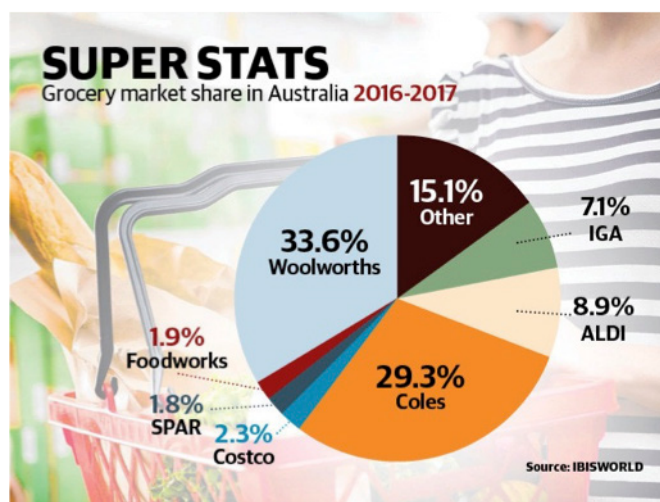
- **Do not disadvantage fringe retailers** – avoid the waterbed effect to maximise long-term profits.
- **Create an advantage for fringe retailers** – reverse the waterbed effect to make fringe retailer more competitive.
- **Non-linear pricing for fringe retailers** – reduce the marginal cost for fringe suppliers (i.e. a franchise fee and per unit wholesale price).

## UNFAIR TRADING PRACTICES

# Decoding the Australian Food and Grocery Code of Conduct: impetuses, interests and implications

Caron Beaton-Wells, *Melbourne Law School*

The Food and Grocery Code of Conduct (FGCC) is a statutory code of conduct introduced in Australia in 2015. It is voluntary in the sense that retailers and wholesale can choose to be bound by the code, but then compulsory in the sense that its obligations are legally enforceable. The three major retail chains have opted in: Coles, Woolworths and Aldi. The code governs dealings between grocery retailer/wholesaler signatories and their direct suppliers only. As with the Groceries Supply Code of Practice in the UK, the code in Australia sits alongside the competition rules and rules on fair trading.



There are a number of current trends in the retail market in Australia:

- **Highly concentrated** – notably, this was not found to be detrimental to consumer interests in two inquiries which concluded that the market is still contestable [ACCC, 2008; Harper, 2015].
- **Intensifying retail competition** – this means that retailers are striving for efficiency and continuing to push suppliers for greater margins.
- **Vertically dynamic market** – there is an imbalance in bargaining power which may in the long run lead to detriment for consumers through supplier consolidation and disincentivisation of innovation and investment by suppliers [Treasury, 2015].

These trends have had a number of practical consequences including a lack of transparency and certainty in supply agreements, a lack of good faith in retailer-supplier dealings, and a lack of access to justice by way of a fair and effective dispute resolution process. It is not expected that the FGCC can address the issues surrounding the structure of the market, but it will hopefully address the conduct problems in the interim.

So far, the impact of the FGCC has been variable – awareness is uneven but growing, understanding is variable and the code is being used in some negotiations, albeit there has been scant use to date of its dispute resolution mechanisms. Notably, there are some counteracting factors including confusion and fear amongst suppliers and difficulties in changing the entrenched culture in the sector. Indeed, there are still some that criticise the current regime, for example, arguing that it should be mandatory, cover indirect suppliers, be less flexible, be overseen by an ombudsman and apply penalties. The code will be the subject of a review in 2018.



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## GSCOP seven years on

Andrew McCarthy, *British Brands Group*

The Groceries Supply Code of Practice (“the Code”) came into force in 2010 covering all direct suppliers to supermarkets. The Groceries Code Adjudicator (“GCA”) has so far taken a practical and flexible approach to enforcing the Code. In particular, she has demonstrated a willingness to work with the parties involved and to use the Code as a practical basis of discussion.

### Enforcement

The GCA has carried out important enforcement activities over the past seven years including publishing case studies and best practice statements, conducting a consultation on indirect payments for better shelf position, agreeing on forensic auditing with eight out of ten retailers, facilitating an industry solution to the issue of ‘drop and drive’, conducting four arbitrations and, most notably, carrying out an in-depth investigation of the practices of Tesco.

The introduction and enforcement of the Code has resulted in a number of improvements in the practices of retailers and, in general, buyers are sensitive and responsive to the Code and its language. For example, Iceland, Waitrose and Morrison’s have all introduced initiatives to improve relations with suppliers. That said, there is a risk that retailers will use the Code tactically – the key to avoiding this is to ensure that suppliers are adequately trained on issues relating to the Code. There currently appears to be high levels of ignorance and scepticism of the Code amongst suppliers.

### Trade associations

There is a key role for trade associations in the operation of the Code. In particular, they provide a source of information and advice for members, a further line of protection for supplier anonymity, training courses which give insight into prevailing practices and the means to report issues to the GCA.

In summary, the Code, and the role of the GCA, are generally considered a success and, notably, the approach has been replicated in the pub sector. There is some pressure to extend the Code to indirect suppliers and the outcome of the first GCA review is awaited. The key to the success of the Code is its sound basis on initial thorough analysis by the Competition Commission and its focus on addressing clearly identified problem practices. Its success should not be jeopardised.

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## Fair Trade movement considerations for policy on Unfair Trading Practices and competition

Sergi Corbalán, *Fair Trade Advocacy Office*

### Unfair trading practices

The Groceries Supply Code of Practice and the Grocery Code Adjudicator in the UK are a good example of a model for fighting against unfair trading practices (UTPs). However, such practices continue to persist across the EU, particularly in relation to overseas suppliers. There are a number of steps that can be taken to improve both the UK and EU regime:

- **Extend the remit / geographical scope to cover non-EU producers** – this will be particularly important for UK suppliers following Brexit.
- **Ensure the legal framework has a mix of voluntary and binding elements** – the UK is a good example of this.
- **Introduce a European network of enforcers to address cross-border cases.**

However, these steps will not be sufficient to achieve fair trade or the Sustainable Development Goals set for 2030 as many of the issues are a consequence of the market structure.

### Competition law and sustainability

There is an unstoppable trend for more open democratic debate and policy coherence for sustainability. For example, in recent years public procurement rules and trade policy have changed in order to better enable sustainability outcomes. Competition law could also be used to achieve sustainability objectives, for example, by the introduction of sustainability exemptions that could allow, under certain conditions, sector-wide agreements to eliminate works forms of production in a given supply chain, for instance (see Fair Trade Advocacy Office Briefing Paper, June 2016). To this end, it is worth considering what constitutes consumer welfare. This may be cheaper prices today, but may also include future prices, consideration of consumers in other countries, the environment, animal welfare and ethical values. These are difficult issues which should be debated.

This question has been debated in the Dutch Parliament. There has not yet been much traction for these issues in the Council of the European Union, the European Parliament or the European Commission. However, the current European Commissioner for Competition, Margrethe Vestager, may be more willing to defend small farmers and sustainability.

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## Discussion on Unfair Trading Practices (UTPs)

Chairman: Bruce Lyons, *University of East Anglia*

Panellists: John Shine, *Competition and Consumer Protection Commission*

Maria Rehbinder, *DG Grow, European Commission*

Caron Beaton-Wells, *Melbourne Law School*

Terry Jones, *National Farmers' Union*

- **Unfair Trading Practices** – it is difficult to define Unfair Trading Practices (UTPs) but such practices are generally underlined by an imbalance of bargaining power. UTPs can lead to consumer harm, both in the short and long-term, but are also relevant considerations for the development of social policy.
- **Geographic scope of codes of compliance** – in general, codes of practice apply to retailers' dealings with all direct suppliers despite their geographic location, although there may be a lack of awareness amongst smaller foreign suppliers.
- **General prohibition of unconscionable conduct** – some jurisdictions, such as Australia, have a general prohibition against unconscionable conduct which can be used as a tool to address UTPs. However, there are advantages to a code like the GSCOP in the UK which allows for a more collaborative approach to resolving issues in the sector. In particular, adjudicators who have specific knowledge of the sector can interpret the rules and apply a flexible approach to enforcement.
- **Relationship between codes dealing with UTPs and competition law** – competition law focuses on protecting the process of competition and not particular undertakings. There is arguably some tension between this and the codes of practice introduced to deal with UTPs. However, there is also a synergy between fair trading and competition as fair trading promotes business certainty, investment and diversity.
- **Requirements for successful approach to UTPs** – there are a number of key requirements for a successful approach to UTPs: a well drafted legally binding code, knowledgeable and practical enforcement including sanctions, well informed suppliers and a good awareness of the code. In addition, confidentiality is key to ensure that cases are reported.

## HORIZONTAL AND VERTICAL GUIDELINES

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### Key outcomes from the e-commerce market investigation

Zsuzsa Cserhalmi, *DG Comp, European Commission*<sup>1</sup>

On the 6 May 2015, the European Commission made the creation of a digital single market a political priority. The Commission, amongst other things, aims to ensure better access for consumers and businesses to online goods and services across Europe, including the removal of unjustified barriers. Whilst certain legislative actions have focused on removing public and regulatory barriers, the e-commerce sector inquiry focused on private or company erected barriers. Below is a summary of the key findings from that sector inquiry.

#### Price transparency and price competition in online markets

Consumers are now able to instantaneously obtain and compare product and price information online, and switch swiftly from one channel (online/offline) to another. The ability to compare prices of products across several online retailers leads to increased price competition affecting both online and offline sales. There is an increase in price monitoring in online sales. The frequency of online price adjustments depends on the sector, but daily and promotional price changes are reported as the most prevalent ones.

Pricing algorithms are commonly used which may increase price competition, but can potentially lead to antitrust problems if they facilitate horizontal collusion, facilitate hub and spoke arrangements (usage of same algorithm), incentivise RPM practices, and/or result in collusion by artificial intelligence.

#### Online business strategies

Manufacturers are taking a number of measures to react to the growth of e-commerce such as the opening of their own online shops, appointing pure online distributors, and increasing their support for existing retailers.

A growing number of selective distribution systems are also being introduced to help preserve brand image and quality online. The results of the e-commerce sector inquiry do not call for a change to the Commission's general approach to qualitative and quantitative selective distribution. Selective distribution may, however, facilitate the implementation and monitoring of certain vertical restraints that may raise competition concerns and require scrutiny. Notably, the European Commission recently launched a formal investigation into the distribution practices of clothing company Guess which deals with restrictions on sales between Member States.

#### Contractual restrictions on online sales

Marketplace bans: the information obtained in the e-commerce sector inquiry indicates that the importance of marketplaces as a sales channel varies significantly depending on the size of the retailers, the Member States concerned, and the product categories concerned. As a result, the findings indicate that marketplace bans do not generally amount to a de facto prohibition on selling online or restrict the effective use of the internet as a sales channel, irrespective of the markets concerned. The findings of the sector inquiry also indicate that the potential justification and

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<sup>1</sup> The views expressed are purely personal and do not necessarily represent an official position of the European Commission.

efficiencies reported by manufacturers differ from one product to another. As a result, without prejudice to the pending preliminary reference, the findings of the sector inquiry indicate that (absolute) marketplace bans should not be considered as hardcore restrictions.

## **Conclusion**

There is no need to review the regulatory framework prior to 2022.

The Commission is stepping up enforcement on e-commerce, including in relation to resale price maintenance and territorial/online sales restrictions.

Results will be used to broaden dialogue with national competition authorities to ensure a consistent approach.

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## Brand competition and parallel trade in a post-Brexit world

Stephen Smith, *Bristows LLP*

The result of the recent General Election in the UK has called into question what the UK's post-Brexit relationship will look like and even perhaps whether Brexit will ultimately happen at all. However, assuming Brexit does take place, there may be a number of implications for brand competition and parallel trade in the UK and Europe.

### The growth of e-commerce and its impact on brand owners

E-commerce sales continue to grow strongly, doubling between 2006 and 2011, leading to greater price transparency. This has undoubtedly resulted in downwards pressure on prices. Whilst generally considered good for consumers, pressure on retail prices also means lower margins, ultimately both for retailers and suppliers, who are usually asked to support retailers in the form of reduced wholesale prices. This has an impact both on service levels and also innovation.

### Selective distribution

Selective distribution enables brand owners to control their distribution model by restricting access to resellers by reference to certain, typically qualitative, criteria. Selective distribution systems can fall outside the prohibition of anticompetitive agreements under Article 101(1) altogether where the nature of the product justifies such an arrangement. Even where this is not the case, the distribution network may be exempted under Article 101(3), including under the block exemption for vertical agreements. There is no obligation on brand owners to share all their selective criteria with their potential distribution partners, only that they should be prepared to give the minimum level of information required to allow the retailer to understand the reasons for any refusal to admit them to the network.

### How will Brexit change this?

The real answer is that no one really knows. However, if after Brexit, the UK is outside the EU, the single market and the customs union there may be a number of implications for brands in Europe:

**Block parallel imports into the UK?** There may be opportunities for brand owners to exploit some potentially fundamental shifts in policy on parallel trade. For example, geo-blocking may be permitted enabling brand owners to ring fence the UK market. That said, brand owners may also face challenges such as the UK consumers' willingness to pay higher prices or a potential re-emergence of a duty-free market.

**Resale price maintenance in the UK?** UK law could evolve in a way which diverges from the 'by object' treatment of resale price maintenance (RPM) in the EU, moving more towards an 'effects' approach. This would enable some use of RPM in the UK, for example, to encourage retailers to invest capital and labour in promotional efforts, and to prevent free riders from undermining the incentives of retailers to invest in a manufacturer's product. Certainly, where there is significant inter-brand competition, harm to consumers is less clear-cut, even accepting that RPM removes intra-brand competition. Set against those opportunities for brand owners, there are also challenges. If the UK does diverge, this may increase the costs of cross-border trade which might make the UK a less-attractive destination. Further, the CMA has characterised RPM in the UK as '*suppliers ripping off customers*' so it seems unlikely that there will be significant change in competition policy in the UK, at least initially.

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## Selective distribution and its role in brand reputation, choice and competition

Robert Schulz, *BSH Hausgeräte*

The aim of selective distribution is to ensure a uniform minimum quality standard for the sales and marketing of (a special range of) branded products that are characterized by, for example, particularly high value, innovative features or technical complexity, special design and image.

This aim is reached by choosing partners according to certain objective quality criteria, which (i) must have a material, reasonable link to the selective products; (ii) must not exceed what is necessary to ensure proper marketing; and (iii) must be applied without discrimination. A selective distribution system is closed which means that partners are prohibited from reselling the selective products to non-authorized dealers. Notably, the European Commission recognises selective distribution as a legitimate business model, but warns that selective distribution must not be abused for anti-competitive purposes.

### Benefits of selective distribution

Consumers benefit from competent advice and services provided by qualified retailers in an attractive sales environment.

Retailers benefit from gaining access to an attractive product range, enjoying special marketing support and becoming attractive for consumers.

Brand owners/manufacturers benefit from high-quality commercialisation by dedicated retailers who protect and promote the brand image.

### Challenges of selective distribution

The aim of selective distribution is not to keep resale prices high, to restrict cross-border sales, to keep products away from the internet or from online platforms, or to reward or to sanction dealers for their pricing and/or online activities.

This presents a substantial legal and administrative challenge for business people and in-house legal counsel.

Companies often operate in global markets, but law / enforcement is governed on a national basis with significant differences across jurisdictions, particularly in the treatment of vertical restraints.

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## Discussion on the changing competition landscape

Chairman: Nicola Mazzarotto, *KPMG*

Panellists: Javier Berasategi, *Berasategi & Abogados*

Gunnar Kalfass, *Bundeskartellamt*

Zsuzsa Cserhalmi, *DG Comp, European Commission*

Jan Werner, *Metro Group*

- **Growth of e-commerce** – online sales have grown over recent years, and this trend is set to continue. This raises new challenges in the competitive landscape. For example, there is increased pressure on prices, increased price transparency and a merging of retail channels.
- **Priorities for enforcement** – over recent years the competition authorities in Europe have seemingly focused on certain vertical issues such as territorial restrictions and resale price maintenance. The theory of harm for consumers in these cases is not always compelling. Further, this focus has arguably been at the expense of enforcement in relation to horizontal issues which have the potential to effect competition to a greater extent. For example, the risks surrounding information exchange in the relationship between private label retailers and suppliers has been neglected which may have a real impact on innovation.
- **Absolute marketplace (platform) bans** – The European Commission's Final Report on the e-commerce sector inquiry indicated that absolute marketplace (platform) bans should not be considered hardcore restrictions of competition. A decision which is currently pending before the European Court of Justice in *Coty* will also deal with the legality of online platform bans.
- **Absolute price comparison tool bans** – The Commission has indicated that absolute price comparison tool bans which are not linked to quality criteria may amount to a hardcore restriction of competition. This is because price comparison tools are important for price transparency online and allow distributors to effectively promote their online offer and generate traffic to their website. Some find it difficult to reconcile the Commission's differing position with regards to marketplace and price comparison tool bans.



## SPEAKER BIOGRAPHIES

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### Morning session

#### **Ulf Bernitz**

*Institute of European and Comparative Law*

Ulf Bernitz is Professor of European Law at Stockholm University, as well as Senior Research Fellow at St Hilda's College, University of Oxford. He is also Director for the Söderberg Foundation Oxford/Stockholm Venture in European Law, based at the Institute of European and Comparative Law, Oxford. His research interests are in the fields of European law and private law (especially competition and marketing law, intellectual property law and consumer law). He has published widely in these fields. He is President of the Swedish FIDE Association for European Law.

#### **Gunnar Kallfass**

*Bundeskartellamt*

Since 2013, Gunnar has been Head of Unit "German and European Antitrust Law" in the General Policy Division of the Bundeskartellamt. Before that he was legal advisor in the department dealing with "litigation and legal issues" (2009-2012) and case officer in the 6<sup>th</sup> Decision Division (media, sports) of the Bundeskartellamt (2008-2009). Prior to that, he was research associate at the University of Hamburg (Institute for International Affairs) 2005-2008.

#### **James O'Connell**

*Covington & Burling LLP*

Jim is a partner at Covington & Burling LLP. Based in Washington, DC, he advises clients on their critical antitrust matters, including mergers and acquisitions, joint ventures, licensing arrangements, other business practices, government investigations, and litigation.

Jim joined Covington after over five years of public service with the Antitrust Division of the U.S. Department of Justice, where he served in several leadership roles, including as Chief of Staff and as Deputy Assistant Attorney General for International, Legal Policy, and Appellate Matters. Jim previously practiced antitrust law at Shearman & Sterling.

A frequent speaker and writer on antitrust law and policy issues, Jim has testified before the U.S. Congress and the Antitrust Modernization Commission. He is also a member of the leadership of the American Bar Association's Section of Antitrust Law.

#### **Kadambari Prasad**

*Compass Lexecon*

Kadambari is a Senior Economist in Compass Lexecon's European competition policy group. She has four years of experience in merger control, Article 101 and Article 102 and arbitration cases.

She has particular expertise in theoretical modelling and formalising economic concepts. She has developed theoretical models for some leading investigations, for example the European Commission's Pay TV investigation, the European Commission's Article 102 investigation into Qualcomm, Ofcom's regulatory review of the supply of sports channels and the subsequent appeal at the CAT, the Polish competition authority's investigation into collective dominance in the telecommunications market and the European Commission's Article 101 investigation of the market for credit default swaps.

Kadambari also has significant expertise in valuation of intellectual property, in particular the valuation of standard-essential patents under terms that are fair, reasonable and non-discriminatory.

Prior to Compass Lexecon, Kadambari has worked at NERA and taught at the University of Oxford. She holds a D.Phil. and M.Phil. in Economics from Nuffield College, Oxford and a B.Sc. in Economics from the London School of Economics and Political Science.

### **Caron Beaton-Wells**

*University of Melbourne Law School*

Caron is a Professor specialising in Competition Law at the University of Melbourne Law School and Director of the University's Global Competition and Consumer Law Program and Competition Law & Economics Network. Her research and teaching in this field extends beyond the law to institutional, political and sociological dimensions of competition regulation, and her recent research projects have focused on cartel criminalisation, supermarket power, petrol pricing and the interface between competition and consumer law.

Caron has been Associate Dean of the Law School's undergraduate and masters programmes. Her engagement activity involves contributing to the public discourse around the world on significant competition law-related issues and on bringing together and fostering constructive debate and shared learning amongst stakeholders.

Caron is a member of several national and international editorial and advisory boards, has consulted to the OECD, ASEAN, SSNED and the New Zealand Government, is a non-governmental advisor to the International Competition Network and the Law School's representative on UNCTAD's Research Partnership Platform. Formerly a solicitor at (now) King & Wood Mallesons, Caron is also a member of several international editorial and advisory boards in the competition law field, and a member of the Law Council of Australia's competition and consumer committee and the Victorian Bar.

### **Andrew McCarthy**

*British Brands Group*

Andrew is a graduate of Durham University and was a partner in a City law firm before joining Procter & Gamble UK in 1986. He spent seven years as General Counsel of its Fabric & Home Care division and retired at the end of 2011 as UK General Counsel. He was also Director of External Relations with responsibility for brand PR, corporate communications and regulatory matters.

Andrew has served on the Council of the British Brands Group, the boards of the UK Cleaning Products Industry Association, the Association des Industries de Savonnerie et Entretien, the Broadcasting Code of Advertising Committee and the Advertising Standards Board of Finance and as Chairman of the Cosmetic, Toiletry & Perfumery Association.

He lives in London with wife Kate, has four daughters, is active in local politics and is a keen skier.

### **Sergi Corbalán**

*Fair Trade Advocacy Office*

Sergi studied law and international politics in Spain, Switzerland and Belgium and has more than 15 years' experience in various for-profit and not-for-profit European and Global networks on EU and Global policy and advocacy.

In 2008 he became Executive Director of the Fair Trade Advocacy Office based in Brussels. The Fair Trade Advocacy Office (FTAO) speaks out on behalf of the Fair Trade movement for fair trade and trade justice with the aim to improve the livelihoods of marginalised producers and workers in the south. The FTAO is a joint initiative of Fairtrade International and the World Fair Trade Organisation (Europe and Global). Through these three networks the FTAO represents an estimated 2.5 million Fair Trade producers and workers from 70 countries, 24 labelling initiatives, over 500 specialised Fair Trade importers, 4,000 World Shops and more than 100,000 volunteers.

The Fair Trade Advocacy Office serves as secretariat for the European Parliament's cross-party Fair Trade Working Group and is a member of the EU High-Level Forum on the Better Functioning of the Food Supply Chain and various other EU advisory groups on trade, development and agriculture.

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## Discussion

Panel chairman

**Bruce Lyons**

*University of East Anglia*

Bruce is Professor of Economics in the Centre for Competition Policy (CCP) and School of Economics at the University of East Anglia. He is also an Academic Adviser to KPMG. He previously taught at the University of Cambridge. He was a member of the European Commission's Economic Advisory Group on Competition Policy (EAGCP) from its inception in 2004 until Article 50 was triggered in 2017, and is a member of the Academic Advisory Panel of the Competition and Markets Authority (CMA). He was a Member of the Competition Commission for nine years, including being a panel member on the Supply of Groceries market investigation (2008).

He has taught for many years at all levels, including executive courses and courses for regulators and lawyers both in the UK and internationally. He was formerly Editor of Journal of Industrial Economics. He has written several books and many research papers. His current research relates to the economics of mergers, market structure and competition policy, including the implications of behavioural consumers. Other areas of interest include state aid and the institutions implementing competition policy. He has advised firms in many different sectors, including sports, healthcare, banking, energy, retail and manufacturing.

Panellists

**Terry Jones**

*NFU*

Terry Jones re-joined the NFU as its Director General in April 2016.

For five years previously he had been running food industry trade associations. In 2011 he joined the Food & Drink Federation (FDF) as its Director of Communications, where he sought to bring to life how food manufacturers could deliver increased rates of sustainable growth.

Leaving FDF at the end of 2014, he took up the post of DG at the Provision Trade Federation (PTF) looking after the interests of businesses involved in the UK bacon and dairy trade.

Before working at FDF and PTF Terry worked for the NFU from 2002-2011 in a variety of roles including Head of Government Affairs, Head of Food Chain and Director of Communications.

Terry lives in Cheshire with his wife Emma and their two daughters.

**Maria Rehbinder**

*DG GROW, European Commission*

Maria heads the business-to-business services unit in the European Commission's Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW). Her unit's remit includes B2B relations and policy development in the retail sector. She was responsible for coordination of DG GROW input to the preparation of the EU Digital Single Market Strategy and closely involved in the follow-up of the action on platforms.

Maria has been in her current job since 2013 following a period of more than ten years in the European Commission's Competition Department. She joined the Commission in 1996 having held posts at the Finnish Ministry of Finance. She studied economics at the Swedish School of Economics and holds a PhD in Law from the University of Helsinki.

**John Shine**

*Competition and consumer protection commission*

John is the Director of Regulation and Advocacy in the Irish Competition and Consumer Protection Commission, with a brief that straddles both consumer protection and competition issues. This includes responsibility for enforcement of legislation, which came into effect in 2016, aimed at regulating certain practices in the grocery goods sector. John is also a Board Member of the European Consumer Centre, Ireland.

John previously worked in the National Consumer Agency where he had responsibility for enforcement of consumer legislation. John is a graduate of Trinity College Dublin and has a postgraduate diploma in Regulatory Governance from University College Dublin.

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## Afternoon session

**Zsuzsa Cserhalmi**

*DG Comp, European Commission*

Zsuzsa is a member of the Digital Single Market Task Force of the European Commission's Competition Directorate General. She is in charge of the e-commerce sector inquiry and is responsible for legal and economic assessment of competition cases in e-commerce markets.

Previously, Zsuzsa was in charge of the application of merger and antitrust rules in the area of consumer goods, basic industries, manufacturing, food and agriculture in the Competition Directorate General. She conducted numerous competition investigations in merger cases and in cases involving anti-competitive agreements and abuse of dominant position.

She also worked in the European Commission's Internal Market Directorate General providing legal advice on the implementation of internal market rules.

Zsuzsa holds a Master's Degree in EU Law from the College of Europe in Bruges and a DES en Droit Européen from the Université Libre de Bruxelles.

## **Stephen Smith**

*Bristows LLP*

A partner in the Competition team at Bristows LLP, Stephen has extensive experience advising across a range of EU and UK competition law matters. He has a broad practice encompassing merger control, cartels and anti-trust investigations before regulators in the UK and the European Commission.

Advising across diverse sectors including financial services, retail, manufacturing, telecommunications and technology, Stephen has also previously spent time at the communications regulator OFCOM, where he advised on a variety of competition and regulatory matters, including in relation to spectrum auction regulations.

Stephen provides clients with pragmatic, commercial advice including in respect of ongoing compliance and dawn raid training and on the special responsibilities relevant to companies who enjoy a dominant market position.

Stephen is current Chair of the Law Society's Competition Section and one of The Lawyer's Hot 100 for 2016.

## **Robert Schulz**

*BSH Hausgeräte*

Robert is Head of Legal – Sales & Marketing, at BSH Hausgeräte GmbH, Munich, Germany ("BSH"). BSH is the largest home appliance manufacturer in Europe and one of the industry leaders worldwide, selling the complete portfolio of household appliances under the Bosch, Siemens, Gaggenau, Neff and Constructa brands. Robert joined BSH in May 2015. At BSH, Robert is responsible for legal advice in the fields of Sales, Marketing, White Collar Crime and Antitrust.

Previously, Robert was Senior Counsel Competition at Siemens AG in Munich, Germany, where he advised on a full range of competition law matters. Before joining Siemens, Robert worked in private practice at Cleary, Gottlieb, Steen & Hamilton in Frankfurt, Brussels and Cologne (1999-2006).

Robert holds a PhD in law from Humboldt University, Berlin (2000), and completed his legal traineeship ("Referendariat") at the State of Berlin (1996). Robert obtained a postgraduate degree in Law & Economics from the universities of Hamburg, Gent and Oxford (1994) and an undergraduate degree in Law from the Free University of Berlin (1993).

Robert is a Member of the Board of "Münchener Kartellrechtsforum", a competition law interest group, and is a member of "Studienvereinigung Kartellrecht". He is regularly invited to speak and has published widely on competition law matters.

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## **Discussion**

Panel chairman

### **Nicola Mazzarotto**

*Global Head of Economics, KPMG*

Nicola is Global Head of Economics at KPMG. He holds a PhD and an MSc in Economics and has over 15 years of experience working on competition and antitrust cases at UK and EU competition authorities and for private sector clients.

Nicola joined KPMG in January 2011 and since then he has advised a range of corporate clients across many sectors on all aspects of competition and regulatory economics and strategy, helping firms getting their mergers approved, minimising the risk of regulatory intervention and developing strategy to succeed in changing regulatory environments.

Before joining KPMG, Nicola was Head of Policy Analysis at the UK Competition Commission (CC). While at the CC Nicola was involved in the development of best practice in key areas including leading the development of the revised UK merger guidelines. Nicola also led the economic analysis on a number of high profile cases including the London Stock Exchange mergers and BSkyB/ ITV.

Nicola has published on various aspects of competition economics and policy and has taught competition economics at many universities in the UK and Europe.

Panellists

### **Javier Berasategi**

*Berasategi & Abogados*

Javier Berasategi is the founder of Berasategi & Abogados, a law firm based in Madrid (Spain). He is a former chairman of the Competition Authority of the Basque Country (Spain). Before joining the Basque Competition Authority, he was a competition lawyer with Stanbrook & Hooper and McDermott, Will & Emery in Brussels (Belgium). He has been involved in high profile competition cases before the European Commission and other competition authorities since 1997.

He authored the market study "Retailing of consumer goods: Competition, Oligopoly and Tacit Collusion" (2009), while at the Basque Competition Authority, and has recently published the study "Supermarket Power: Serving Consumers or Harming Competition" (2014). He has researched, written and lectured extensively on the enforcement of competition law and fair dealing regulations in the grocery retail sector. As a legal practitioner, he regularly advises suppliers on these issues.

He holds a degree in law and economics by the University of Deusto (Spain), a postgraduate diploma in European economics by the European Institute of the same university and a LL.M. in European Law from the College of Europe (Belgium).

### **Jan Werner**

*METRO AG Wholesale & Food Specialist Company*

Jan is Head of Legal Services International at METRO AG. He joined Metro in 2005. Before that he was Legal Counsel at Continental AG, a tyre and automotive parts manufacturer.

As Head of Legal Services International Jan oversees legal matters for Metro in 16 countries, covering Asia and Middle & Eastern Europe. In particular this covers expansion, new market entries and regulatory restrictions on operations for retailers, especially in Eastern Europe.

Furthermore, Jan is a member of the Internal Market and Consumer Affairs (IMCO) Committee as well as the Supply Chain Committee at Eurocommerce, the largest European trade association. In this role he contributes to discussions about the changing environment for retail and wholesale. Current discussions center around geo-blocking, multichannel approach for retailers, and alleged "unfair trade practices" between retailers and their suppliers.

Jan has been admitted to the German bar and holds a Master of Laws (LL.M.) degree from University of Georgia.

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