



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 fourteenth annual symposium on
competition amongst retailers and suppliers

Held on Friday 15th June 2018
at Mary Sunley Building, St Catherine's College Oxford

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OVERVIEW

This report provides an overview of the fourteenth annual symposium discussing Trends in Retail Competition. The symposium considered competition involving distributors and suppliers, unfair trading practices, geo-blocking in the context of selective distribution and brand effects, and online sales bans.

The symposium opened with a discussion between a brand owner, lawyer and economist on competition involving distributors and suppliers. The discussion covered the exchange of confidential commercial information where distributors also compete at the product level with private label products, and the assessment of buyer power by competition authorities, pertinent in light of the proposed merger between Asda and J Sainsbury in the UK.

The session on regulating unfair trading practices included presentations from the European Commission on its proposals for regulating UTPs in the food sector and the UK's Groceries Code Adjudicator on her approach and success in strengthening compliance with the Groceries Supply Code of Practice. A panel discussion followed, introducing a perspective from Europe's voluntary Supply Chain Initiative.

The afternoon programme concentrated on geo-blocking, selective distribution and online sales bans, with presentations from the European Commission, brand owners and the German competition authority, followed by a panel discussion which introduced a perspective from the UK competition authority and an economist.

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. The event was held under the Chatham House Rule.

PROGRAMME

09.30 Introduction
Professor Ulf Bernitz

COMPETITION ASPECTS AFFECTING DISTRIBUTORS AND SUPPLIERS

09.40 Panel Discussion
Nicholas Levy, Cleary Gottlieb
Adrian Majumdar, RBB Economics
Gabriel McGann, The Coca-Cola Company

EFFECTIVE REGULATION OF UNFAIR TRADING PRACTICES

11.10 European considerations in addressing UTPs
Oliver Sitar, DG AGRI, European Commission

10.35 Insights from an effective modern regulator
Christine Tacon, Groceries Code Adjudicator

12.00 Panel discussion
Ravi Bhatiani, for the Supply Chain Initiative
Oliver Sitar, European Commission
Christine Tacon, Groceries Code Adjudicator

HORIZONTAL AND VERTICAL GUIDELINES

14.00 Selective distribution after Coty and the interplay of the geo-blocking regulation with competition law
Fabian Kaiser, DG Comp, European Commission

14.20 Geo-blocking restrictions and their implications for brand owners
Andreas Gayk, Markenverband

14.40 Online sales bans (after Coty and Asics)
Felix Engelsing, Bundeskartellamt

15.20 Panel discussion
Felix Engelsing, Bundeskartellamt
Andreas Gayk, Markenverband
Morven Hadden, Competition and Markets Authority
Fabian Kaiser, European Commission
David Parker, Frontier Economics

16.55 Closing remarks
Professor Ulf Bernitz

COMPETITION ASPECTS AFFECTING DISTRIBUTORS AND SUPPLIERS

Panel Discussion

Panellists: Nicholas Levy, *Cleary Gottlieb*
 Adrian Majumdar, *RBB Economics*
 Gabriel McGann, *The Coca-Cola Company*

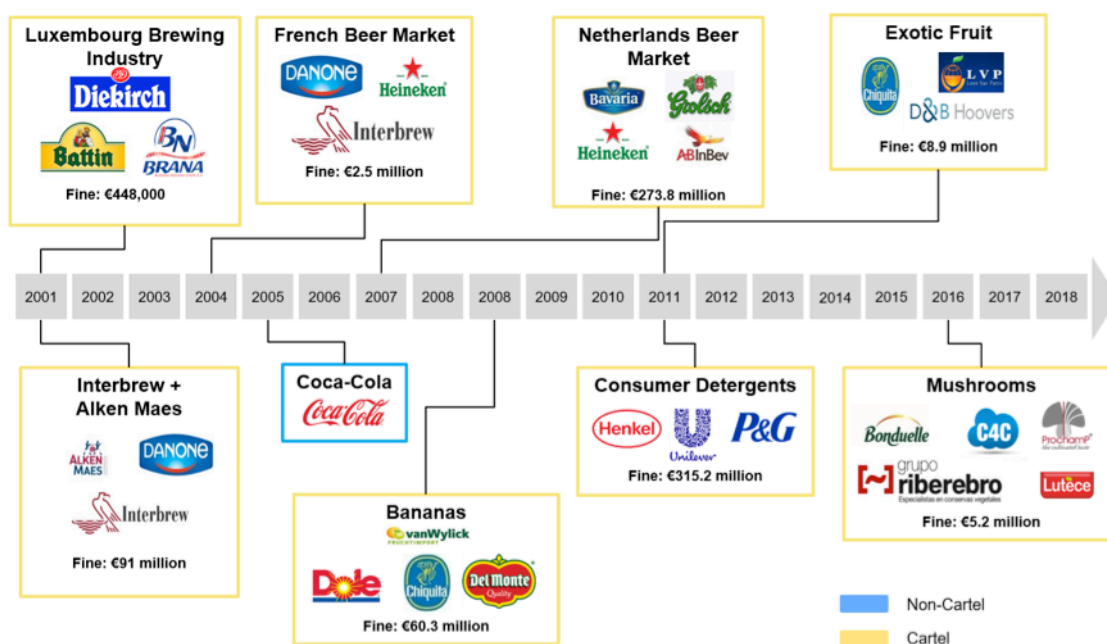
Commercial Information, Buyer Power and Market Consolidation

Gabriel McGann

The discussion covered a range of topics, including whether there is a lack of coherence in the way competition enforcers and others address information exchange issues between brand owners and retailers with competing private label products – this issue is particularly important given the increasing private label footprint (e.g. retailers supplying private label to other retailers) and increasing concentration at the retail level (e.g. through mergers). Further, more broadly there are increasing headwinds for brands with rising costs and a decline in investment.

Information Exchange among Consumer Products Companies & Grocery Retailers

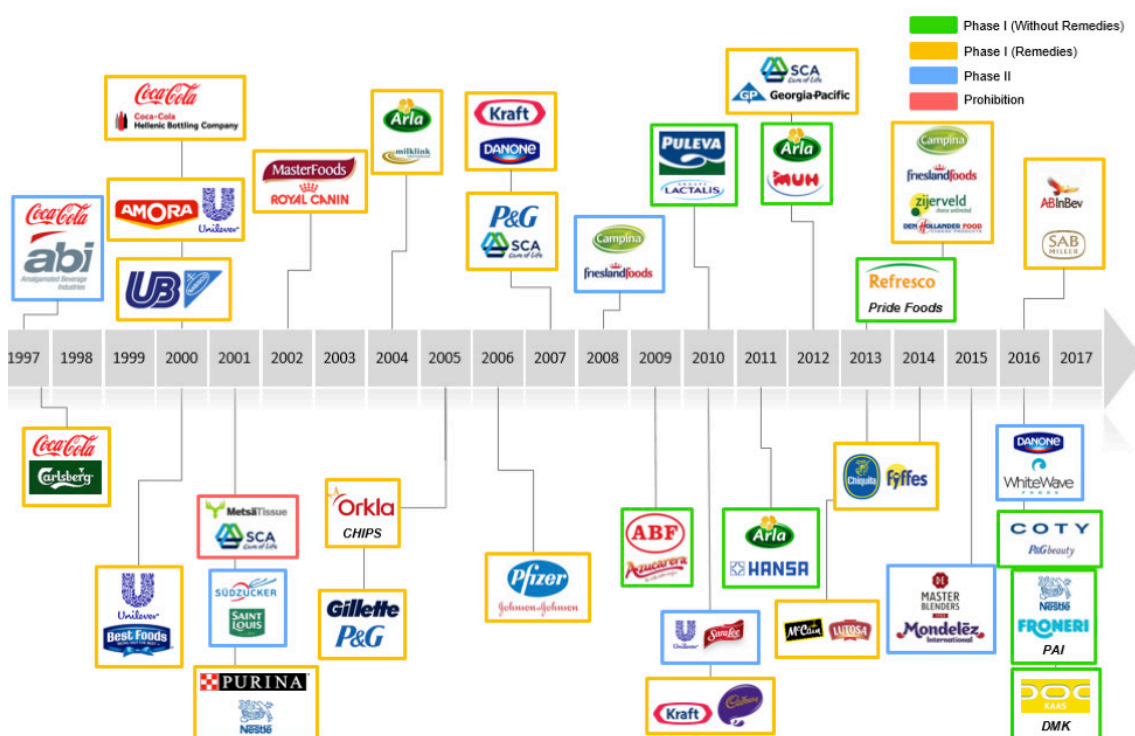
The European Commission and national competition authorities have carried out a number of antitrust investigations concerning information exchange in the consumer products field. For example, the UK Dairy Investigation related to the unlawful exchange of information about future retail prices for cheese and milk products between various supermarkets via common suppliers. It is possible that similar issues arise from the communication of information between consumer products companies and retailers. In particular, competition between branded products and private label could be affected by the advance communication of competitively sensitive information relating to branded products such as product launches. In such cases, 'clean teams' and 'Chinese walls' could be established to avoid the misuse of such information.



Current Enforcement Trends in Consumer Products & Grocery Retailer Mergers

Consumer Products Mergers

Consumer product mergers tend to face close scrutiny – the European Commission has cleared 23 deals subject to remedies over the past 25 years (although only one consumer products deal has been blocked). The current European Commissioner for Competition, Margrethe Vestager, is considered to be tougher and more sceptical than her predecessors.



There are a number of key learnings that arise from these mergers:

- Develop a pro-competitive rationale at the outset;
- Early preparation is essential – the European merger process is data-heavy and front-loaded;
- Internal documents can be determinative – know what they say and take care in generating new documents;
- Economic evidence can be useful, provided it is consistent with market reality and internal documents;
- Evidence on efficiencies may influence customers, but will rarely override competition concerns;
- Customer opposition matters: if your customers don't like your transaction, it's unlikely the European Commission will either;
- Negotiating and drafting remedies is a major work stream. Plan early.

Grocers Mergers

There has been a great deal of UK agency merger activity in the grocery sector since 2003. Issues that arise in groceries mergers include market definition, consideration of national and local competition, the level of concentration, the closeness of competition, buyer power and the effect on suppliers, and remedies.

Market definition remains a critical starting point:

- Geographic Market Definition: Concerns have arisen where transactions have reduced the number of supermarket operators in a given area from 4 to 3 or fewer, typically requiring divestitures of overlapping stores.
- Product Market Definition: the CMA has distinguished “one stop shop” supermarkets from other groceries retailers – future CMA investigations will need to determine whether this assessment should be revisited in light of the changed market environment, including the growth of discounters and online shopping and changes in consumer shopping habits.

Looking ahead, the CMA may give greater consideration to national competition, including in its assessment of the Sainsbury’s/Asda merger. In a pre-consultation document published in 2018, it made clear that it may focus on *“dynamic competition between national chains, and aspects of competition that manifest at a national level, and less on the granular analysis of individual local markets”*.

CMA Approach to Buyer Power in Retail Mergers

Adrian Majumdar

Buyer power is only a competition law concern where it results in harm to end customers.

In *Tesco/Booker*, the CMA stated that *“the exercise of buyer power by wholesalers or retailers is not likely to raise competition concerns and might even be beneficial to customers, although as noted in our guidelines, there are circumstances under which it may lead to harm”*.

The CMA rejected a number of buyer power theories of harm in *Tesco/Booker*:

- Theory of harm I: additional buyer power would weaken rival wholesalers. The theory posits that better terms for the merged entity would be passed-on to customers and cause switching away from the merging parties’ rivals to such a degree that the latter become unviable. The CMA rejected this theory as there was limited supplier overlap (suggesting relatively little scope for harmonising terms of supply), and there was not likely to be sufficient switching to Booker to result in the exit of rival wholesalers.
- Theory of harm II: supplier innovation would reduce as a consequence of the merged entity favouring sales of its own-brands. The CMA identified a framework in which imitation (in the form of own-label products) by the merged entity could spread innovation more quickly in the short term (benefiting customers) but, in the long term, diminish incentives for branded suppliers to develop new products (harming customers). Ultimately, the CMA rejected this theory as the procurement increment was too small to have an impact.
- Theory of harm III: the merger could lead to a reduction in the range of branded products stocked by Booker thereby reducing customer choice. The CMA rejected this theory as the downstream market is competitive and therefore if customers value range, they can switch to other suppliers.

The *Tesco/Booker* deal demonstrates that the CMA is wary of any “efficiency offence” / long term predation theory of harm. In general, the CMA can be expected to adopt a starting point that if consumers value innovation or range, then merging retailers would not have the incentive to harm these aspects if sufficient retailer competition remains post-merger. That said, a buyer power theory of harm may arise if harm to the upstream supply base impacts far more on rivals than the merging parties or there is good reason to expect that the merged firm’s stocking incentives do not match the demand of its aggregate customer base (for example because retailers find it profitable to reduce variety to obtain larger discounts but their customers would overall have preferred a greater range).

EFFECTIVE REGULATION OF UNFAIR TRADING PRACTICES

European considerations in addressing UTPs

Oliver Sitar, *DG AGRI, European Commission*

The European Commission considers that the position of farmers in the food supply chain could be enhanced in a number of ways: creating possibilities for producer cooperation; increasing governance of unfair trading practices; and increasing market transparency.

In relation to the governance of unfair trading practices, the Commission adopted a proposal for new rules in this area on 12 April 2018. This is the first time that such a proposal has been adopted at the European level. The proposal is for a Directive which seeks to protect SME suppliers (including third country suppliers) in the food supply chain.

Unfair Trading Practices Directive

Under the proposal, the following practices would not be permitted in any circumstances:

- Payments later than 30 days for perishable food products
- Short-notice cancellations of perishable food products
- Unilateral and retroactive contract changes
- Wasted product risk transferred to supplier

Further, the following practices would not be permitted unless the parties agree:

- Unsold product risk transferred to supplier
- Payments for stocking, displaying and listing
- Contributions to buyer's promotion campaign
- Contributions to buyer's marketing campaign

These rules would be complementary to any existing national rules and self-regulation such as the Supply Chain Initiative.

Enforcement

The proposal also sets out requirements for the enforcement of these rules. In particular, there must be designated public authorities in Member States with investigative and fining powers. There must also be the provision of confidentiality for complainants, and authorities must be able to take up investigations on their own initiative to enable them to investigate any anonymous complaints.

Cooperation

The proposal also provides for cooperation between enforcement authorities (similar to the European Competition Network) to enable the sharing of expertise and experiences

Insights from an effective modern regulator

Christine Tacon, Groceries Code Adjudicator

Legally the role of the Groceries Code Adjudicator (the “**GCA**”) is to monitor, enforce and ensure compliance with the Groceries Supply Code of Practice (the “**Code**”). The GCA aims to strengthen the supply chain and bring further innovation to the groceries sector benefiting suppliers, retailers and ultimately consumers.

A modern regulatory approach

The GCA’s approach puts collaboration and business relations at its core as she: (i) makes retailers aware of issues reported by suppliers; (ii) requests that retailers investigate the issue and report back; and (iii) takes formal action if the practice continues. The GCA also uses a number of tools including voluntary commitments, best practice statements, case studies, interpretative guidance and investigations.

Annual survey 2017/2018

Last year’s annual survey of suppliers identified how retailers were performing against individual issues under the code (on a green, amber and red basis):

	Retailer 1	Retailer 2	Retailer 3	Retailer 4	Retailer 5	Retailer 6	Retailer 7	Retailer 8	Retailer 9	Retailer 10
Incorrect deductions from invoices										
Data input errors not resolved promptly (e.g. 7 days)										
Artwork and design: Unfair, unreasonable or unexpected charges										
De-listing without giving reasonable notice										
No compensation/incurred penalty charges for inaccurate forecasting by the retailer										
Drop and drive: delays in, or not receiving, payment when there are disputes over deliveries										
Forensics: third party audits which have been abusive or excessive in nature										
Unjustified payments for consumer complaints										
Unfair/unreasonable/unexpected charges for: Packaging										
Requests for lump sum payments relating to: Retailer margin shortfall not agreed at the start of the contract period										
Other requests for lump sum payment										
Overbuying at promotional price and subsequently selling at full price										
Requests for lump sum payments relating to: Listing fees for products already stocked (pay to stay)										
Requests for lump sum payments relating to: Better positioning or increased shelf space or participation in category captaincy/category management/range reviews										
Other										

N.B. Retailers have been shuffled and are NOT shown in alphabetical order

It also identified the top issues for suppliers, with delay in payments remaining the number one issue:



Panel Discussion

Chairman: David Lowe, *Gowling WLG*
Panellists: Ravi Bhatiani, *for the Supply Chain Initiative*
Oliver Sitar, *European Commission*
Christine Tacon, *Groceries Code Adjudicator*

On 12 April 2018, the European Commission adopted a proposal for a Directive which deals with unfair trading practices in the food supply chain (the “**UTP Directive**”). The Directive sets minimum standards for Member States in Europe, and is complementary to any existing rules. Across Europe and the rest of the world, there are currently a range of approaches to the regulation of unfair trading practices, both in terms of the legal framework and enforcement.

Legal framework

- When considering the correct approach, it is important to be clear as to purpose of the regulation, and to not attempt to extend the regulation into other areas inappropriately. For example, the regulation may be directed at protecting consumers or primary producers of goods.
- The UTP Directive aims at contributing to a fair standard of living for the agricultural community, an objective of the common agricultural policy under Article 39 TFEU. The aims of the UTP Directive therefore differ from competition law which aims to protect consumers.
- The UTP Directive does not regulate the prices negotiated in the food supply chain as these negotiations are considered to be central to the operation of the market. Instead the rules focus on ensuring transparency, rather than price regulation.

Enforcement

- Effective enforcement is critical for success of an unfair trading practices regime. There are creative ways of going about enforcement, as demonstrated by the Grocers Code Adjudicator’s (GCA) enforcement of the Groceries Supply Code of Practice which takes a conciliatory approach whilst maintaining strong regulatory powers. This means that an amicable solution is offered before formal steps are taken. It is hoped that enforcement of the unfair trading practices UTP Directive will take a similar approach.

TERRITORIALITY, SUPPLY CHAINS AND THE IMPLICATIONS FOR BRAND COMPETITION

Selective distribution after Coty and the interplay of the geo-blocking regulation with competition law

Fabian Kaiser, *DG Comp, European Commission*

Selective distribution after Coty

- Selective distribution may improve competition in relation to other factors than price. As can be seen from the results of the e-commerce sector inquiry of the Commission, many manufacturers implement them as a means of addressing free-riding within their distribution network, maintaining or establishing a certain brand image and/or ensuring a high level of distribution quality.
- For selective distribution agreements to fall outside the scope of Article 101(1) TFEU, i.e. not to constitute a restriction of competition, according to the case-law of the ECJ, the so-called 'Metro criteria' have to be fulfilled¹. That is to say that resellers are chosen on the basis of objective criteria of a qualitative nature, laid down uniformly for all potential resellers and not applied in a discriminatory fashion, that the characteristics of the product in question necessitate such a network in order to preserve its quality and ensure its proper use and, finally, that the criteria laid down do not go beyond what is necessary.
- In the context of a preliminary reference in the *Coty*² case, the European Court of Justice recently confirmed that a selective distribution system designed, primarily, to preserve a luxury image, is compatible with EU competition law if the Metro criteria are met. Notably, the Court applied the criteria not only to selective distribution agreements as such, but also to specific contractual restrictions within selective distribution agreements. It held that a ban on sales through third party platforms such as Amazon and eBay pursued a legitimate aim and was appropriate and proportionate in the particular case in question and therefore fell outside the scope of Article 101(1) TFEU. Where a selective distribution system does fall in the scope of Article 101(1) TFEU, the Court confirmed that a third-party platform ban does not amount to a so-called 'hardcore' restriction of competition under the Vertical Block Exemption Regulation³. This reasoning is not limited to luxury goods and equally applicable to other product categories.

¹ Case 26/76, *Metro SB Großmärkte v Commission* [1977] ECR 1875, paragraph 20, and Case 31/80 *L'Oréal* [1980] ECR 3775, paragraphs 15 and 16.

² Judgment of 6 December 2017, *Coty Germany GmbH v Parfümerie Akzente GmbH*, C-230/17, EU:C:2017:941.

³ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices, OJ L 102 23.4.2010, p.1.

The interplay of the geo-blocking regulation with competition law

- The Regulation on unjustified geo-blocking⁴ ('Regulation') which arose from the European Commission's Digital Single Market Strategy applies from 3 December 2018. It aims to provide better access for consumers to online goods and services across Europe by preventing discrimination of customers by retailers based on nationality or residence. In particular, the Regulation prohibits traders operating in one Member State from blocking or limiting access to their websites and apps by customers from other Member States wishing to engage in cross-border transactions without objective justification. Moreover, in a number of situations where there are no justified reasons for geo-blocking or for discrimination, customers should have the same access to goods and services as local customers. In such cases traders should treat them as if they were residing in their home country.
- Geo-blocking that is carried out based on requirements in distribution agreements is typically unlawful under competition law. The Regulation complements competition law by catching unilateral behaviour which fragments the internal market without being caught by competition law. Article 6 of the Regulation addresses the situation that geo-blocking practices that contradict the Regulation stem from an obligation in a distribution agreement with a supplier. It makes clear that restrictions on passive sales which violate the Regulation are void, even if they are exceptionally permitted under the competition law rules. As the Regulation refers to the Vertical Block Exemption Regulation, the definition of passive sales will become increasingly important also outside the area of competition law.

⁴ Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC, OJ L 60I, 2.3.2018, p. 1–15..

Geo-blocking restrictions and their implications for brand owners

Andreas Gayk, *Markenverband*

Key provisions in the geo-blocking regulation (2018/302)

Access to web-sites	Access to goods	Non-discrimination in payment
No limitation of access to websites	Not applicable to goods for resale	No differentiation in electronic payment method
No re-routing to different top-level domains unless prior consent	Obligation to contract across borders	Withholding delivery for objective reasons until confirmation that the payment has been properly initiated
Unless requirement by law	No obligation to deliver beyond normal area of distribution	
	Cross border contract without impact on Rome I evaluation	
	No legal requirement for 'European Pricing', but	
	No different terms & conditions	
	Limitation on agreements on passive sales, exceeding competition law rules	

The geo-blocking rules are likely to have a significant effect on brands

- Brands are not 'blocking' but 'targeting' to improve brand experience.
- Brands are perceptions in the minds of consumers, built on a specific positioning. For example, a proposition may be that "Brand X is the best choice in product category Y to fulfil the promise Z made to consumers because of the reasons and evidence given by the manufacturer (and the community)".
- There may be legitimate rationales for targeting brands at particular regions. For example, even within Europe consumer needs differ regionally or the cost of pre- and post- sale services may vary.
- It is possible to envisage workarounds of the new rules both on the customer and supplier side to address some of these commercial needs.

Online sales bans (after Coty and Asics)

Felix Engelsing, *Bundeskartellamt*

In Coty, the European Court of Justice ruled that a prohibition imposed by a manufacturer on retailers using a third-party platform would in some circumstances be permitted. However, a number of open questions remain. The German competition authorities, who have also looked at this issue, offers some further guidance, at least in that jurisdiction.

Bundeskartellamt view on marketplace bans

- The position of the Bundeskartellamt on marketplace bans was laid down in the Asics decision, and also in the Adidas case in 2014.
- In particular, in Asics, the German competition authority and courts found a prohibition imposed by Asics on retailers allowing their products to appear on price search engines was anti-competitive by object – although the prohibition was part of a selective distribution system, it lacked objective justification and was intended to restrict price competition.
- Following those cases, only per-se bans of online-marketplaces are forbidden. Manufacturers can prohibit retailers from using marketplaces that do not fulfil its objective criteria (e.g. 'own retailer shop' or vice versa 'no sale via common product page').
- It is therefore possible for manufacturers to prohibit their retailers from using certain non-neutral-marketplaces (where a company runs a marketplace and acts as retailer for the same consumer goods, e.g. Amazon).

Further issues to consider

- The risk of discrimination where a manufacturer co-operates (perhaps exclusively) with marketplaces, or the retail branch of a manufacturer is run on marketplaces, but the same manufacturer prohibits their authorized dealers from selling via those marketplaces.
- The role and market power of Amazon which acts both as powerful marketplace and as retailer which may lead to potential for abuse. Further, in the case of marketplace bans, Amazon might profit: major manufacturers might authorize Amazon as a retailer while at the same time imposing marketplace bans on other retailers.

Panel discussion

Chairman: Pat Treacy, *Bristows*
Panellists: Felix Engelsing, *Bundeskartellamt*
Andreas Gayk, *Markenverband*
Morven Hadden, *Competition and Markets Authority*
Fabian Kaiser, *European Commission*
David Parker, *Frontier Economics*

Territoriality and geo-blocking: economic issues

- Discrimination is a common feature of competitive markets (e.g. peak- and off-peak transport) and economic theory suggests that it can be beneficial – entry will be encouraged in the long term compared to situations where there is only one price as firms are more likely to recover their fixed costs.
- The geo-blocking regulation does not ban price discrimination – different prices can be charged in different countries. However, the extent of any discrimination depends on arbitrage possibilities which will vary.
- For example, the geo-blocking regulation requires a German website to charge the same price to customers in Germany and customers in Belgium but doesn't require that the company provides delivery outside of its existing network. In this case the impact of the geo-blocking rules on geographic price discrimination depends on transport costs as a proportion of value – for many end-consumer products, it is unlikely that price differences will be large enough to make it worthwhile to switch. For other products, the differences in value may be material. We may also see firms entering the market to act as an agent for customers by providing delivery services, to take advantage of arbitrage opportunities.

Restrictions in online environment

- Competition law provides a principle-based framework which can adapt to the online environment. That said, competition law is not always the answer, for example consumer law or data protection law may also play a role.
- The online environment does present new challenges such as the possibility of agreements with self-learning algorithms, and new dynamics between the benefits and risks of operating online (e.g. as a result of free-riding).
- The CMA has recently pursued a number of cases relating to vertical restrictions of competition. Although the CMA recognises that vertical restrictions are frequently pro-competitive, it aims to identify appropriate cases, e.g. where firms have market power or particularly prevalent restrictions. Those cases have considered a number of restrictions in the online environment including price fixing, resale price maintenance, price parity clauses, and restrictions on online sales.
- The assessment of these types of online issues under competition law is not significantly different to an assessment in the context of brick and mortar sales – the same key principles are still applicable.

The meaning of luxury

- Following the Coty decision, there has been some debate regarding what constitutes luxury goods. Some argue that the Coty decision is in some way limited to luxury goods but others disagree. In any case, measuring what constitutes luxury goods is very difficult.
- The geo-blocking regulations empowers consumers to purchase elsewhere in the single market if they prefer. However, it is not entirely new as passive sales are already generally permitted as a result of competition law. Some therefore argue that there won't necessarily be price harmonisation to the extent suggested by others.

Focus on intra-brand competition

- The competition authorities appear to be focusing more on practices which restrict intra-brand competition, despite economic theory suggesting that this will not result in an effect on competition if inter-brand competition is strong. However, it was suggested that the authorities focus on intra-brand competition may be justified if there is a risk that the practices are or will become prevalent across the market, thereby having an effect on competition.

SPEAKER BIOGRAPHIES

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.

Morning session

Nicholas levy

Cleary Gottlieb

Nick's practice focuses on EU and UK antitrust law.

Consistently recognized by Chambers as one of the leading antitrust lawyers in Europe, Nick was named Global Competition Review's "Dealmaker of the Year" in 2015.

He has extensive experience in notifying mergers and joint ventures under the EU Merger Regulation, coordinating the notification of international transactions, and advising on all aspects of antitrust law, including anti-cartel enforcement, collaborative arrangements, vertical agreements and unilateral conduct.

Nick joined the firm in 1990 and became a partner in 1999.

Adrian Majumdar

RBB Economics

Adrian is a Partner at RBB Economics. Prior to taking his post in April 2004, he was the Deputy Director of Economics at the Office of Fair Trading, now part of the CMA.

Adrian has published widely on nearly all aspects of competition economics and is a co-author of the textbook, UK Merger Control, 2016. He is on the Advisory Board of the British Institute of International and Comparative Law (BIICL) Competition Law Forum, is a non-governmental advisor for the UK to the International Competition Network and has acted as an expert for the OECD on competition matters.

While at the OFT, Adrian was the principal author of the Competition Act guidelines on Market Definition and the Assessment of Market Power. He also spent a period of time at the Civil Aviation Authority where he was involved in the setting of price caps and devising appropriate investment incentives for regulated airports.

Gabriel McGann*The Coca-Cola Company*

Gabriel is Senior Counsel, Competition at The Coca-Cola Company and advises on a wide variety of competition law matters involving mergers and acquisitions, distribution, procurement and compliance issues in Europe, Asia, Latin America, Africa and Middle East. He is Chair of AIM's Competition and Legal Affairs Committee and, until recently, was Co-Chair of AmCham EU's Competition Policy Committee.

Prior to joining The Coca-Cola Company, he served as a legal advisor with Aer Lingus, and practiced as a Barrister in Dublin.

He has a LL.M degree from Yale Law School and obtained his primary law degree at Trinity College, Dublin.

Oliver Sitar*DG AGRI, European Commission*

Oliver is the deputy head of the unit in DG Agriculture and Rural Development of the European Commission which is responsible for the governance of the agri-food markets. The unit has led the work on a recent proposal by the Commission on unfair trading practices and has followed the work of the Agricultural Markets Task Force which published a report called "Enhancing the Position of Farmers in the Food Supply Chain" in November 2016. Mr Sitar's work experience in the Commission includes stints in DG Competition, where he was part of the team dealing with the Microsoft case, and at the EU Delegation to the WTO in Geneva, where he participated in the bananas tariff negotiations and the Doha Development Round negotiations. He holds a law degree from the University of Vienna and completed post-graduate studies at the Johns Hopkins School of Advanced International Studies in Bologna.

Christine Tacon*Groceries Code Adjudicator*

Christine has been the Groceries Code Adjudicator since 2013, regulating the large grocery retailers in the way they treat their suppliers. She is working to achieve behaviour change and a more equitable relationship between retailers and suppliers through persuasion and the promotion of good practices.

She is also a non-executive director of Anglia Farmers a co-operative procurement business for agricultural members and Chair of MDS Limited, a training provider for graduates in the fresh food and produce industry.

Christine's professional background is as a Chartered Engineer with 12 years' experience in sales and marketing. Her early career was with Coats Viyella, Mars Confectionery, Anchor and Vodafone. For 11 years until 2012 she ran the Co-op's farming business and was awarded a CBE for services to agriculture in 2004.

Discussion

Panel Chairman

David Lowe

Gowling WLG

David is an experienced partner focusing on commercial contracts and the firm's Head of the Food and Beverage Sector as well as Head of International Trade. He also plays a crucial role in the firm's Brexit Unit.

He helps negotiate and draft contracts to achieve their commercial aims in areas such as supply chain, procurement facilities management, property management, outsourcing, logistics, manufacturing, supply of goods and services, international trade, consumer and travel law.

His supply chain expertise is best illustrated by his role in the food and retail sectors, where clients include major names such as Premier Foods, Iglo (Birds Eye), United Biscuits, Hovis and Marks & Spencer.

David won UK Projects and Procurement Lawyer of the year at the International Law Office Client Choice Awards 2013 and was recognised in 2017's prestigious Acritas Stars database as a 'star lawyer'.

Panellist

Ravi Bhatiani

For the Supply Chain Initiative

Ravi is the Director of Legal Affairs for Independent Retail Europe, the oldest EU retail trade association in Brussels representing 1.13 trillion euros of turnover and 5.88 million jobs. Independent Retail Europe is a signatory and member of the Supply Chain Initiative.

Ravi is responsible for policy development and legal issues. Ravi has worked at Independent Retail Europe for over seven years and has worked extensively on supply chain and competition topics in that time. Indeed, Independent Retail Europe played a leading role in building and negotiating the EU level Supply Chain Initiative.

Before joining Independent Retail Europe, Ravi worked as a legal adviser in Brussels for a financial services trade association.

Afternoon session

Fabian Kaiser

DG GOMP, European Commission

Fabian is a “case handler” in the Directorate-General for Competition of the European Commission. Since July 2015, he has been a member of the Digital Single Market Task Force, which carried out the e-commerce sector inquiry. Previously, he spent several years as Senior Counsel Competition in the legal department of Siemens AG in Munich. In this function, he advised on a variety of competition law matters ranging from merger control and antitrust compliance to distribution, licensing and R&D contracts. From 2009 to 2012, he had already been working as a case handler in DG COMP dealing with financial services. Prior to joining the European Commission, he worked as an associate at a leading international law firm in Düsseldorf, Germany.

Fabian studied law at the Universities of Passau and Lausanne and completed a master’s degree in European Studies at the Center for European Integration Studies (ZEI) in Bonn.

Andreas Gayk

Markenverband

Andreas is lawyer by training. He was educated at the universities of Würzburg, Freiburg and Tübingen in southern Germany. After working in venture capital and private practice, Andreas served with both The Coca-Cola Company and its German bottler for more than 10 years with responsibility for corporate, commercial and competition law. In 2009, Andreas joined Markenverband, the German Brands’ Association as Director Marketing Policy/Trade Relations and Compliance Officer. In this position, he advises on all questions relating to competition law of distribution and fairness in the supply chain. Andreas is a member of the board of Forschungsinstitut für Wirtschaftsverfassung und Wettbewerb, a recognized German think-tank for competition policy.

Felix Engelsing

Bundeskartellamt

Felix is chairman of the 2nd decision division of the Bundeskartellamt, which is responsible for merger and antitrust enforcement in the agriculture, food industry, retail trade, clothing/shoes, cosmetics and e-commerce sector. Prior to that he headed the 8th decision division (electricity, gas, district heating, water, mineral oil/fuels) and the 10th decision division (energy sector).

Since starting his career in the Bundeskartellamt in 2000, Felix was head of the German and European Antitrust Unit as well as the International Section where he co-chaired the ICN Unilateral Conduct Working Group. He also worked for the legal department where he litigated cases before the Federal Supreme Court.

Felix worked for an international law firm in Brussels and for the German Association of Municipalities in Bonn/Brussels. He studied law at the University of Münster, worked as research assistant and received his PhD at the University of Bonn.

Discussion

Panel chairman

Pat Treacy

Bristows

Pat has specialised in EU law and competition law for almost 30 years and has been involved in landmark cases at EU and national level. In addition to her expertise across the range of competition law, she has particular strengths in advising on the complex legal and policy issues arising where competition law and intellectual property law intersect.

Pat represents clients before the competition authorities and the courts, whilst also advising on competition law issues in complex agreements (including settlement, R&D and licensing agreements). Pat advises many of the Firm's clients on the competition law responsibilities affecting dominant companies and is a frequent commentator on the intersection of competition and IP law as featured in the blog [The CLIP Board](#).

Pat is a member of the Competition Law Association; the UK Association of European Lawyers; and the Competition Section of the Law Society. She is on the editorial board of the Journal of Intellectual Property Law and Practice and Competition Law Insight. Pat lectures and writes widely on topical issues. She also teaches the competition law module on the University of Oxford Postgraduate Diploma in Intellectual Property Law and Practice course.

Panellists

Morven Hadden

Competition and Markets Authority

Morven joined the Competition Commission as a Legal Director in 2007 and was appointed as a Legal Director in the Competition and Markets Authority (CMA) in 2014. She was previously a senior associate in the EU, Competition & Regulatory department of City law firm Simmons & Simmons specializing in EU and competition law, working in the firm's London and Brussels offices. Morven has worked for Government departments as a competition policy and legal adviser on the media merger provisions (which are the focus of the Fox/Sky merger) and on the proposals that led to the reform of the UK competition law landscape in 2013. At the CMA she oversees the legal advice on phase 1 mergers as well as advising on phase 2 mergers, market investigations, regulatory appeals, cartel cases, antitrust enforcement and related litigation. She recently advised on the CMA's infringement decision relating to the online sales ban of Ping golf clubs and the related litigation in the Competition Appeal Tribunal.

David Parker

Frontier Economics

David is a Director in the Competition practice of Frontier Economics. He has over 20 years' experience of providing strategic and expert economic advice to clients facing competition law issues or engaged in litigation. He has acted in front of the European Commission and at national competition authorities in many European countries and in Asia.

David has been involved in many of the highest-profile competition cases in the EU and UK. Recent clients include Tesco, First Group, Lloyds Bank, Just Eat, Booker, Aggregate Industries, Willis Towers Watson, Disney, Valero, Rolls Royce, Zoopla, HMRC, Whistl, and the National Health Service. Particular sectors of specialism include online platforms, retail, pharmaceutical, transport, heavy

industry, FMCG, and retail and wholesale financial services.

David regularly acts as economic expert on litigation cases, having given evidence in both Courts and Tribunals. He has acted on a wide variety of matters including follow-on damages cases arising from breaches of competition law (cartels, vertical agreements, abuse of a dominant position), VAT disputes, regulatory disputes, and in relation to standalone allegations of abuse of a dominant position or anti-competitive agreement.

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