Remedies in retail competition

Dr Mike Walker
Vice President, CRA International
Visiting Professor of Competition Economics
Loughborough University
Remedies in retail competition

• Taking a competition economist’s approach to the issue, not a legal one
• Consider four potential competition concerns
  – Local store concentration
  – Buyer power
  – Below cost selling
  – Price flexing
Local store concentration

• Number of recent merger cases looking at local store concentration
  – e.g. Somerfield, Morrisons/Safeway

• Local concentration should only be a concern when there are
  – barriers to entry for new players; or
  – barriers to expansion for existing players

• Potential barriers to entry and expansion include
  – Planning permission/landbank issues
    - Clearly a focus of the current CC inquiry
  – Fear of anti-competitive retaliation
Local store concentration \textit{(cont.)}

\begin{itemize}
\item \textbf{Possible remedies}
  \begin{itemize}
  \item Divestment of stores
    \begin{itemize}
    \item Clean
    \item Over-reaction in Somerfield case
    \end{itemize}
  \item Price regulation
    \begin{itemize}
    \item Very undesirable
    \item Likely to prolong problems rather than solve them
    \end{itemize}
  \item Lower barriers to entry
    \begin{itemize}
    \item Change of planning laws
    \item Use-it-or-lose-it remedy for landbank issues
    \item Vigilant application of competition law by authorities
    \end{itemize}
  \end{itemize}
\end{itemize}
Buyer power

• Economists start from the position that buyer power is usually pro-competitive as lower input prices are passed on to consumers
  – More so when input price reductions are industry wide
  – Even a monopolist passes on some proportion of input cost reductions
• But a problem if
  – Suppliers squeezed so much that investment or quality or choice falls
  – Harm downstream competition
    - e.g. waterbed effect whereby small stores pay higher input prices because large stores pay lower ones, thus leading to a reduction in competitive constraints on large players
• The use of private label is likely to increase retailers’ buyer power, but …
• … little empirical evidence in support of alleged detriments
Buyer power (**cont.**)

- **Possible remedies**
  - Hard to remedy buyer power concerns
    - Particularly relating to choice and long-term investment
  - Code of practice, but current UK version toothless (what is “reasonable”?)
  - Allow smaller stores to create buyer groups
    - Competition law issues under Ch1/A81
  - Allow smaller stores to buy at same price that larger stores buy at
    - Highly interventionist
    - Hard to police
    - Access remedies only usually acceptable for essential facilities
  - Structural remedy: break-up large retailers
    - Far too interventionist given current weak empirical evidence on harm
Below cost pricing

- Economists typically think of low prices as being pro-competitive
- In general only anti-competitive if lead to exit of competitors and if then lead to higher prices than previously
  - Exit of inefficient or sub-scale players is not anti-competitive
- Below cost selling of private label to induce lower input prices from branded suppliers is not in general anti-competitive
  - Key question is not whether it harms competitors, but whether it harms consumers (less choice, lower quality, higher prices)
Below cost pricing (cont.)

• Possible remedies
  – Banning below cost selling
    - Can stifle retail competition
      · e.g. blanket bans in France and Ireland
      · Partial ban in Germany
  – Standard competition law predatory pricing test
    - Does the retailer have substantial market power?
    - Are prices below avoidable costs?
    - Will they induce exit or reduce the ability of competitors to compete?
    - Will prices in the long-run be higher than they would have been in the absence of the exclusion?
Price flexing

• Price flexing
  – Has concerned the competition authorities
  – Does not in general concern economists, particularly if it does not restrict total sales

• Different prices that reflect different costs of supply are not anti-competitive

• Only potentially a concern if different prices reflect local exploitation due to a lack of competition

• Possible remedies include
  – Insisting on uniform pricing
    - Unlikely to be pro-competitive if there are underlying differences in costs of supply
    - Losers as well as winners
    - May facilitate tacit collusion
  – Remedy lack of local competition by lowering barriers to entry
Conclusions

• Need to ensure that do not try to protect small retailers at the cost of efficiency and higher prices
• Issues such as increased local concentration, buyer power, below cost selling and price flexing are often pro-competitive
• Need good empirical evidence of anti-competitive harm before trying to remedy alleged problems