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

Defining markets where branded and private label products are present:

“How posh is your scotch?”

Nicole Kar
22 May 2015
Why does market definition matter?

- Merger control / calculation of market shares
- Dominance / able to act independently of competitors?
- Other restrictions: horizontal v vertical analysis: do retailers and manufacturers compete at the same level?

![Diagram showing horizontal and vertical competition between Brand, Private Label, Retailer, and Consumers.]
Does it really matter in practice?

- Market definition is a means, not an end
- In majority of merger decisions market definition left open
- Authorities often assess on alternative / worst case bases
- Issues may be nuanced e.g.
  - Across different jurisdictions
  - As between premium / mid-range / value private label offerings
  - Branded and private label may be part of the same retail market but in distinct wholesale markets
Constraints assessed at a later stage

- Constraints usually considered during competitive assessment (regardless of outcome of market definition analysis)

- Majority of cases where interaction between branded and private label products considered have found some degree of constraint imposed by private label products.

- Ultimately it is a question of evidence

![OB/OL competitive constraints chart]

- Yes: 57%
- Presumably yes: 17%
- Inconclusive: 13%
- No: 13%
Focus on food

Sectors analysed (EU 2011–2014)
- food
- drinks
- personal care
- consumer goods (incl. homecare)

Competitive constraints between OB and PL in food sector (EU 2011-2014)
- yes
- presumably yes
- inconclusive
- no
Factors which swing the balance

*Key question: could branded good supplier introduce small but significant (e.g. 5% price increase) without losing sales to private label suppliers?*

<table>
<thead>
<tr>
<th>Retail level</th>
<th>Wholesale level</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Product characteristics – commoditised / sophisticated?</td>
<td>• Barriers to entry for new PL products / suppliers</td>
</tr>
<tr>
<td>• Product similarities / Demand side substitutability (‘Must have’?)</td>
<td>• Same / distinct manufacturers?</td>
</tr>
<tr>
<td>• Products displayed side by side?</td>
<td>• Same / distinct procurement processes?</td>
</tr>
<tr>
<td>• Presence of premium / mid range / value PL products?</td>
<td>• Ease of switching producers</td>
</tr>
<tr>
<td>• Price trends - overlapping price ranges? / is PL leader or follower?</td>
<td>• Margins</td>
</tr>
<tr>
<td>• Geographic differences?</td>
<td>• Evidence of retailer power – e.g. delisting threats / reducing branded space</td>
</tr>
</tbody>
</table>

*NB question is whether PL products constrain, not simply interact with branded goods.*
Analytical tools

• Consumer evidence (e.g. market research / surveys, loyalty card data)
• Price correlation analysis
• Event analysis e.g. supply shock, promotion, delisting
• Margin data
• Bidding data / procurement trends
Empirical evidence suggests there may be some substitutability between [PL] and branded vodka, at least for end-consumers [but]

[1] OFT [doubts this] end-user information is corroborative of the views of retailers.

[2] … some retailers noted their profit margins in [PL] vodka are lower than in branded … This may limit the extent that retailers can threaten to switch … to [PL] and therefore the constraint that [PL] places on the wholesale prices of branded vodka.

Taking all this into account, and particularly given

[3] the parties are active only in branded

the OFT … considers branded and [PL] separately … (OFT, Diageo/United Spirits, 58)
Blended bottled Scotch whisky to the off-trade

- For whisky (but not vodka) retailer preferences driven by consumer preferences. Off-trade customers pointed to a stronger constraint on PL from branded than the other way round. (OFT, Diageo/United Spirits, 30)

- On Nielsen data, 35-55% of Bell brand losses directly (W&M brand) or indirectly (to PL brands whose product is supplied to UK retailers by United) to United = close competitors

- Had the OFT defined separate markets for PL and branded, it would have concluded it only had half the story each time.

- Majority of retailers [argued] that W&M competes strongly with Bell’s … also raised concerns due to the incremental impact [on] brand competition of W&M’s strong presence in private label whisky. (at 58)
Questions?
Contacts

Nicole Kar

Competition/Antitrust Partner, London
Tel: +44 20 7456 4382
Mobile: +44 7795 234 559
Email: nicole.kar@linklaters.com