Assessing the competition effects of buying alliances

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Current ERA landscape

- **AgeCore Ltd.**
  - Sale: approx. EUR 140 bn
  - EDEKA, Colruyt, Conad, Coop Schweiz, Intermarché, Eroski

- **AMS Sourcing B.V.**
  - Sale: approx. EUR 105 bn
  - AholdDelhaize, Dansk Supermarked, Migros, Jerónimo Martins, Morrisons, Booker etc.
  - Focus: Private Label

- **AMS creating synergy**

- **Coopernic scrl**
  - Sales: approx. EUR 140 bn
  - Rewe, Leclerc, Coop Italia, AholdDelhaize

- **AholdDelhaize, Dansk Supermarked, Migros, Jerónimo Martins, Morrisons, Booker etc.**
  - Focus: Private Label

- **Coopernic**

- **Eurelec**
  - Eurelec Trading Scrl
  - Sales: approx. EUR 95 bn
  - REWE, E.Leclerc

- **Horizon International**
  - Established 2018
  - Sales: ?
  - Auchan, Casino, Dia, Metro

- **EMD Ltd**
  - Sales: approx. EUR 180 bn
  - Superunie, div. Markant, Euromadi, div. Kaufland etc.
  - Focus: Private Label

- **EMD Ltd**

- **Established 2018**
  - Sales: approx. EUR 170 bn
  - Tesco, Carrefour
Main features

Members

- Usually national champions from **different** countries
  - High market shares in retail market
  - ... but usually no overlaps in national markets

Targets

- **On-top bonus** (EU bonus)
  - No (real) counterparts:
    - Promotions to be negotiated on national level
    - Very limited value of central services (mediation, etc.)

- "**Gatekeeper**" principle
  - w/o international deal, no national negotiations

- s/shes: "**Testudo**" principle
  - "All deal" or "no deal"
  - Coordinated de-listings
Why may retailers team up for buying?

EU competition law takes **liberal stance on joint buying**
- **EU Horizontal Guidelines 2011 (HGL)**

**Likelihood test**
- Restraint of competition is **unlikely** ...
  - ... if market shares of retailers on both buying and downstream retail market are **below 15%** (safe harbour)
  - **OR**
  - ... if retailers are **not competitors on the downstream retail market**

**In practice**
- **EU Commission:**
  - Dawn raids at various players in Feb 2017 and May 2019
- **National authorities:**
  - Growing no. of investigations (last one: BE dawn raid on 20 May)
  - Only if overlap on downstream retail market
  - Limited number of decisions (France, Italy, Germany ..)
What are the borderlines?

ERA members may not allocate geographic markets

- **Implicit** market allocation?
  - Background: ERAs are only accepted under EU law if no overlap on retail market
- Do ERA members qualify as *potential* market entrants?
  - Some ERA members already operate in other geographic markets
  - Lidl/ALDI/Spar extend their presence w/o being ERA member

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**Allocation of markets**

(HGL 205)

Aldi (Nord)  
Lidl  
Spar
What are the borderlines?

**Information exchange (HGL 215)**

*Internally (within ERA)*
- Admissible to the extent exchange of information is *necessary* for the joint purchasing
  - ERAs usually only negotiate on-top bonus but not local terms
- ERA members may **not** exchange information about future business strategies beyond current geographic scope (expansion plans)

*Externally (other ERA)*
- Not admissible / overlap downstream

**Co-ordinated de-listing**

*Necessary* element of joint buying OR *excessive* restraint of comp.?
- Not decided yet – e.g. BKartA did not investigate Agecore/EDEKA/Nestlé
- EU COM: Car Battery Recycling Cartel
  - Fixing purchase prices prohibited - fined
  - Competition down stream
  - Joint de-listing same effects as fixed purchase prices?
What are the borderlines?

**Foreclosure of other retailers**

(HGL 212)

Do ERAs harm competitive position of other (SME) retailers?

- **Waterbed effect?**
  - CMA in Sainsburys/Asda:
    - "... the Merger is unlikely to lead to customer harm through a waterbed effect"

- **Spiral/Concentration effect?**
  - EDEKA/KT in application to minister:
    - KT forced to exit market following authority's refusal to approve proposed buying group and subsequent spiral effect
  - Effects similar to network effects?
    - High correlation between sales and purchases prices
    - Risk of tipping of market

**Reduced innovation and quality**

(HGL 207)

- CMA in Sainsburys/Asda:
  - "... insufficient evidence ... that the Merger is more likely ... to significantly reduce incentives to invest and innovate on the part of suppliers."

- BKartA in EDEKA/KT:
  - "If level of competition decreases, consumers will suffer due to inferior product quality, reduced innovation and less choice ..."
Thank you!

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