

# **EUROPEAN COMMISSION DG AGRI WORKSHOP ON RETAIL ALLIANCES**

**Ignacio Larracochea**  
Manufacturer perspective

**Brussels, 4 - 5 November, 2019**

# « FAIRNESS MATTERS »



«Running your business in a way that is fair to your competitors, fair to your business partners, and above all fair to consumers»

«I believe that **companies**, and individual business people, **have a responsibility to foster trust in the markets** – trust in a system that works for all - by playing by the rules when they do business in the EU»

*Commissioner Vestager speech at Copenhagen Business School 3 September 2018*

*Why Fairness matters, International Commerce Review, 7(2):92-102, December 2007, Ludo Van Der Heyden, INSEAD*

# OVERVIEW

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1. Imbalances in Power between Retailers and Suppliers in the Food Supply Chain
2. Retail Alliances – Who are they? How do they operate?
3. Disruption of the food supply chain ?
4. Conclusions

# RETAILERS - GATEKEEPERS TO CONSUMERS

EU CONSUMERS

Retailers represent 20% of suppliers' Business whilst suppliers represent less than 2% (or even 1%) of Retailers' business

17/8  
RETAILERS/  
GROUPS

INDUSTRIAL SUPPLIERS  
1.000

FARMS  
(cerca 1.000.000)



# COMPARISON BETWEEN THE 10 LARGEST RETAILERS, INDUSTRIAL SUPPLIERS AND COOPERATIVES ( 2015 - M€)



COMPARATIVA ENTRE LOS 10 PRINCIPALES GRUPOS DE LA DISTRIBUCIÓN FRENTE A FABRICANTES Y COOPERATIVAS AÑO 2015 (M€)

Nº	DISTRIBUCIÓN	VENTAS 2015	FABRICACIÓN ALIMENTOS Y BEBIDAS	VENTAS 2015	COOPERATIVAS	VENTAS 2015
1	MERCADONA, S.A.	19.059,20	COCA-COLA IBERIA	3.100,00	COREN	950,00
2	CARREFOUR - GRUPO	7.923,00	EBRO FOODS, S.A. - GRUPO	2.461,92	DCOOP	937,00
3	GRUPO EROSKI - DIV. ALIMENTACIÓN	4.917,15	NESTLÉ ESPAÑA, S.A. - GRUPO	2.166,00	GRUPO AN	716,00
4	DIA %	4.551,73	CAMPOFRÍO FOOD GROUP, S.A. - GRUPO	1.924,87	ANECOOP	530,00
5	ALCAMPO - GRUPO	3.308,20	GRUPO FUERTES	1.443,00	COVAP	404,00
6	LIDL SUPERMERCADOS, S.A.	3.048,00	VALL COMPANYS - GRUPO	1.400,00	COBADU	275,00
7	CONSUM, S. COOP	1.989,00	GRUPO LACTALIS	1.300,00	ACTEL	214,00
8	HIPERCOR, S.A.	1.650,00	MAHOU, S.A. - GRUPO	1.177,50	UNICA GROUP	213,00
9	AHORRAMÁS, S.A. - GRUPO	1.494,00	GRUPO DANONE	1.095,50	AGROPAL	253,00
10	MAKRO AUTOSERVICIO MAYORISTA, S.A.	1.201,00	NUEVA PESCANOVA, S.L.	1.084,00	CAMP D'IVARS D'URGELL	173,00
	<b>SUBTOTAL</b>	<b>49.141,28</b>	<b>SUBTOTAL</b>	<b>17.152,79</b>	<b>SUBTOTAL</b>	<b>4.665,00</b>

Fuente: Anuario Alimarket 2016 (datos 2015) e Informe Macromagnitudes del Cooperativismo Agroalimentario Español de 2015

# RETAILERS - GATEKEEPERS TO CONSUMERS



“From the perspective of the smaller partners, a purchasing cooperation with one of the leading retailers has ambivalent implications ..., there are increasing indications that the conditions attained from suppliers are not always passed on in full to the smaller partners... Apart from the loss of independence, this can also lead to direct disadvantages for the smaller cooperation partners.”

– Source: Bundeskartellamt, German Competition Authority, Summary of the Final Report of the Sector Inquiry into the food retail sector, 31.12.2014, p.5



Eurostat 2015 data  
\*\* Planet Retail

“Retailers only want talk about price. While the salmon price has increased by 60% in a year, that the raw material represents 75% of the finished product, some retailers threaten the cooperatives of delisting their products ... request for paying for no services, increase of demand to finance promotions ...”  
– Source: Coop de France, association of French cooperatives, LSA, 27.02.2017



The Czech Office for the Protection of Competition (ÚOHS) issued verdict for leading retailer which asked more than 200 suppliers to change the basic purchase price of their products, otherwise threatening to delist 30% of their product portfolio” – 21.08.2017



Groceries Code Adjudicator Investigation, 4 leading retailers found guilty of various unfair trading practices on hundred of suppliers in last 2 years despite their alleged engagement in voluntary platforms



Latvia: The Competition Council Fines Retail Chain for Imposition of Unfair Discounts on Milk Processing Company – 20.12.2010



## Unfair Trading Practices across the whole supply chain

When retail strangle their franchised storekeepers: “the retail buying group sells to its franchised stores products which are often 10% to 30% more expensive than the price the shopkeeper could purchase in a regular supermarket!” Source: Mediapart, 11.10.2013

“Certain retailers impose to small shopkeepers «their law» (minimum sales volume, obligation to purchase secondary products)”



– Source: Secretariat General Benelux: restrictions territoriales dans le commerce de détail, p.5, 2018 Micro entreprise statement

214 shopkeepers against leading retailer for unfair redistribution of the profit gathered from suppliers C/15/224905- 2016



Retailers forcing the shopkeepers to only buy from from retail central buying group and to sell with negative margin Source:CNMC (competition authority) SDC/0508/14



# RETAIL ALLIANCES

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## French retail alliances enquiry 31.3.2015

*“§253- The data collected.. are indicative of an imbalance in the forces in this sector: the share of the main retailers, or retail alliances, in the turnover of the suppliers interviewed would be on average in the order of 20%...”*

*“§254- In comparison, in several product markets **even the most important suppliers represent only a small share of the overall turnover of retailers’***



**EUROPEAN RETAIL ALLIANCES  
WHO ARE THEY?  
HOW DO THEY OPERATE?**



# BUYING vs. RETAIL ALLIANCES

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## BUYING GROUPS OF SMALL RETAILERS (AROUND 10% MARKET SHARE)



- Around for a long time (ç 30 years)
- Rationale: Smaller retailers joining forces to compete against bigger retailers

## RETAIL ALLIANCES



- Mostly larger retailers joining forces
- A growing complex layer of alliances (national/international)
- International alliances may be headquartered in favorable countries: forum shopping
- Often not joint purchasing organizations. ERAs many times do not create efficiencies associated with joint buying alliances
- Potential flow of information (member & employee switching)

# RETAIL ALLIANCES – GROCERY (2018)

## SINGLE-COUNTRY ALLIANCE

## EUROPEAN ALLIANCES: SEVERAL RETAILERS

Alliance of independent retailers



**HORIZON**

# INTERNATIONAL RETAIL ALLIANCES



EMD €174.6bn



AMS €158.5bn



Coopernic €134.3 bn



Eurelec €97.3 bn



Horizon €144.6bn



Agecore €132.2 bn



Carrefour World Trade €184.1bn



**EUROPEAN RETAIL  
ALLIANCES:  
AGECORE EXAMPLE**

# BIG COMPLEXITY FOR SUPPLIERS – MULTIPLE LEVELS OF NEGOTIATION - Agecore

## Modus Operandi 2017

### International negotiations - Alliance

Additional payments are 'entry fee' to commercial negotiation with Agecore members at national level, counterparts – no value for money

### National negotiations

Retaliations (collective de-listings) at national level if payment demands not accepted

### Local negotiations – individual stores

## Modus Operandi 2019: 6+1

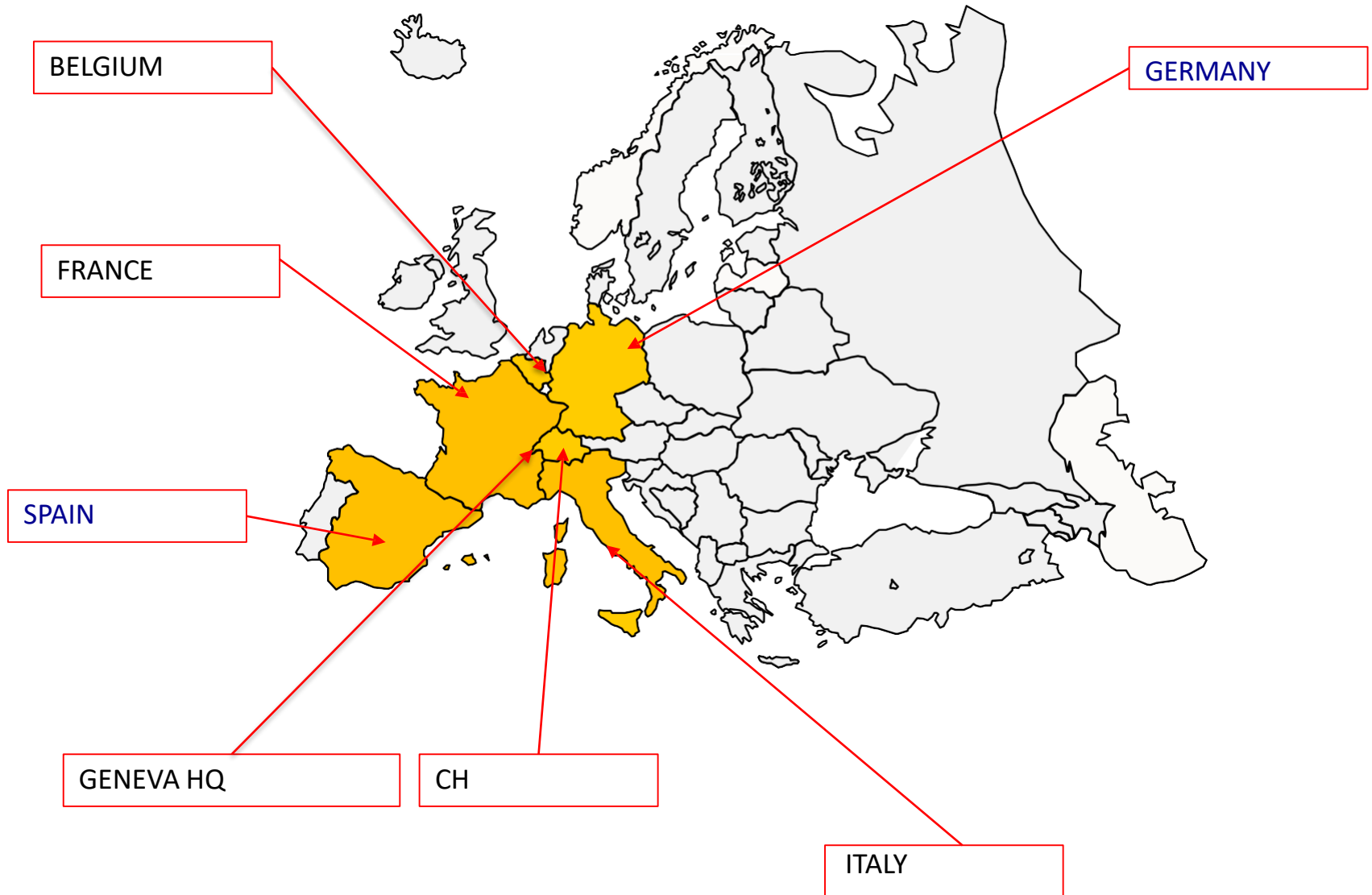
Parallel negotiation in 6 markets



Agecore Director to attend local negotiations and validate local agreements

# AGECORE HQ AND MEMBERS

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# AGECORE – WHAT IS NEGOTIATED, WHERE, WITH WHOM ?

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International Services Fee (Entry fee to be admitted to commercial negotiations at local level)

AgeCore INTERNATIONAL

Supplier X

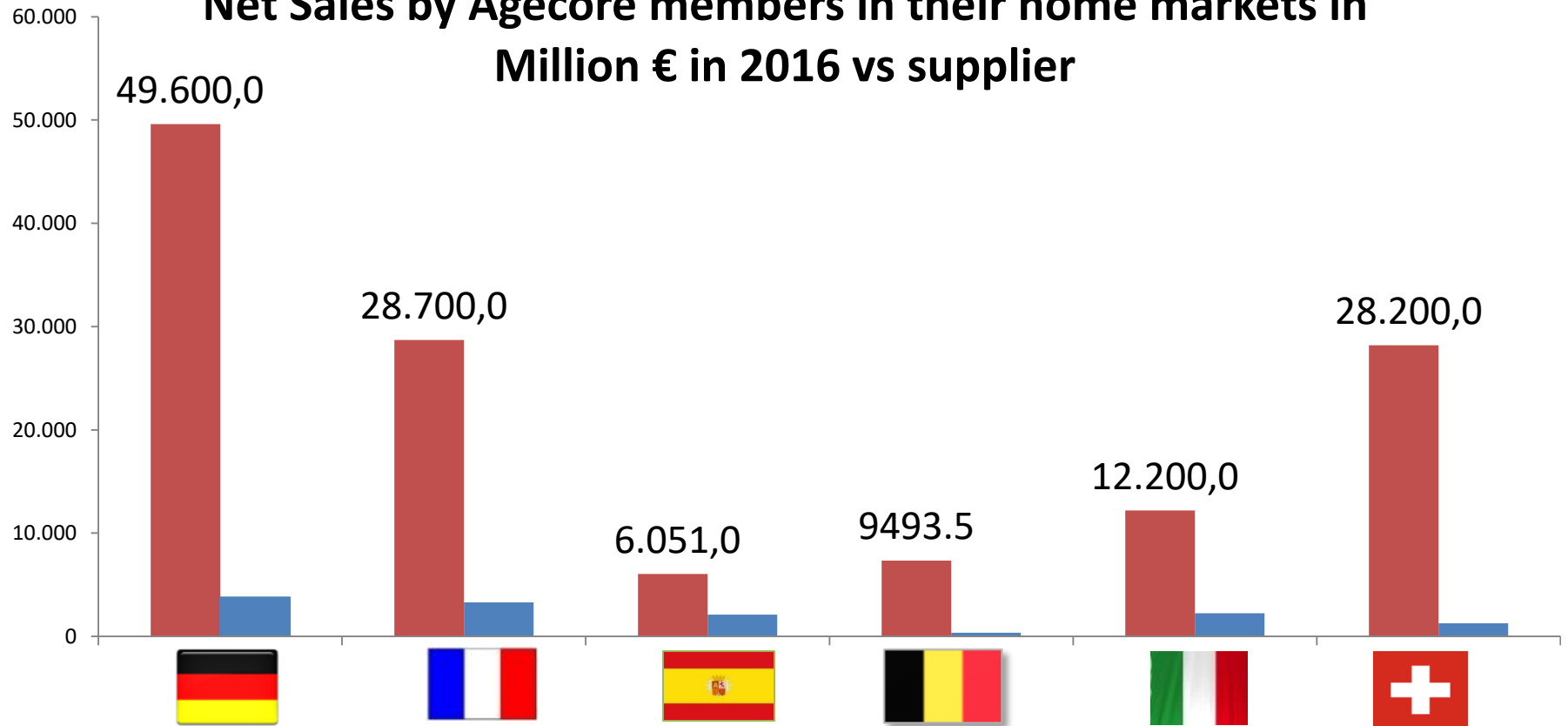
## AgeCore MEMBERS

ITALY  
BELGIUM  
SWITZERLAND  
GERMANY  
SPAIN  
FRANCE

Traditional Commercial Supply Agreements

Supplier X Italiana  
Supplier X Belgium  
Supplier X Suisse  
Supplier X Deutschland  
Supplier X Espana  
Supplier X France

## Net Sales by Agecore members in their home markets in Million € in 2016 vs supplier





# RETAIL ALLIANCES : RECENT EXAMPLES

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- **Enforcement decisions across the EU:**

- **Germany** – German Supreme Court 2019: “wedding gifts” in an acquisition demanded from 500 suppliers
- **France** – Various cases/sanctions by DGCCRF
  - Recently 119 Million € imposed on a retail alliance
- **UK** – GSCOP: Adjudicator Reports on an alliance abuses on hundreds of suppliers
  - Adjudicator statement on Tesco-Carrefour alliance
- **Italy** – Retail alliance with 23% market share disbanded in 2016 following the commencement of investigation by Competition Authority. Ongoing UTP investigation of supermarkets’ unsold bread return policy by Competition Authority (art. 62 of Law 1/2012)
- **Spain** – Retail alliance proceedings by Food Chain Authorities for unfair trading practices (2016). Alliance was disbanded in 2018. Another 4 cases avoided due to deterrence of UTP Law
- **Other Member States** (e.g., Czech Rep., Hungary, Poland, Latvia)

- **Main UTPs identified:**

- Wedding gifts without counterparts from economically dependant suppliers (incl. large suppliers)
- Payments (39 Million €) without adequate counterparts with a significant contractual imbalance
- Misuse of confidential information
- Unilateral demand of payments
- Payments without counterparts (no reflection in promotion prices)



**EUROPEAN RETAIL  
ALLIANCES:  
DISRUPTION OF  
FOOD SUPPLY CHAIN?**

# RETAIL ALLIANCES IMPACT

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- **Economic inefficiencies (social welfare)**

- Unfair Trading Practices distort allocation of economic investments/risks
- Reduction of innovation (DG COMP commissioned report 2014 – Kantar Innovation Radar Spain 2010-2018)
- Upstream value destruction up to primary producers: risk to EU industrial and farming policies
- Reduction of competition through information sharing, concerted collective retaliation and abuse of economic dependency (Germany) or significant difference (France)

- **Impact on consumers**

- Consumer welfare relates to innovation, quality, variety and price
- Service fees may subsidise competing private labels (dual role) and push up procurement prices to other retailers (waterbed effect)
- Dual role and UTPs may undermine the competitive process and consumer welfare

- **This debate is not about bargaining hard and fair on prices**

- UTP rules have no inflationary effect (JRC study for the UTP Directive)
- Service fees may increase prices

# IMPACT OF ERAS ON FOOD SUPPLY CHAIN

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- The Food Supply Chain is a chain. Holistic view required: Inefficiencies at one level have knock-on, cascading effects on other parts of the chain.
- ERAs decrease the price to the retailer, not necessarily to the consumer. No control ex-post.
- Upstream effects on manufacturers' suppliers (farmers, service providers etc.). Farmers' share of the value added of the food supply chain has decreased from 31% to 21% (between 1995 and 2011), Industry from 31% to 28% while that of Distributors have increased from 38% to 51%.\*
- Certain practices of retail alliances may be in line UTPs as indicated in the EU Directive (unilateral contract changes, misuse of confidential info, buyer commercial retaliation)
- ERAs increase overall costs for Manufacturers. Consequently, they need to offset losses with savings in other areas (but only limited possibilities: lower R&D, investment in growth, employment, or price increase to the consumer, etc.

\*(Prof. McCorrison, Univ of Exeter)

# IMPACT ON FOOD SUPPLY CHAIN



« the investigation hearings made clear that the **exercise of buyer power** by retail chains may lead **for the weaker producers**, not just to a squeeze of profit margins, but also to a more general difficulty in organizing effectively their production activities..... »

« long- and complex agreements, which, in many cases... **do not allow**, especially **for enterprises with less bargaining power**, the easy evaluation and comparison of economic conditions negotiated »

# RETAIL ALLIANCES

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German Competition Authority 31.12.2014

*“From the perspective of the smaller partners, a purchasing cooperation with one of the leading competitors has ambivalent implications for another reason....there are increasing indications that the **conditions attained are not always passed on in full to the smaller partners**. The results of the sector inquiry confirm this estimation. **Apart from the loss of independence, this can also lead to direct disadvantages for the smaller cooperation partners**”*

# RETAIL ALLIANCES

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## Retail alliances from point of view of private label manufacturers:

*“Many of the respondents felt that quality was seldom the lead concern of Retailers. Price seems to be the number one concern, especially when buying alliances are involved. ... The **use of buying alliances also further removes the process from any contact with the category, reducing the exercise to just a spreadsheet price. Very low price expectations lead to quality erosion to the detriment of the category.** Some also stated that **this inhibits innovation.**”*

Source: How private labels suppliers in Europe experience the relationship with their retail clients, Report April 2017, IPLC Europe



**EUROPEAN RETAIL  
ALLIANCES:  
CONCLUSIONS**



# CONCLUSION

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- Suppliers are economically dependent on retailers because of their gatekeeper role. Retail Alliances exacerbate the already existing market power of retailers in the EU.
- Market power allows retailers to squeeze payments out of their suppliers often without counterparts. Alliances increase this financial pressure year-by-year.
- These constant financial losses reduce the manufacturers' capabilities to invest and innovate. Employment along the chain (discontinuation of contracts with farmers and idle work in factories) is also impacted.
- Myth of the supplier's power: only 6% are "must stock Brands", low possibilities to find alternative access to consumers (German BKartA). There are ways around "must stock Brands", for example partial delisting of non "must stock Brands", which may be a significant part of a Company's business.
- Fairness for all: A proper assessment of the effects of ERAs on the food supply chain cannot be limited to (alleged) short-term price effects. A holistic approach towards welfare (innovation, etc.) in the food supply chain is required to solve this problem.
- Need to overcome current enforcement gap (as *Assemblée Nationale* report).

**THANK YOU**

# ANNEXES

# EU UTP DIRECTIVE - 2019

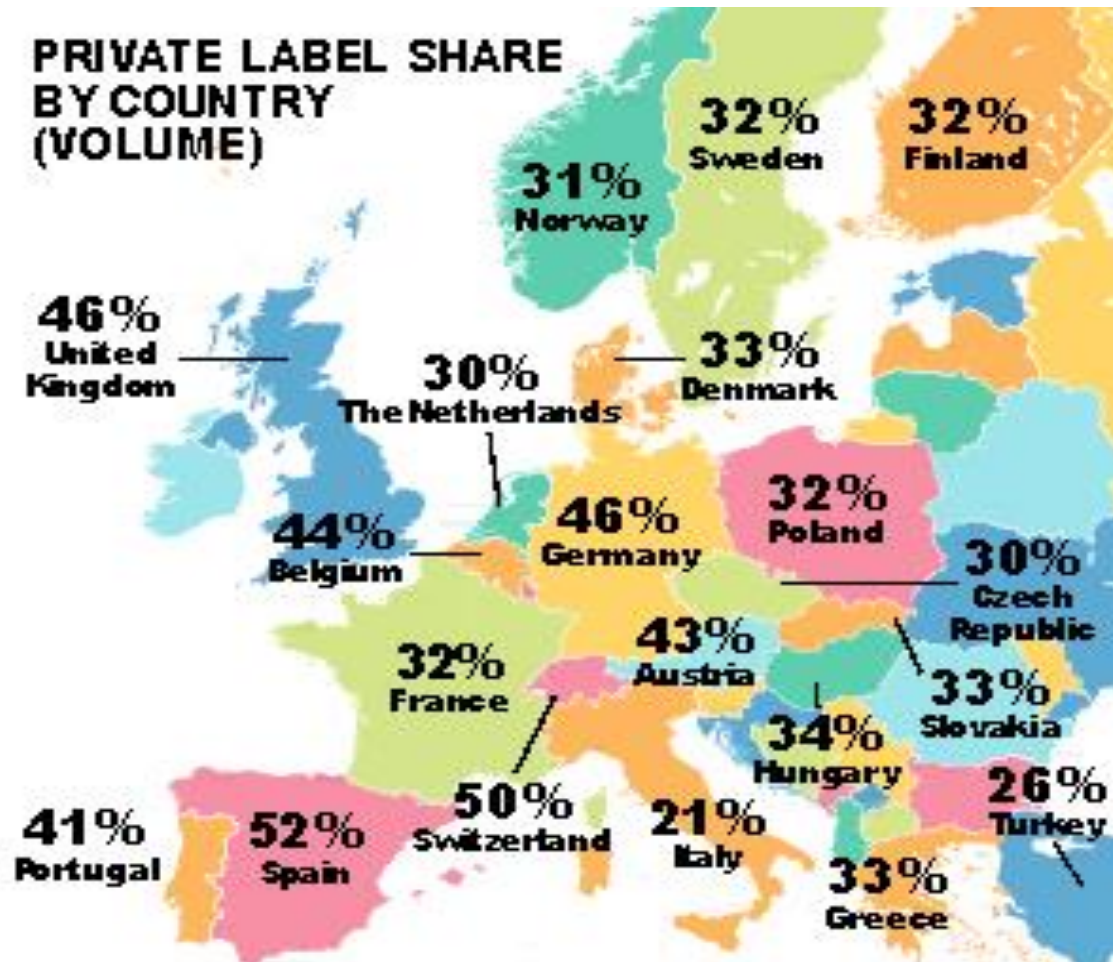
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## PROHIBITED PRACTICES

- Late payments
- Short notice of cancellation
- Unilateral contract changes
- Payments not related to specific transaction
- Risk or loss transferred to supplier
- Lack of written contract
- Misuse of trade secrets
- Commercial retaliation by buyer
- Transferring costs of complaint to the supplier

# RETAILERS AS GATEKEEPER – INDEPENDENCE

25% to 50% of grocery retail sales are coming from retail own brands



# RETAILERS AS GATEKEEPER – INDEPENDENCE




Up to **80%**  
of food sold  
In supermarkets  
comes from  
domestic sources.


## THE CONSUMER WANTS:



... Choice  
and Innovation



... Everything  
all year round



... Organic  
and local



... Good price  
and convenience

## **Retail declares markets are local.....**

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*“There are legal and commercial reasons for retailers not to sell everything everywhere just as there are reasons for not opening a store in every country and every town in their home state or abroad*

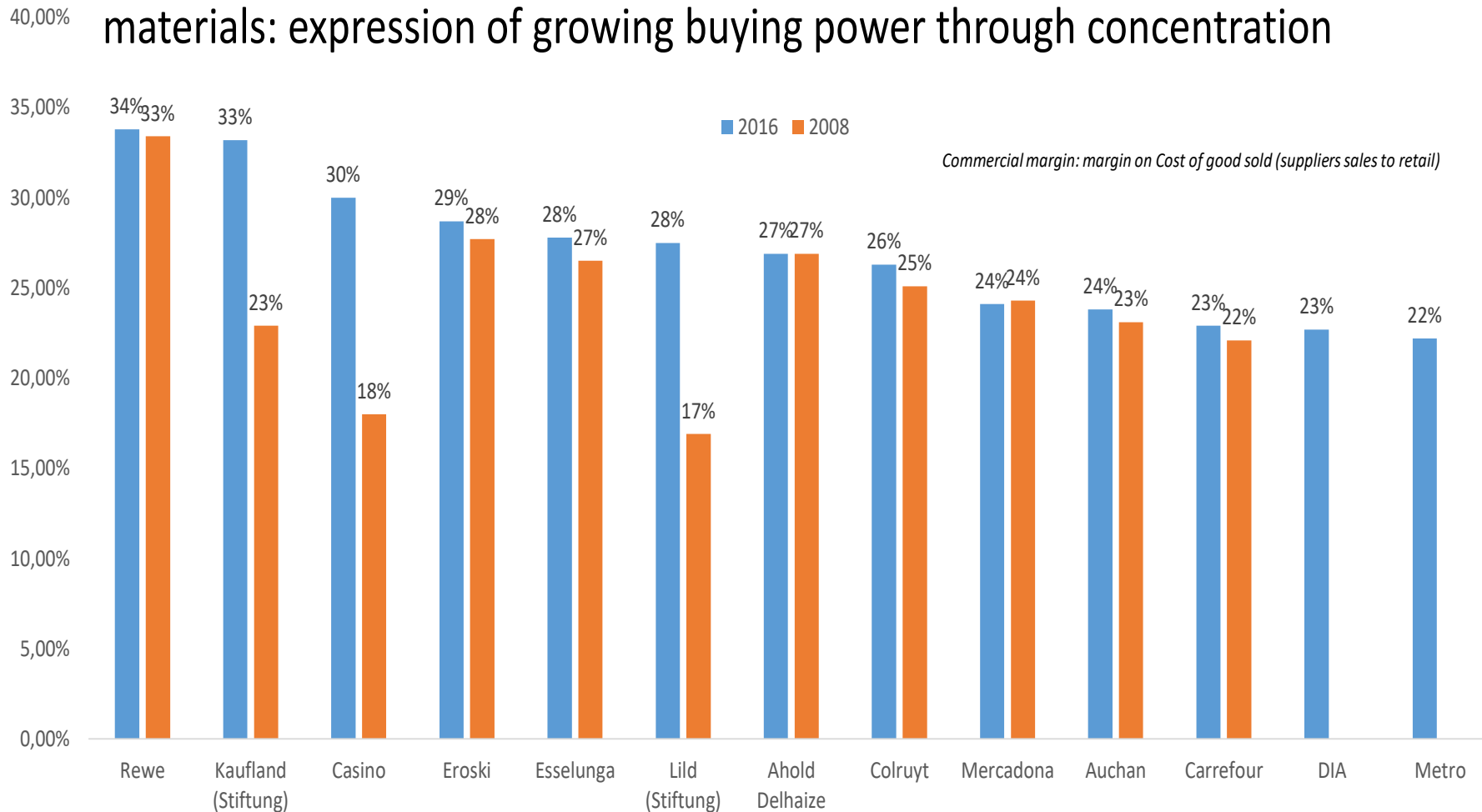
**...Retail defines the assortment for each country**

[https://www.eurocommerce.eu/media/151244/Issue%20Brief\\_Geoblocking.pdf](https://www.eurocommerce.eu/media/151244/Issue%20Brief_Geoblocking.pdf)

# RETAILERS/SUPPLIERS NEGOTIATION

## Trade relationship: commercial margin

Retail buys at cheaper price now that 10 years ago despite inflation of raw materials: expression of growing buying power through concentration



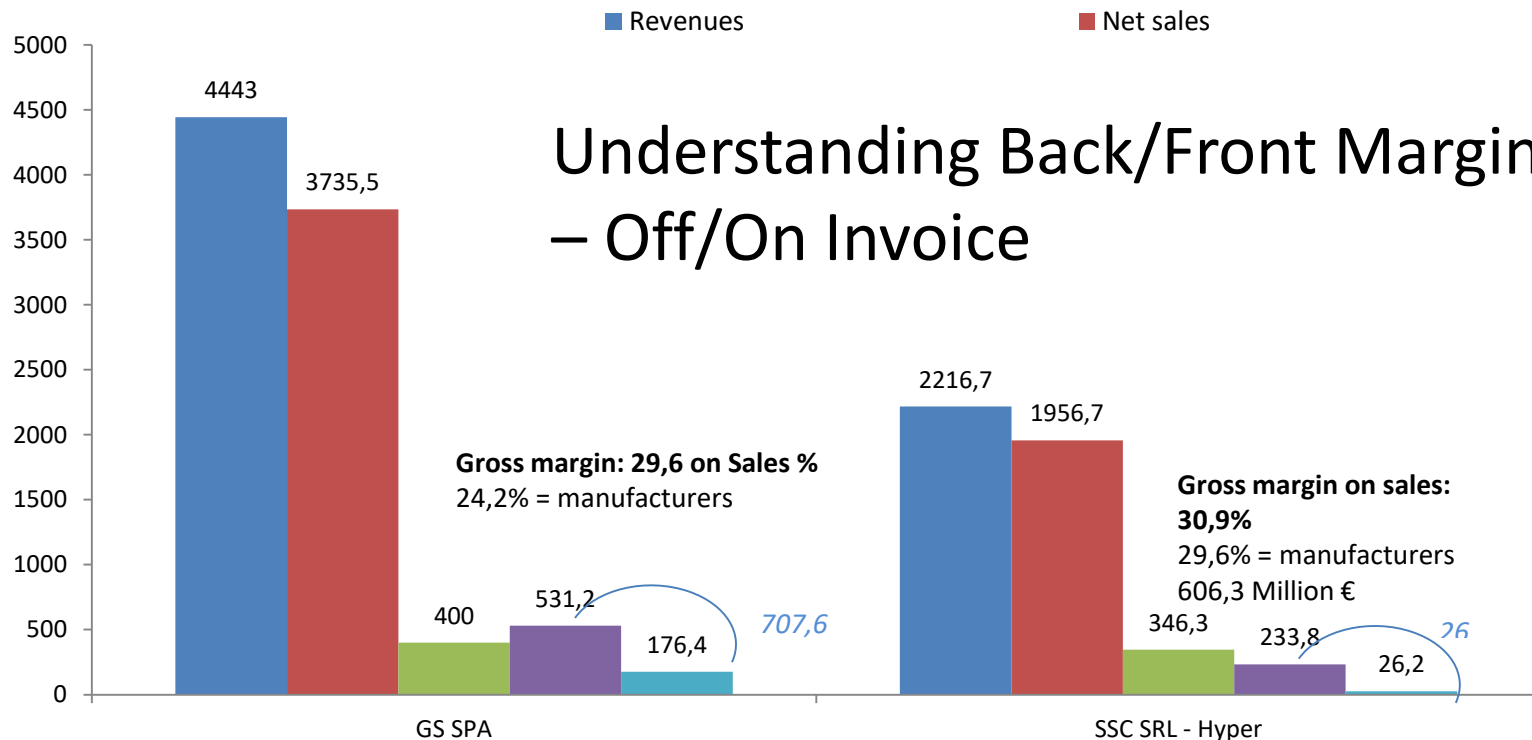
Data source: Amadeus/Orbis, BvD, Moody's – Group consolidated accounts – several include other business than grocery (i.e Travel, Food service....) – all accounts standardised by BvD on same format, diverging for some to companies investors presentation



# Products and Services

## the 2 side of suppliers and retail relationship

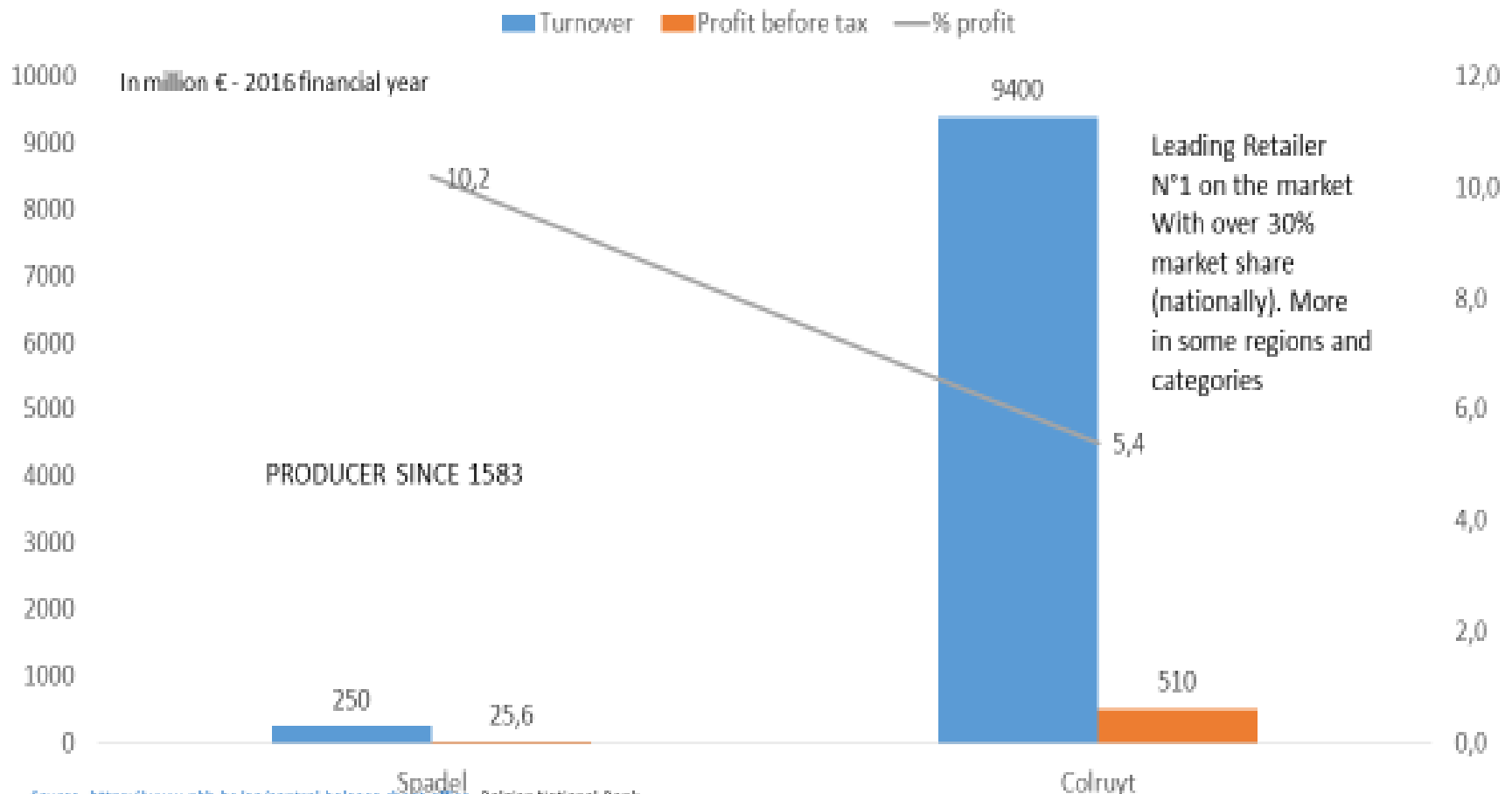
“the gross margin from trade is the not the sole source of income for retailers. **Retail generates revenues both from selling the consumer products purchase (gross margin) as well as from the following activities from trade** : Advertising and promotion activities for brands owners;Product placement charges;Retail chain entry fees: retail chain entry fee are often a significant source of income, especially when the chain has sufficient market power (share) to determine the conditions of entry for suppliers; Reduce operating capital needs/cost due to supplier credit (producers/wholesalers are often required to defer payments due from retailers). The retailers often impose long-term credit terms on their suppliers and get immediate cash from their customers. Therefore the stores may have negative working capital requirements on which they can make also revenues”. FAO Agribusiness Handbook,2009



# RETAILERS/SUPPLIERS BUSINESS MODEL



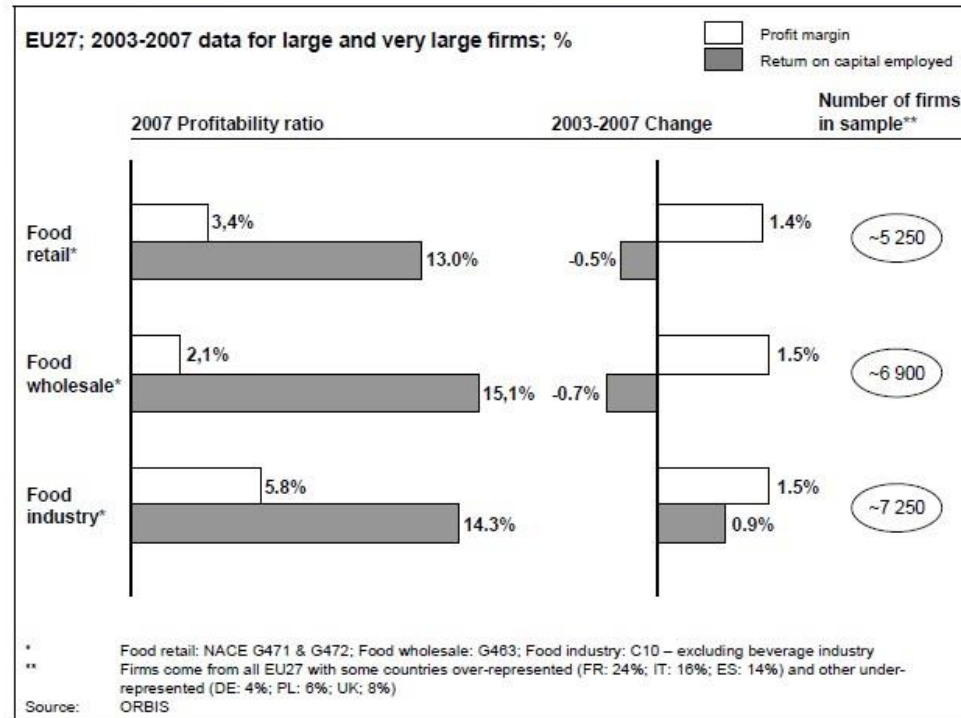
Would you rather have 510 millions € Profit and a profit margin of 5,4% (Retail)  
Or would you rather have 25,6 Millions € Profit and a profit margin of 10,2%....?



Source: <https://www.nbb.be/en/central-balance-sheet-office> Belgian National Bank

# RETAILERS/SUPPLIERS BUSINESS MODEL

Figure 9: 2007 Profit Margin and ROCE and 2003-2007 changes for large and very large firms by sector of the food supply chain in the EU27



A better functioning food supply chain in Europe

COMMISSION STAFF WORKING DOCUMENT

{COM(2009) 591}

Brussels, 28.10.2009  
 SEC(2009) 1445

- Commission – Staff Working Document , Transfer of Value across the Food supply Chain  
*“retailers benefit from higher profitability than the industry where profitability is calculated using the concept of rate of return on capital employed (ROCE)”*

# RETAILERS/SUPPLIERS BUSINESS MODEL

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- 2009 Economist report - French Parliament *“The income levels as a percentage of turnover, necessarily lead to low profit margins for retailers given the significant revenues generated by the sector”*
- *“ Hard to compare as economic models and cost structures significantly differ...retail activities give them the advantage of a permanent cash which exempts them from engaging a lot of equity”*
- French competition authorities – retail alliances *“ comparing net margin between suppliers and retailers is biased by differences in capital intensity between sectors: a high margin may simply reflect a higher capital intensity. ”*
- *“retailers benefit from higher profitability than the industry where profitability is calculated using the concept of rate of return on capital employed (ROCE)”*  
*Commission Staff working documents*

# Four Retail Alliances - 90% of food distribution

March- September 2019

Commission d'enquête sur la situation et les pratiques de la grande distribution et de ses groupements dans leurs relations commerciales avec les fournisseurs

Commission d'enquête  
Partager f t g



Composition  
Agenda  
Rapport d'enquête  
Comptes rendus

French Parliamentary commission on retail and retail alliances : concerned with Food supply chain, farmers revenues, constant deflation and lost of value in France compared to other EU Markets.

Report issued calling for the European Commission to develop legislation to tackle the issue of European retail alliances affecting the negotiation in national member states, 41 proposals to improve the relationship and the respect of UTP Law

<http://www.assemblee-nationale.fr/15/rap-eng/r2268.asp>

Nielsen France analyzes the impact of deflation. DG Nielsen France, the distributors' pressure on manufacturers and themselves with the MDD is detrimental to investment in innovation. P,79



la Fédération Nationale des Syndicats d'Exploitants Agricoles (FNSEA)- Agri producers Union Press Release 25.9. 2019  
« an important work which shows the retail power over the farmers and producers. ...we wait for the French competition authority to bring concrete answers with regard the retail concentration through alliances »

# FOOD MARKET - 2017

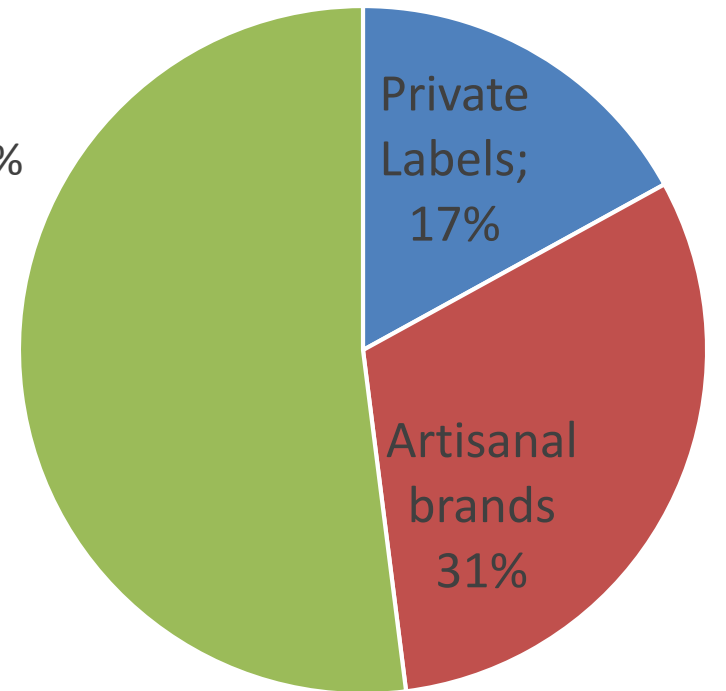
Multinational retailers, members of national and international retail alliances are suppliers through their retailers brands

## Top 10 Suppliers\*

- 1, Pernod Ricard
- 2, **Carrefour – Retail brands**
- 3, Nestle
- 4, **Leclerc – Retail brands**
- 5, Heineken
- 6, Lactalis
- 7, Carlsberg
- 8, La Martiniquaise
- 9, **ITM – Retail brands**
- 10, Castel

## Retail sales to consumers

Brands 52%  
156  
Companies



Artisanal + others: others <0,1% market share  
Packaged Food, Soft and Hot drinks, Alcool drinks

# Retail alliances and Agri food

HORIZON

Auchan|RETAIL

METRO

GRUPE  
*Casino*  
NOURRIR UN MONDE  
DE DIVERSITÉ

DiA

6 different units and levels

- 3 alliances in France: Horizon achats, Horizon appels d'offres et Horizon filières
- 3 International alliances : Horizon international services, Horizon international Tender et Horizon international SMEs.

**La centrale d'achats Horizon première filière agricole française d'approvisionnement**

Publié par la rédaction le 6 nov. 2018 - mis à jour à 14:29



# REPORT FROM FRENCH PARLAMENT HEARINGS

## MAIN RECOMMENDATIONS

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1. Improvement of commercial regulations:
  - the sale at a loss (including a margin),
  - limitation of promotions,
  - termination of negotiations on December 15 instead of February 28,
  - indexes of agricultural production costs and industrial prices, etc.
2. Ex ante control of creation or modification of purchasing/service alliances
3. New UTP / transparency obligations on alliances
  - list of services and prices, billed individually
  - obligation to inform tax authorities and keep copies of agreements and services provided
  - prohibition of billing international services on the total billing of the supplier, only on the additional activities generated
4. New general UTPs
  - abuse of purchasing power (less restrictive than abuse of economic dependence)
  - threats of partial/total cessation of procurement and delisting to obtain better terms
  - non-compete clauses in buyers' labour contracts
5. Improvement of the control framework:
  - more resources for the competent authorities
  - more dissuasive penalties (turnover)
  - obligation to report delisting by the affected supplier
  - reward to the complainant



## FRENCH AUTHORITIES INVESTIGATIONS + APPEAL COURT

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*« Even if certain suppliers have important market share which provide them a power in the negotiation, **all are dependant of the retail order to sell their production and few can allow to be delisted by a big retailer or to engage into a court case: this asymmetric relationship may lead certain suppliers to be forced to accept certain contract terms which are unfair, not in favour of their business** » Appeal Court (Paris) 01.10.2014 p.13*

***Retailers can ...encourage consumers to switch to competing products** (for example by reducing their margin on these products), while suppliers can hardly incentivize consumers to change retail banners...(31.3.2015)*

*Retailers can ... **integrate vertically through private label products.**(31.3.2015)*

*The possibility of alternative solutions (i.e. other outlets) for suppliers require analysis and a reasonable period of time . It is necessary to take into account the technical, commercial or legal constraints related to the transfer to other outlets such as catering, export, etc. In some cases, **these constraints are such that there is not possible alternative solution for the suppliers.** (31.3.2015) »*

*« **certain retailers consider that there would be some « must stock brands** ». The definition provided is however unclear”*

*“**Several suppliers as well as one retailer interviewed considered such products wouldn’t exist as no product cannot be replaced** “*

*“**The recent delisting made by several retailers would demonstrate there is no « must stock brands** » as very few consumer during delisting hold their purchase .”*

## GERMAN FOOD SECTOR ENQUIRY DECEMBER 2014

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***“Purchasing volumes have a decisive impact on the negotiated conditions, which is why the structural advantages of large retail companies are also reflected in the purchasing conditions granted to them.***

*In negotiations with the food industry the **leading retailers are largely able to use their strong market positions** to their advantage. As a consequence **they are in a stronger bargaining position than the manufacturers** . The large retail companies Edeka, Rewe and the Schwarz Group **have a structural advantage at the horizontal level (over their competitors) and at the vertical level (over their suppliers).***

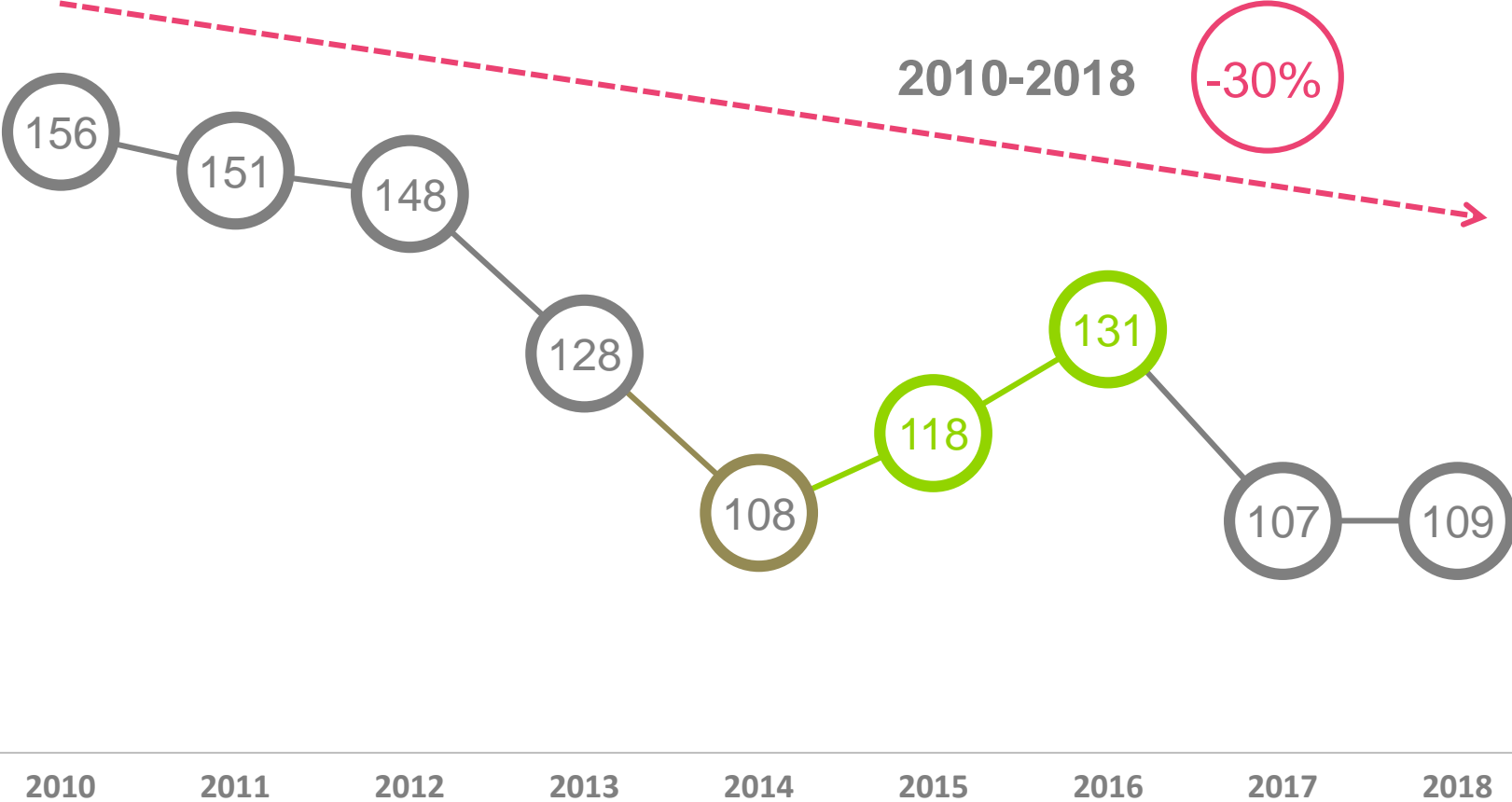
*They account for well over **three-quarters of total turnover achieved with final customers** in the German food retail sector. The market leader **Edeka alone accounts for well over one-quarter of total turnover** in the German food retail sector and has a leading market position in many regional sales markets”*

***“Even strong manufacturers with high turnover shares in the food retail sector can be faced with strong bargaining power from their customers, if they have even fewer outside options than their customers.** Shifting sales to another distribution channel is either regarded as not economically viable or doubt is cast on the "absorptive capacity" of alternative distribution channels.*

Source: [www.bundeskartellamt.de](http://www.bundeskartellamt.de)

# SPAIN: NEW PRODUCT LAUNCHES HAVE DECREASED BY 30% BETWEEN 2010 - 2018

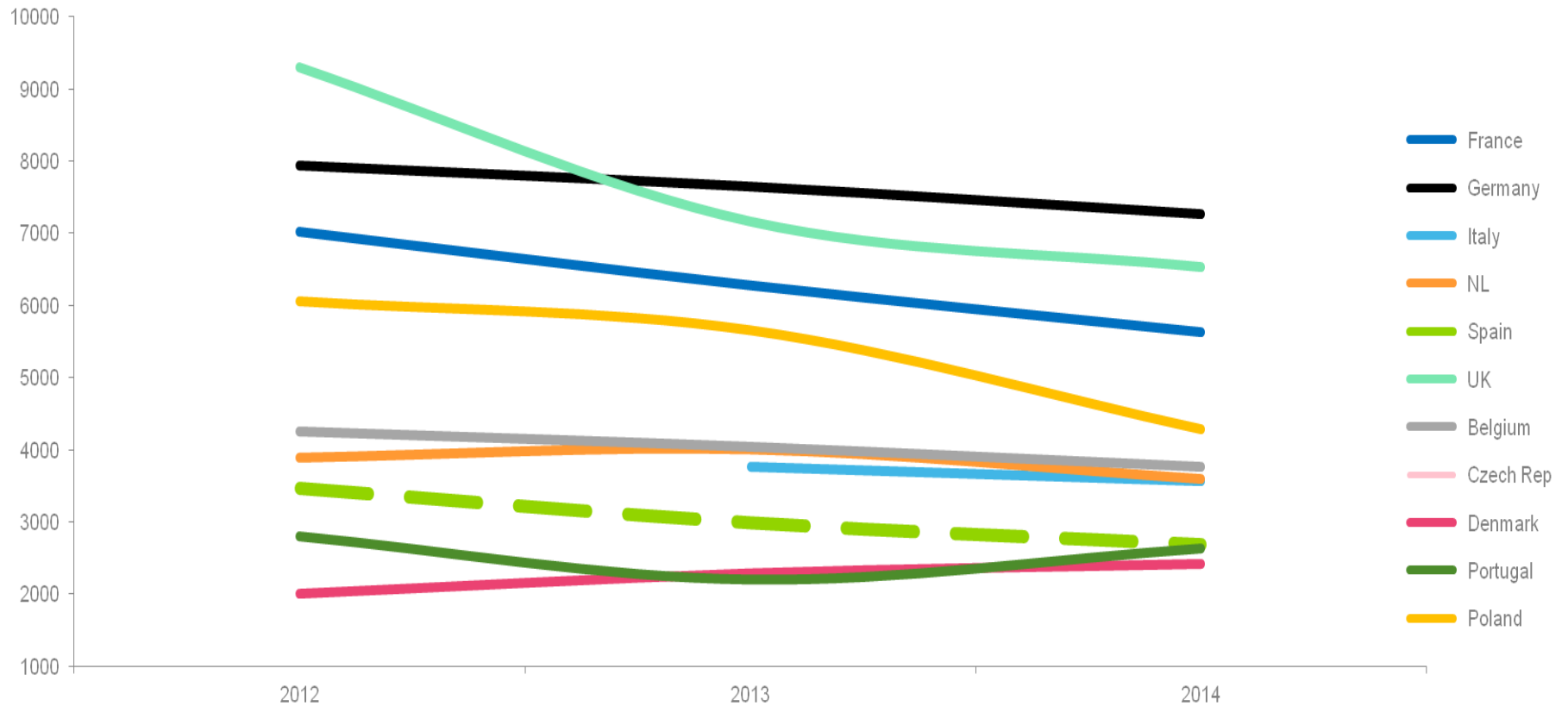
*Innovations in FMCG*



Source: Innovation Radar (Kantar Worldpanell).

# OVERALL PICTURE IN EUROPE NOT GOOD, WITH SPAIN AT THE TAIL

## Innovation launches by country



Source: Europanel. Launches of innovations and copies