



Retail alliances under EU competition law

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Competition

The overall EU antitrust framework

Buyer alliances

- Alliances of buyers can create **benefits**
- Alliances of buyers can have **negative effects**
 - Downstream
 - Upstream
- Yardstick=effects **on the market** (UTP law addresses effects in bilateral relations)
- References:
 - Horizontal Guidelines (HG) of the Commission
 - Court case law and Antitrust investigations
 - Economic literature

What are retailer alliances?

- Scope of activities
 - Jointly negotiate certain purchase terms
 - Jointly purchase
 - Procurement+: branding, marketing, logistics, IT, etc
- Geographical scope
 - Overlap or no overlap between members
 - Regional/national/international
- Members
 - Many small operators
 - Big and small
 - Several large operators
 - And members can be ...

...alliances

Markets

- Upstream Market for the procurement of goods
 - Based on products/categories
 - Separation brand vs private label
 - Usually national, with exceptions
- Downstream Market for sales to end consumers
 - Based on overall sales of groceries and types of shops
 - Private labels and brands together
 - Usually local (defined by travel time)

National alliances (a few examples and evolution 2015-2019)



RTG Retail Trade Group





European Commission

International alliances (a few examples and evolution 2015-2019)



The overall EU situation with alliances

- Growth in numbers of alliances
- Changes in partnerships
- Mobility of personnel in the sector
- High number of contacts



Transparency
Multiplication of opportunities for
exchanges of information or more

Potential benefits of buying alliances legal assessment

- **Price**
 - Lower wholesale prices that can be transmitted to consumers (HG §194)
 - Relevant factors: scale effects, concentrated supply (Dansk Landbrugs C-250/92)
 - Various factors can affect price: National Sulfuric Acid Association
- **Choice and innovation (HG § 194)**
- One major condition: there must be sufficient **competition downstream** to pass-on these benefits (HG §201 and 209)

Potential benefits of buying alliances economic evidence

- **Price**
 - European Central Bank, *"Retail market structure and consumer prices in the Euro Area"* (2014)
 - Toulemon, *"The effect of group purchasing on prices hospitals pay for medicine"*, (2018)
 - Molina, *"Buyer alliances in vertically related markets"* (2019)
- **Choice and innovation**
 - DG Competition study, *"The economic impact of modern retail on choice and innovation in the EU food sector"* (2014)

Potential issues with buying alliances legal assessment

- **Upstream (\$194)**
 - Buying power reducing choice and quality (§202 & 210)
 - Foreclosure of competing purchasers (§203 & 210)
- **Downstream**
 - Collusion due to joint procurement (HG §201)
 - Combined market power (§208)
 - Commonality of costs (§214)
 - Exchanges of information (§215)
 - Collusion disguised by alliance (§205)
- **Usually no issue for market share <15% (§208)**

Potential issues with buying alliances some economic literature

- **Upstream**
 - Buying power reducing product variety
 - Inderst and Schaffer (2007)
 - Allain, Avignon, Chambolle (2019)
 - Foreclosure of competing purchasers
 - Inderst and Valetti “Buyer power and the waterbed effect” (2011)
- **Downstream**
 - Lack of transmission
 - Iozzi and Valetti (2010)
 - Collusion through slotting allowances
 - Foros and Kind (2006)
 - Doyle and Han (2014)

Potential issues with buying alliances some antitrust investigations

- **Upstream**
 - Buying power reducing choice and quality: Centrale Italiana (2014), ongoing investigations in France
- **Downstream**
 - Reduced competition due to
 - Joint procurement itself: Centrale Italiana (2014), ICA-Norgesgruppen (2014), ongoing investigations in France and Belgium
 - Collusion: ongoing investigation by Commission

Extensive scrutiny of national alliances (e.g. NCA inquiries on all alliances in France, Germany & Italy) and international alliances (COM investigations)

Concluding remarks

- ▶ Benefits and costs
- ▶ Antitrust framework deals with overall effects of retail alliances and authorities are actively investigating
- ▶ Allegations are not sufficient, there must be evidence of a problem (e.g. claims upstream) for any intervention
- ▶ Effects on individual « smaller » suppliers to be addressed under separate UTP rules, do not appear specific to alliances
- ▶ Further empirical work that would be useful
 - ▶ Effects of buying power on variety and innovation
 - ▶ Passing-on of price benefits