

The Role of Retail Alliances

1

Competition Aspects of Retail Alliances

Brussels, 5 November 2019



Dr. Felix Engelsing
Chairman
2nd Decision Division

Overview

2

1. Market Structure
2. National Retail Alliances
 - Satellite Constellation: Merger Cases
 - Retail Trade Group: Case
3. International Retail Alliances
4. Competition Aspects
5. Unfair Trading Practices: Edeka Wedding Rebates Case
6. Outlook

Market Structure Germany

3

- Sector Inquiry Bundeskartellamt „Buyer power in the food retail sector“ September 2014
- Top Group of four supermarket chains: Edeka Cooperatieve, Rewe Cooperative, Schwarz Group, Aldi North + South
- have combined app. 85% of the germanwide sales and procurement food market
- procurement mainly national
- vertical integration

TOP 10 Retailers in Germany

4

Top 10 Retailers in Germany 2018 (source: LZ Retailytics)

Company	Turnover 2018 (in million €)	Change	Market Share Germany 2018
1. Edeka (Netto)	58.750	+4,3%	21,5%
2. Rewe Group (Rewe, Penny)	40.020	+4,2%	14,7%
3. Schwarz Gruppe (Lidl, Kaufland)	39.975	+3,0%	14,7%
4. Aldi (Aldi Süd, Aldi Nord)	30.294	+3,0%	11,1%
5. Amazon	15.241	+17,4%	5,6%
6. Metro AG (Metro C+C, Real)	13.508	-1,1%	5,0%
7. Lekkerland	8.837	-1,0%	3,3%
8. dm	8.110	+3,2%	3,0%
9. Rossmann	6.660	+4,1%	2,4%
10. Globus	5.164	+1,5%	1,9%

TOP 10 Retailers in Europe

5

Top 10 Retailers Europe 2018 (Source: LZ Retailytics)

Pos.	Company	Turnover 2018 (in million €)	Change (in percent)	Market Share Europe 2018
1	Schwarz-Gruppe	112.726	6.3	7.0
2	Carrefour	64.083	-1.3	4.0
3	Aldi Nord+ Süd	63.637	6.0	3.9
4	Tesco	61.455	7.6	3.8
5	Edeka	58.750	4.3	3.6
6	Rewe Group	57.281	4.1	3.6
7	Auchan	42.099	-2.4	2.6
8	E.Leclerc	38.709	1.5	2.4
9	Metro AG	35.447	-1.2	2.2
10	Amazon	33.260	20.3	2.1

National Retail Alliances

6

- National Retail Alliances
 - “Satellite Constellation”: Retail Alliances with Edeka or Rewe: often lead to mergers/acquisitions
 - Retail Alliance with EDEKA: Feneberg is now part of the Edeka Cooperative (but split with Netto Nord)
 - Retail Alliance with Rewe (Coop acquired 65-70% via Rewe): Coop was acquired by Rewe 2016 (but split with Karstadt Feinkost)
 - Edeka/Tengelmann Merger 2015: Prohibition decision of Bundeskartellamt but overturned by ministerial authorization in 2016 (commitments to safeguard jobs at Tengelmann)
 - Merger Rewe/Coop 2015: Phase 2 decision of Bundeskartellamt: commitments by Rewe to divest 11 supermarkets

National Alliances – Retail Trade Group

7

- Retail Trade Group (RTG)
 - Retail Alliance between Metro/Real, Bünting, Klaas+Kock, Bartels-Langness, Netto Nord Aps, Kaes, tegut
 - founded in April 2017
 - almost all remaining retail companies in the German market (that do not belong to the Big 4 in Germany)
 - joint venture with services for the parties in the areas of purchasing, e-commerce, logistics and administration
 - parties continue to operate different distribution channels on sales markets, but possible effects of cooperation on sales side

National Alliances – Retail Trade Group

8

- BKartA no objection under competition law against RTG
 - on procurement side: joint shares of RTG members less than 15%
 - within 15% threshold of EU horizontal guidelines for buyer power
 - in several regional markets RTG companies compete on sales side (in some areas high joint market shares)
 - but major competitors have high market shares on all sales markets (scope of action of RTG still sufficiently controlled)
 - significant positive effects
 - four major food retailers EDEKA, REWE, Schwarz group and Aldi have more than 85% of the market
 - cooperation can ensure competitiveness and independence of smaller retailers, also as sales alternative for suppliers

International Retail Alliances

9

COOPERNIC★

founded 2005

140 billion €

international
“marketing
conditions”:
compensation for
marketing
activities or
turnover growth



Conflicts with:



11.6 billion €



3.4 billion €



9 billion €

International Retail Alliances

10



founded
1997/2015

140 billion €

international
“marketing
conditions”:
compensation
for marketing
activities or
turnover
growth



Conflicts with:



80 billion €



35 billion €



6 billion €



2 billion €

International Retail Alliances

11



founded 1989

184 billion €

14 members



Competition Aspects of Retail Alliances

12

- Merger Control
 - merger of retail alliance: case in Germany 2013
 - merger of retail alliance members
- Information Exchange (horizontal)
 - between competing members of retail alliances active on the same regional product or procurement market
 - horizontal agreement
 - cases by EU Commission and Belgian Autorité de la Concurrence

Competition Aspects of Retail Alliances

13

- Abuse of market power/Unfair trading practices
 - Anzapfverbot – general prohibition of unfair trading practice under German competition law, § 19(2) no. 5 GWB
 - applicable also to companies with relative or superior market power, § 20(2) GWB (dependency)
 - Boycott or other restrictive practices, § 21 GWB
 - (1) Undertakings and associations of undertakings may not request that another undertaking or other associations of undertakings refuse to supply to or purchase from certain undertakings, with the intention of unfairly impeding these undertakings

UTP: Anzapfverbot in Germany

14

§ 19 GWB: Prohibited Conduct of Dominant Undertakings

(1) The abuse of a dominant position by one or several undertakings is prohibited.

(2) An abuse exists in particular if a dominant undertaking as a supplier or purchaser of a certain type of goods or commercial services

5. requests other undertakings to grant it advantages without any objective justification; in this regard particular account shall be taken of whether the other undertaking has been given plausible reasons for the request and whether the advantage requested is proportionate to the grounds for the request.

Case: EDEKA Wedding Rebates

15

- Claims of Edeka against suppliers (“wedding rebates”) after acquiring 2000 Plus supermarkets
- Prohibition Decision BKartA July 2014
 - Claims against sparkling wine producers
 - prohibition based on Anzapfverbot
- Appeal Court OLG Düsseldorf, Judgement Nov. 2015:
 - repeal of BKartA decision: no abuse of market power by Edeka and no inadmissible claims

Case: EDEKA Wedding Rebates

16

Federal Court of Justice, January 2018

- confirmed BKartA in most important issues
 - relative market power of EDEKA confirmed
 - abusive: demands for retroactive alignment of conditions with best value, adjustment of payment terms, partnership reimbursement
- Federal Court of Justice saw (like BKartA) excessive shift of entrepreneurial risk of powerful retailer to producer

Competition Aspects of Trading Practices

17

- Tough Negotiations allowed: freedom of contract
- Market power and dependency: imbalance in negotiation power
- Bundeskartellamt: Amazon Case 2019
- Individual or overall conditions as reference point?
- Assumption for no objective justification for obvious imbalance
 - Retroactive alignment of conditions
 - Partnership reimbursement (share of investment costs)
- Assessing service against consideration in return
- Appropriateness test/receipt of a benefit

Outlook

18

- International retail alliances: further development, market power and negotiation processes
- further concentration in retail market in Germany: Metro sells its business “real” in Germany
- UTP Directive: Implementation
 - black and grey clauses
 - responsible national authority
- 10th Amendment of GWB (Acts against Restraints of Competition) in Germany: strengthening abuse control