

## Contribution to the Commission Evaluation of the Horizontal Block Exemption Regulations and Guidelines

### Key messages

The Horizontal Block Exemption Regulations (HBER) and the Horizontal Guidelines (Guidelines or HGL) work well and provide an overall balanced framework for horizontal cooperation. The European Commission's current evaluation is an opportunity to update this framework and provide further legal certainty, especially by reflecting more recent market developments such as digitalisation, globalisation and sustainability.

Digital has brought about huge transformational changes in supply chains, increasing transparency and competitive pressure. Retailers and wholesalers are now facing competition from global ecosystems established outside the EU. Manufacturers increasingly address consumers direct on-line and thus are becoming direct competitors. Digital has also expanded the selling market for a number of products which are offered in stores and on-line. Retailers and wholesalers are facing suppliers that are increasingly consolidated, hold significant profits and market shares by selling unique brands and in many cases fragment the single market. We ask the Commission to take these factors into account when conducting their competition assessments.

We wish to make the following main points, which we will detail further below:

1. **Purchasing alliances** lead to lower prices for customers, they create efficiencies and contribute to creating a single market for sourcing. The Guidelines provide the needed flexibility and legal certainty for these alliances to operate both effectively and compliantly.
2. To further improve the Guidelines, we ask that the Commission considers **increasing the safe harbour threshold** for the relevant buying market to 30%. Furthermore, the possibility of voluntary ex-ante consultations with the EU Commission and/or the national competition authorities should be introduced in order to increase legal certainty.
3. In light of the further digitalisation of commerce, we recommend adapting the Guidelines in relation to **information exchange**. Specifically, the Guidelines should provide more clarification on **signaling** and help better assess data and information exchange between competitors, particularly regarding **agency agreements** as well as **hubs-and-spoke** situations.
4. The Guidelines should provide more guidance on **sustainability** cooperation, especially on how to consider future benefits and future burdens in the competitive assessment. This would help retailers and wholesalers make required investments in sustainability projects.

## 1. European retail and wholesale alliances<sup>1</sup>

1. The Guidelines recognise that joint purchasing agreements have pro-competitive effects. European retail and wholesale alliances are such joint purchasing agreements. We appreciate that the Guidelines use straightforward, universally applicable criteria and are based on long-standing economic policy to help us ensure the competition compliance of these agreements.
2. Purchasing agreements exist in many sectors and their role in supporting competitiveness is well-established. There is no economic justification for a differing, sector-specific approach to purchasing agreements in retail and wholesale.
3. European retail and wholesale alliances have in most cases no dealings with farmers. They primarily concern processed packaged goods, especially A-brands and private labels, not the agricultural goods of farmers. Therefore the oversight should continue in the hands of DG COMP, who has effectively enforced the Guidelines at EU level to this day.
4. European retail and wholesale alliances are often created to support retailers and wholesalers negotiating with strong, often international fast-moving consumer goods (FMCG) suppliers with high profit margins. By providing clear rules on the conditions for purchasing agreements, the Guidelines safeguard that retailers and wholesalers can continue to increase their buying power towards these suppliers. In doing so, they also support retailers' and wholesalers' efforts to develop a truly single market for FMCG sourcing.
5. We ask the Commission to maintain the Guideline's current overall well-balanced approach. The Guidelines are properly enforced in a consistent manner throughout the EU with regards to purchasing agreements. National competition authorities have used the HGL when analysing retail and wholesale alliances not only under Article 101 TFEU but also when applying the equivalent national law provisions<sup>2</sup>.

### *1.1 European retail and wholesale alliances rely on clear governance and compliance principles*

6. European retail and wholesale alliances have varying degrees of geographical coverage (up to 20 countries), different scopes in terms of the numbers of members (up to 11) and are of different types with different commercial activities:
  - European retail and wholesale alliances have in most cases no dealings with farmers. They primarily concern processed packaged goods, especially A-brands and private labels as well as goods not-for-resale (e.g. store furniture and equipment), not the agricultural goods of farmers.
  - Some members of alliances are active in only one country, others are active in several countries. Some retailers and wholesalers are not part of any alliance. Some alliance members are integrated retailers or wholesalers, others are independent retailers, cooperatives or buying groups.
  - European retail and wholesale alliances are designed so that their members continue to compete on downstream selling markets.
7. European retail and wholesale alliances negotiate on behalf and/or with the support of their members to get better sourcing conditions by combining volumes and creating economies of scale. They may also provide associated marketing and distribution services, negotiated in return for services fees. In many cases the services are specified unilaterally between the supplier and each alliance member or may be performed unilaterally vis-à-vis the supplier. In some cases, alliances buy themselves; in others, they only provide support in the context of negotiations with large, mostly international suppliers.

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<sup>1</sup> More background information on retail alliances can be found in annex 2

<sup>2</sup> Article 3 of Council Regulation 1/2003 has resulted in NCAs applying national competition law in a consistent manner in this area.

8. European retail and wholesale alliances operate in compliance with national and European laws, specifically with the Guidelines, and are under the scrutiny of national and European competition authorities. They use compliance officers, internal and external legal counsel to ensure compliance. For the reasons mentioned above, we are convinced that competition rules, and the Guidelines in particular, are the relevant framework for assessing their competition effects.

### *1.2 European retail and wholesale alliances bring efficiencies and benefit suppliers and customers*

9. European retail and wholesale alliance typically negotiate with large, often international FMCG suppliers with high margins (15-30% net margins) and high return on capital.<sup>3</sup> These suppliers are at a competitive advantage compared to retailers and wholesalers, because they typically have high market shares in their focus product categories. They also command strong brands, some of them “must-have” products, that put suppliers in a position to stop delivering when retailers or wholesalers do not cooperate.<sup>4</sup>
10. The FMCG suppliers’ strong market positions are exacerbated by some suppliers imposing territorial supply constraints (TSCs), which force retailers and wholesalers to source locally in each Member State, segmenting markets and leading to unjustified price differences for customers<sup>5, 6</sup>. If retailers or wholesalers attempt to parallel import, suppliers may take retaliatory action, for example by stopping deliveries. Alliances help retailers and wholesalers develop a truly European Single Market for sourcing.
11. Faced with competitive pressure and an overall difficult sourcing environment, European retailers and wholesalers have formed alliances to improve their competitive position. These alliances are of particular importance to small and medium-sized retailers and wholesalers, who through an alliance are able to compete better with larger retailers and wholesalers, as their purchases otherwise would represent only a very limited share of the suppliers’ overall market. Participation in alliances give national retailers, big as well as small, access to a bigger range of branded products, that otherwise would not be available in their country.
12. European retail and wholesale alliances support their members’ bargaining position towards their big multinational suppliers. They are central to the creation of a level playing field with big suppliers and for providing better prices to consumers<sup>7</sup>.
13. Retail and wholesale alliances encourage product innovation and improvements by sponsoring new suppliers’ entry and new private label development. This is particularly relevant for smaller suppliers of private label products, who through the alliance get access to retailers in other member states.
14. Retail and wholesale alliances lead to efficiencies in logistics and packaging and can act as a vehicle for setting environmental standards in the supply chain, including products that are sourced jointly, thereby reducing the first mover disadvantage<sup>8</sup>.
15. Consumers benefit from these efficiencies. Competition on retail and wholesale markets with low margins means that retailers and wholesalers have no choice but to pass on purchase price improvements to their customers.<sup>9</sup> Consumers also benefit from new products and a wider product choice, for example by access to products that otherwise might not be available at all or only in other regions or Member States.

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<sup>3</sup> See annex 2: contribution to the DG AGRI/JRC workshop on alliances, 05 November 2019

<sup>4</sup> See recent cases of suppliers stopping deliveries to retailers – CocaCola – Intermarché; Edeka-Heinz

<sup>5</sup> One example is the AB InBev case, where the Commission in May 2019 fined the company €200 million for restricting cross-border sales of beer between the Netherlands and Belgium.

<sup>6</sup> See annex 1 on territorial supply constraints, definition and impact

<sup>7</sup> Molina, 2019: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3452497](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3452497)

<sup>8</sup> See section 3 on sustainability agreements

<sup>9</sup> This phenomenon is known as the Robin Hood effect (Corstjens and Steele, INSEAD, Journal of Retailing and Consumer Services 15, (2008) 224-236)

16. Suppliers benefit from the additional volumes that European retail and wholesale alliances provide, but also from administrative simplification due to a reduced number of contact points. A-brands suppliers benefit from services such as international promotional campaigns, support for internationalisation, product launches/innovation, joint development programmes and data sharing. Private label suppliers benefit from access to a wider network of retailers and wholesalers and from higher volumes.
17. Vice-president of the Commission Margrethe Vestager has unequivocally recognised the pro-competitive effects of European retail and wholesale alliances: *“Buying alliances between retailers have become a key component of grocery supply chains. They can bring lower prices to consumers for food and personal care brands that they purchase on a daily basis.”*<sup>10</sup>

### 1.3 Market analysis

18. The Guidelines require that purchasing cooperations are assessed both on the relevant buying and selling markets and they set a conservative safe harbour threshold of 15% combined market share both upstream and downstream. We believe it is reasonable to raise at least the upstream safe harbour threshold to 30%.<sup>11</sup> Furthermore, the possibility of voluntary ex-ante consultations with the EU Commission and/or the national competition authorities should be introduced in order to increase legal certainty.
19. When evaluating purchasing cooperations, the Guidelines should also allow for greater consideration of market power imbalance between suppliers and retailers and wholesalers as “joint purchasers”. As stated above, European retail and wholesale alliances bring together resellers who typically deal with international suppliers with high market shares or even “must-have” products, with very low substitutability due to customers brand loyalty. These suppliers also have various routes to market. Retailers and wholesalers in turn are faced with fragmented, i.e. national sourcing markets, which is further aggravated by the use of territorial supplier constraints by some suppliers. These considerations should be properly reflected in the market analysis.

## 2. Information exchange fit for a digital environment

20. The Guidelines spell out the criteria for lawful information exchange between competing companies. These provisions are essential for legal certainty and are strictly and consistently enforced by the EU Commission and national authorities. They provide effective guidance to make sure that information exchange among companies – including among members of European retail and wholesale alliances – is structured to effectively safeguard compliance with competition laws. In general, these provisions have worked well and provided sufficient guidance for operators. We ask the Commission to ensure that any change in these provisions are necessary and backed up by strong evidence.
21. However, the Commission should consider further guidance to help retailers and wholesalers engage in new, efficiency enhancing cooperations made possible by the ongoing digitalisation of commerce. For example, digitalisation is fueling the development of ecosystems, where information exchange and data sharing between competitors could be essential for the development of, for example, artificial intelligence (AI) solutions.<sup>12</sup> In this context, we reject a general “data sharing obligation” of non-personal data as this would give competitors access to autonomously generated and valuable data sets, thus, distort competition and decrease incentives to invest in data intensive business models.
22. In the Guidelines, the Commission should also address information exchange in (increasingly horizontal) relationships with suppliers that sell to customers directly online or via their own retail outlets or with the help of agency relationships. When doing so, the Commission should keep in

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<sup>10</sup> “Antitrust: Commission opens investigation into possible collusion by two French retailers in a purchasing alliance”, DG COMP Press Release 4/11-2019

<sup>11</sup>This would reconcile the Guidelines better with recent national case law on mergers and acquisitions in the retail sector: Casino acquiring Capdis and Holding Mag Spring in December 2019

<sup>12</sup> Please see more details on use of AI in the retail and wholesale sector in [EuroCommerce position paper on AI](#)

mind that vertical information exchange between a retailer/wholesaler and a supplier (e.g. communication of recommended retail prices or joint campaign planning) usually benefits from a safe harbour under the Vertical Block Exemption Regulation. In case of a horizontal relationship with the supplier, that exemption should continue, as long as the vertical information exchange does not affect the horizontal competition between the parties.

23. We also ask the Commission to consider further clarification on recent case law on signaling, which in an increasingly digital environment has given rise to uncertainties.<sup>13</sup> This case law requires that undertakings receiving competitively sensitive information from a competitor must distance themselves or otherwise risk engaging in an illegal concerted practice. The Guidelines could specify how these undertakings should properly distance themselves from such unilateral information exchange,<sup>14</sup> and they should be amended to clarify the requirements that companies participating in an online platform have to meet (including the response to changes in settings by the platform administrator).
24. The case law also gives rise to uncertainty concerning suggestions and recommendations on pricing. The Guidelines could also give guidance here, on whether such suggestions and recommendations are enough of a signal to give rise to competition concerns.
25. Digital price comparison tools are useful and important to overcome information asymmetries and hence ensure effective competition in the retail and wholesale market. It is important to distinguish between price convergence and price fixing and understand to what extent the similarity in prices is a result of intentional actions. Once this is understood, existing competition law can be applied, however, it would be helpful, if the HGL included more guidance on how to conduct the assessment of intent.
26. Finally, it would be useful to have guidance on the exchange of information between competitors having entered into agency agreements and concerning hub-and-spoke situations.<sup>15</sup>

### 3. Competition law that supports sustainability

27. With the recent launch of its Green Deal, the EU Commission has signalled its commitment to tackle sustainability challenges. Retailers and wholesalers are fully in support of this,<sup>16</sup> but oftentimes rely on cooperation with other retailers and wholesalers to make an effective contribution. Cooperation can be necessary due to the large sustainability investments that are needed or because national governments require retailers and wholesalers to take joint action. In each of these cases, lack of legal certainty on how to cooperate compliantly can quickly become a real obstacle.<sup>17</sup>
28. Ensuring more legal clarity regarding sustainability cooperation can help companies overcome the “first mover disadvantage” that they are currently facing, and which slows down the needed investments in and development of new sustainable solutions.
29. In the Guidelines, sustainability is currently covered explicitly only in the context of standardization agreements. Sustainability cooperation between competitors can and should however go beyond this and retail and wholesale would benefit greatly from further guidance.
30. Sustainability benefits should be explicitly included as potential efficiency gains, a parameter of competition equal to lower prices, higher quality or better service. It would also be helpful if the

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<sup>13</sup> E-Turas (C-74/14) and the Container Shipping (COMP 39850)

<sup>14</sup> The Court accepts that distancing may be done only vis á vis the “system administrator”. But in that case, it is unclear which obligations fall upon the system administrator. It would be useful to clarify whether immediate forwarding of that message or withdrawal of the initial communication would exempt the system operator from liability. And if yes, whether that could run counter to the effectiveness of the prohibition, given that a signal was already sent.

<sup>15</sup> [https://one.oecd.org/document/DAF/COMP/WD\(2019\)89/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)89/en/pdf)

<sup>16</sup> Cf. REAP program and activities of the Retail Forum - <https://ec.europa.eu/environment/industry/retail/about.htm>

<sup>17</sup> One such example is the “Chicken of Tomorrow” initiative in the Netherlands.

Commission could clarify how to consider future consumer benefits and future sustainability burdens in competitive assessments. Where a sustainability agreement restricts competition, it should be considered whether the residual competition criteria can be fulfilled through competition on other factors.

31. Lastly, the Commission could consider making it possible for cooperating companies to get a waiver for their sustainability cooperation from DG COMP. These waivers are available in some member states already and provide the companies with much needed legal certainty.

#### 4. Clarity on subcontracting agreements (production agreements)

32. Section 4 of the horizontal guidelines addresses subcontracting agreements in the context of joint production agreements. Example 5 contains helpful guidance on assessing the competition effects of non-compete and non-poaching clauses during the contract duration. It would however be beneficial to update the guidelines to reflect the case law (BGH, KZR 18/97 and KZR 54/08) on such clauses also after the termination of the contract. Legal clarity on non-compete clauses is fundamental for the agile functioning and inclusion of SMEs in supply chains in retail and wholesale and many other sectors of the economy.

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## Annex 1: Territorial Supply Constraints

Territorial Supply Constraints (TSCs) are illegitimate restrictions, which are imposed by dominant or non-dominant suppliers of “must-have” products and restrict the retailers’ ability to:

- Choose the countries where to source from, parallel import or purchase centrally
- Move products to another EU country
- Offer products available across the border
- Access the full range of products

TSCs occur more frequently in the fast-moving consumer goods sector, where a few large multinational operators hold strong positions in certain product categories and continue to make significant margins. An internal survey of EuroCommerce members shows that other sectors may also be subject to TSCs (textiles, electronics, etc.).

TSCs may take different forms such as:

- Refusal to supply, limiting the quantities and threats to stop supplying
- Differentiating product ranges between EU member states
- Limiting language options

TSCs are enforced through refusal to sell and referencing the retailer to the respective country sales department and/or to sell certain volumes to prevent parallel imports. They are a way for suppliers of branded goods to impose significant price differences across countries:

- In a study in 2015, the European Central Bank concluded that while there may be objective reasons for price differences across countries such as taxes (in part. VAT), wages, income level, local preferences, transport costs, price differences may also reflect the impact of *territorial supply constraints*<sup>18</sup>.
- An internal survey among EuroCommerce members shows that retailers and wholesalers are faced with buying price differences of up to 60% for the same product without any reasonable justification.

In its communication on a retail sector fit for the 21<sup>st</sup> century, the Commission acknowledged the existence of Territorial Supply Constraints and stated that their impact was to “*drive market segmentation, limiting competition and resulting in likely significant discrepancies between wholesale and consumer prices or the choice of products offered to consumers across the EU*”<sup>19</sup>. The Communication announced a factfinding exercise on the effects of such practices on the Single Market, which is currently ongoing.

A study by DICE<sup>20</sup> shows that TSCs lead to an inefficient allocation of resources, lost consumer welfare, reduced innovation and generate costs of enforcement as suppliers put in place sophisticated mechanisms to ensure that products are not transferred from one country to another. The study suggests that removing TSCs would lower prices in the EU for consumers, support market integration, reduce suppliers’ costs of enforcing TSCs, lead to more efficient allocation of resources by manufacturers and create higher incentives to innovate by increasing competition.

In 2019, the Commission fined AB InBev €200 million for restricting imports of its Jupiler beer products from the Netherlands into Belgium. The investigation identified four practices for fragmenting the internal market:

- Changing packaging of Jupiler beer products supplied to retailers and wholesalers in the Netherlands to make these harder to sell in Belgium;
- Limiting volumes of Jupiler beer supplied to a wholesaler in the Netherlands, to restrict exports of these products into Belgium;
- A number of ABInBev’s products were recognized as very important for retailers in Belgium as customers expect to find them on their shelves. ABInBev refused to sell these products to one retailer unless the retailer agreed to limit its imports of less expensive Jupiler beer from the Netherlands to Belgium;
- ABInBev made customer promotions for beer offered to a retailer in the Netherlands conditional upon the retailer not offering the same promotions to its customers in Belgium.

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<sup>18</sup> [https://www.ecb.europa.eu/pub/pdf/other/art01\\_eb201501.en.pdf](https://www.ecb.europa.eu/pub/pdf/other/art01_eb201501.en.pdf)

<sup>19</sup> Commission communication “A European retail sector fit for the 21st century” COM (2018) 219 final

<sup>20</sup> Wey, 2019: “Territorial Supply Constraints: Impact on Consumer Welfare”



## CONTENT

1. What are retail alliances? What is their range of activities and who are their suppliers?
2. What is the rationale for setting up alliances?
3. The European consumer perspective
4. A supplier perspective: what are the benefits of negotiating with an alliance?
5. The agricultural perspective



<sup>21</sup> This presentation can also be found at JRC's website: [https://ec.europa.eu/jrc/sites/jrcsh/files/ra\\_3\\_1\\_bouchut\\_what\\_are\\_eras\\_what\\_do\\_they\\_do\\_and\\_how\\_do\\_they\\_function.pdf](https://ec.europa.eu/jrc/sites/jrcsh/files/ra_3_1_bouchut_what_are_eras_what_do_they_do_and_how_do_they_function.pdf)

## EUROPEAN RETAIL ALLIANCES – WHAT, HOW AND WITH WHOM

- ERAs are diverse in terms of:
  - geographical coverage (4 to 20 countries);
  - number of members (2 to 11);
  - types of members;
  - activities;
- **Most alliances:**
  - > sell services to large national and international suppliers with significant market share – e.g. growth, data-sharing and international development;
  - > provide synergies in their members' sourcing, including in private label;
  - > some do joint projects and exchange of best practice.
- European alliances are focused on A-brands and international private label suppliers;
- Leading retailers in EU countries continue to compete against each other on national markets;
- ERAs have governance and strong compliance rules to ensure compliance with national and EU competition rules.



## EUROPEAN RETAIL ALLIANCES



**Agecore**  
6 members  
9 EU countries



**AMS Sourcing**  
11 members  
18 countries in Europe



**Coopernic**  
4 members  
20 EU countries



**EMD**  
11 members  
16 countries in Europe



**EURELEC**  
2 members  
4 EU countries



**Carrefour-Tesco**  
2 members  
10 EU countries



**Horizon Int.**  
4 members  
16 EU countries

Source: Company annual reports, company websites, alliance website



## ACTIVITIES OF EUROPEAN RETAIL ALLIANCES\*

### SELLING SERVICES

- Examples:
  - Promotional programmes;
  - Support for internationalisation;
  - Support for product launches/innovation;
  - Support for category development and growth;
  - Data sharing with a high degree of detail on sales performance;
  - Joint business plans and growth initiatives;
  - Mediation.
- They sell services against a fee which represents a percentage of the negotiated turnover of the suppliers. This aligns retailers' and suppliers' incentives on joint success in line with the principle of no payment without performance.

### SOURCING PRODUCTS

- Private label sourcing:
  - Specifying product qualities and requirements;
  - Allowing members to place orders, not buying directly via alliance;
  - Only processed foods & packaged products;
  - Building on expertise from participating retailers.
- Products not-for-resale (e.g. store furniture & equipment) sourcing;
- A-brands sourcing (very few cases);
- Access to a single platform for sourcing.

\* These are a range of activities illustrating the various types of ERAs' activities; ERAs do not provide all these activities



## ERAs NEGOTIATE ON BEHALF OF OR WITH THE SUPPORT OF THEIR MEMBERS MAINLY WITH LARGE A-BRANDS AND PRIVATE LABEL SUPPLIERS

1. ERAs mainly deal with the largest FMCG suppliers (food and near foods) (e.g. Nestle, AB Inbev, Unilever, Procter & Gamble, Coca Cola, L'Oreal, etc.);
2. ERAs deal with international Private Label (PL) suppliers (food and near foods);
3. Smaller, local A-brands and PL suppliers; in very limited cases and at supplier request; ERAs support them to develop international sales;
4. Fresh product producers and farmers: ERAs only deal with processed packaged food producers;
5. Suppliers of goods that are "not-for-resale": one of the recent activities of ERAs.



## GOVERNANCE AND COMPLIANCE MECHANISMS

- ERAs operate in compliance with national and European legislation, including competition rules, and under the scrutiny of national and European competition authorities.
- The exchange of commercially sensitive information between members and the alliance is strictly governed by confidentiality agreements and internal codes of conduct, to avoid any leakage of commercially sensitive information. ERAs use compliance officers as well as external legal counsels to ensure compliance. They share aggregated figures only.
- ERAs negotiate on behalf of or with the support of their members.
- International contracts define the parties' goals and commitments and set quantitative key performance indicators to monitor progress.



## GOVERNANCE AND COMPLIANCE MECHANISMS

- Where alliances buy products, the agreement between the European alliance and suppliers replaces the national agreement of respective members and suppliers.
- Where alliances sell services, once international service contracts are negotiated ("on top" of local contracts), they are:
  - ▷ communicated to the members and the national teams to ensure execution;
  - ▷ reviewed regularly in joint business reviews between representatives of retailer and supplier;
  - ▷ fees are usually paid at the end of the year and based on real counter-performance ("scorecard").



## CONTENT

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## ERAs ARE VITAL TO THE EUROPEAN VALUE CHAIN

- ERAs contribute to creating a European single market for sourcing of products.
- ERAs seek to offset territorial supply constraints (TSCs) imposed by large FMCG suppliers, negotiate on a level playing field, help counter pressure from large FMCG suppliers to increase prices and benefit consumers through lower prices and better choice.
- ERAs support retailers' profitability, which is under significant competitive pressure and at historically low levels. The long-term survival of many retailers is in question.
- Large international FMCG players have immense negotiating power through their significant market share and their unique brands. They command very large margins and exceptionally high returns on capital.
- Alliances and buying groups help SME retailers compete with larger retailers; thus playing a key role in the livelihood of rural areas, villages and small towns.
- Alliances or other forms of cooperation occur in many other sectors of the economy including farmers, food manufacturers and others (e.g. automotive, pharma, airlines, banks).

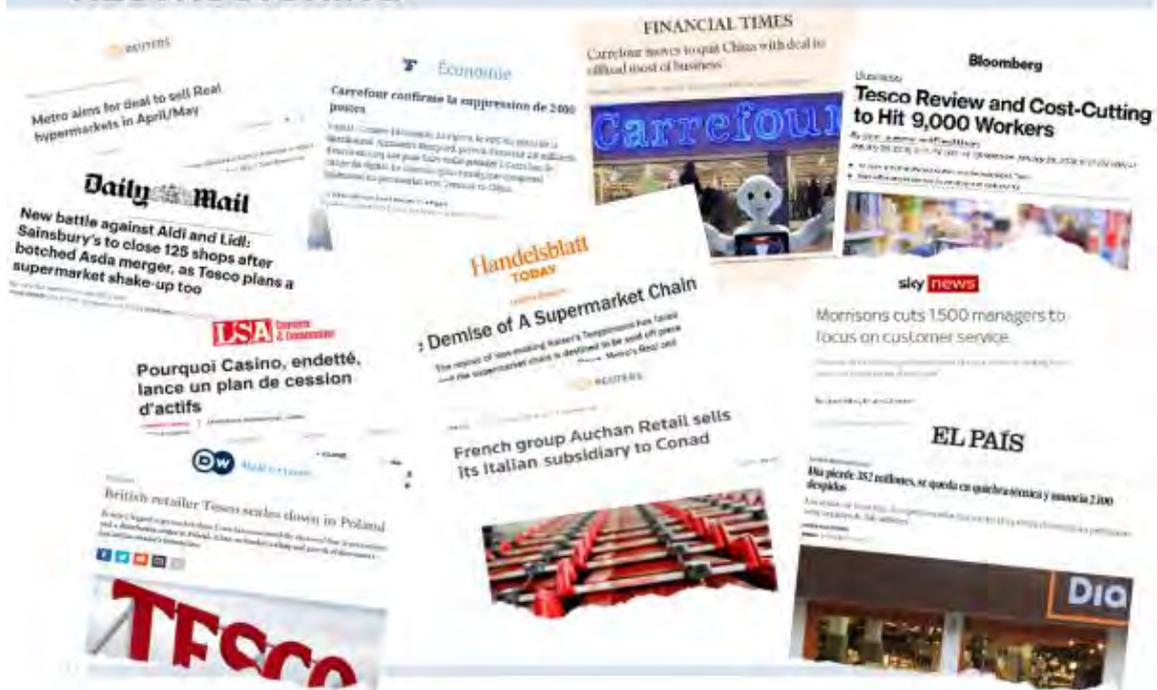


## ERAs SUPPORT THE SINGLE MARKET FOR SOURCING

- Most grocery retailers operate in one or a few EU member states.
- Large suppliers:
  - > are global players;
  - > are strong in specific categories;
  - > fragment the single market when selling;
  - > use the single market for their own production and sourcing.



## UNDER COMPETITIVE PRESSURE, MANY EU FOOD RETAILERS HAVE BECOME VULNERABLE AND ARE RESTRUCTURING



# ERAs ARE A RESPONSE TO CHANGING MARKET CONDITIONS AND INCREASING COMPETITION

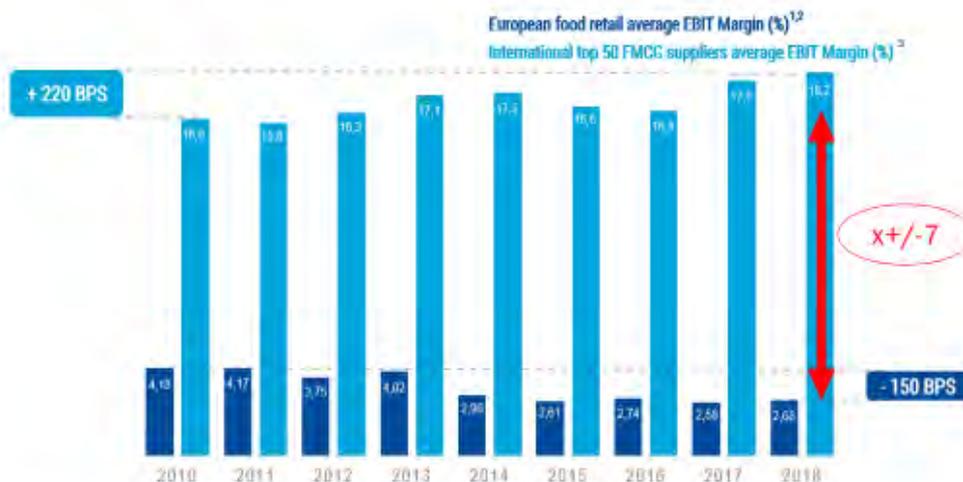
- **Retail competition is strong**
  - > growing retail formats include proximity, convenience, discounters, e-commerce, organic or home-delivery
- **Digital has increased competitive pressure**
  - > more transparency (prices, choice), convenience
  - > new business models competing for consumers' attention –e.g. Meal delivery platforms, etc.
  - > very strong players outside the EU
  - > manufacturers selling direct to consumers

## Example: Alibaba ecosystem

- Own stores as well as marketplaces:
- 197 billion transactions on Alipay in 2018;
- Market capitalisation of USD 460 bn, more than 4 times the combined market capitalisation of the top 10 listed European food retailers



# EU FOOD RETAILERS HAVE LOWER AND DECLINING MARGINS



Notes:  
 1 - Average EBIT margins in European segments, excluding any bare segments  
 2 - EU food retail average includes Aldi/Denon, Carrefour, Casino, Tesco, Sainsbury's, Morrison, Asda, M&S, Waitrose  
 3 - Denon's adjusted EBIT/Roverule, i.e. adjusted the impact of exceptional items

Sources: OC&C Mapping the Rewards; The FMCG Global 50; annual reports; EuroCommerce analysis and estimates



# EU BIGGEST FOOD RETAILERS ARE 10 TIMES SMALLER THAN THEIR BIGGEST SUPPLIERS



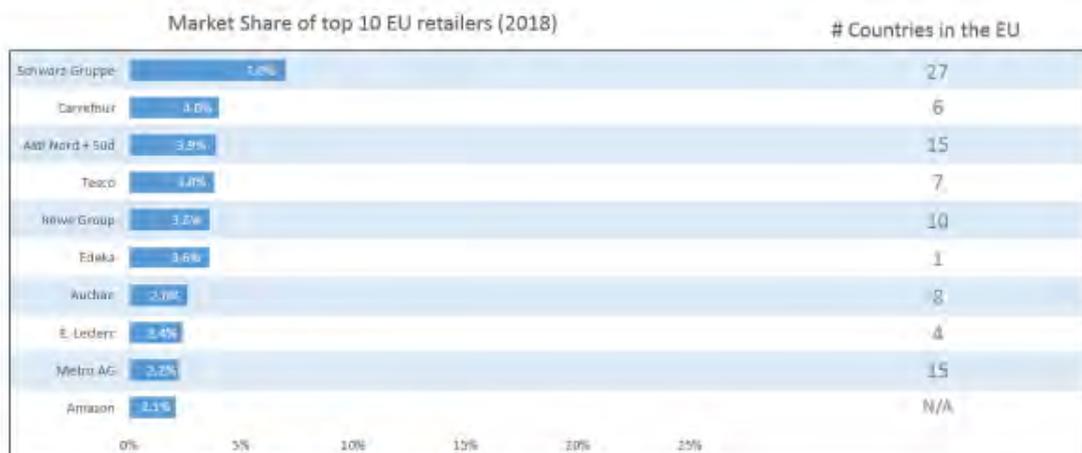
# A FEW INTERNATIONAL SUPPLIERS CONTROL MOST BRANDS THAT RETAILERS NEED TO HAVE IN THEIR STORES



## THE SHARE OF THE LEADING SUPPLIER IN ITS CATEGORY OFTEN EXCEEDS 50%



## RETAILERS' MARKET SHARE AT EU LEVEL IS SMALL



Source: IZ Retailytics. This study includes all organised trade companies dealing predominantly with FMCGs. IZ Retailytics refers to "Europe" as the total 40 countries of geographical Europe, including Russia but excluding Armenia, Azerbaijan, Georgia and Turkey.

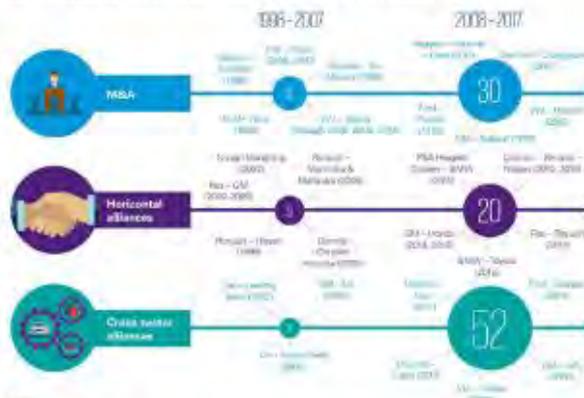
## ALLIANCES EXIST IN OTHER SECTORS INCLUDING FMCG

### GlaxoSmithKline plc and Pfizer Inc to form new world-leading Consumer Healthcare Joint Venture

This transaction provides a unique opportunity to accelerate GSK's strategy and create substantial value for shareholders.

### Changing alliances landscape in automotive industry 1996-2017\*\*\*\*

Based on the top 15 players and including selected examples from KPMG's database



Source: Strategic alliances: a real alternative to M&A?, KPMG

### Nestlé conclut une alliance avec Starbucks pour \$7,15 mds

www.nestle.com | www.starbucks.com

Nestlé pourra vendre des produits Starbucks en dehors des cafés



In 2013, Deutsche Telekom and Orange founded **BuyIn** to remain relevant in a competitive market with strong smartphone and broadband growth, declining margins, high technical challenges and a very strong and consolidated supplier base. By delivering **strategic procurement services** to its members, **BuyIn** increases the competitiveness in their direct spend. This competitiveness leads to **sustainable economies of scale and savings** based on **analytics and benchmarks** across millions of price points from 40+ operators.

Source: <https://www.kpmg.com>

By Julie Crowell and David Yaffe-Bellany

Sept. 26, 2018



The 2010 **merger between Kraft and Heinz** created one of the largest food companies in the world. It had \$28 billion in combined annual revenues and controlled dozens of food and beverage brands that for generations were staples of American households, including Heinz ketchup, Kraft cheese, Oscar Mayer meats and Planters nuts.



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## ALLIANCES BENEFIT CONSUMERS

- ERAs bring the single market to consumers
- ERAs provide:
  - Wider choice, lower prices, better promotions, good value and quality private labels products, etc.
  - Consistent quality standards
  - Quicker access to innovation



Price



Choice



Innovation



Quality



## THE EUROPEAN SINGLE MARKET FOR SOURCING STILL DOES NOT EXIST FOR RETAILERS

- ⊗ Consumer prices for branded food products often vary strongly between European countries, even taking into account VAT & excise duties or logistics costs.
  - Pampers baby-dry price differences of up to 40%.
  - Snickers price differences of up to 25%.
  - ECB analysis (2015) demonstrates significant cross-border effect;
  - ECB (2016) shows efficiency gains via alliances are passed on to consumers.
- ⊗ Retailers are faced with buying price differences of up to 60% for the same product without any reasonable justification.
- ⊗ Retailers cannot source branded goods centrally for their stores in different Member States.
- ⊗ Large international suppliers force most retailers to source locally in every Member State where they resell the products concerned. Parallel imports are often challenging and at times impossible.

Source: Press coverage; French Commission hearings; ECB 2015; European Commission; PR Database; EuroCommerce survey

### Example: AB InBev

- AB InBev is dominant on the Belgian beer market;
- EU Commission fined AB InBev €200 million for restricting cross-border sales of beer between the Netherlands and Belgium;
- The fine is reduced by 15% because AB InBev had fully cooperated (...) and acknowledged wrongdoing.



## CONTENT

1. What are retail alliances? What is their range of activities and who are their suppliers?
2. What is the rationale for setting up alliances?
3. The European consumer perspective
4. A supplier perspective: what are the benefits of negotiating with an alliance?
5. The agricultural perspective



## ERAs BENEFIT SUPPLIERS

- Access to a large set of markets with a single entry point – e.g.:
  - increased efficiency in managing commercial relationships;
  - less complexity, more effective way of doing business (less sales teams, less travel, administrative simplification);
  - faster negotiation cycle.
- Access to international services in addition to nationally provided services
  - commercial development across several countries;
  - create synergies across countries;
  - access to multiple markets for SME suppliers;
  - growth programmes.
- Economies of scale by combining volumes and harmonizing product specifications, including supporting additional long-term investments and production planning;
- Support to innovation and promotion campaigns;
- Increased innovation capacity based on inputs and projects in multiple countries.



# ERAs BENEFIT SMEs AND HELP THEM GROW INTERNATIONALLY



A frozen food product from Scandinavia...



... found its way to Belgium and the Netherlands



A full range of 200 specialties from Italy



... found its way to Germany and Switzerland



## CONTENT

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## THE AGRICULTURE PERSPECTIVE

- ERAs do not interact with agricultural/fresh producers.
- Individual retailers only buy very little from farmers directly.
- Farmers sell to food processors, cooperatives, wholesalers and traders.
- Key facts:
  - most agriculture production goes to processing (70%); exports; food service; catering and hospitality;
  - farmers face strong and concentrated first buyers and input suppliers;
  - the price of agricultural products is driven by global dynamics of supply and demand, conditions affecting production, consumer trends (e.g. higher demand for organic) or policy considerations (e.g. sugar reduction), and not by retailer prices.

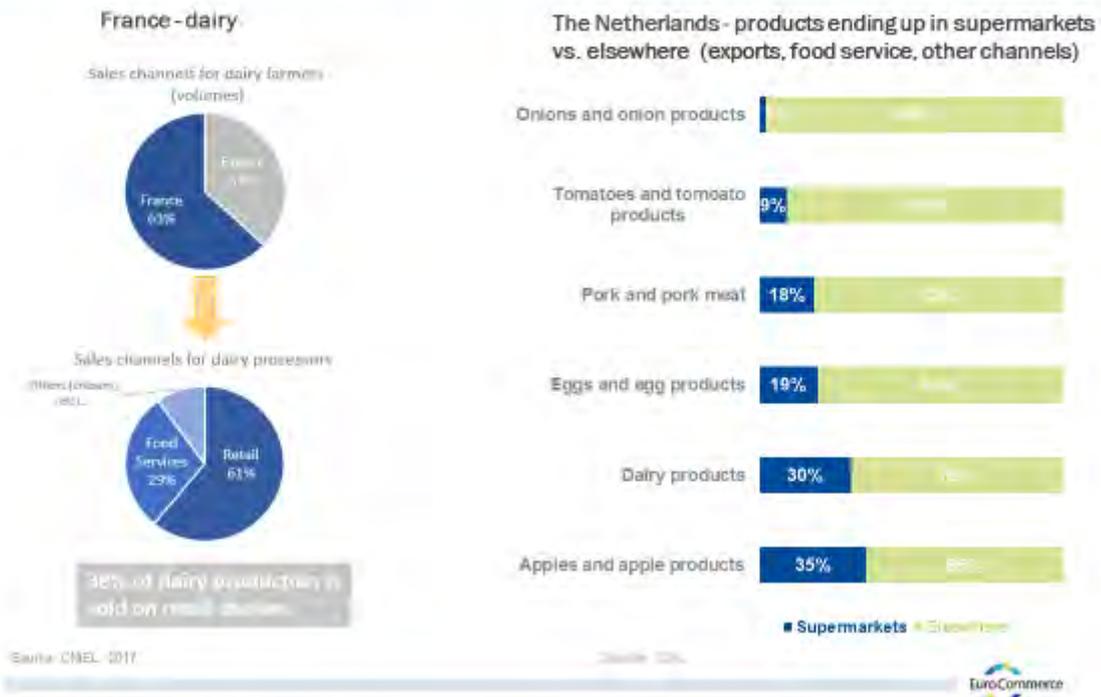


## ERAs NEGOTIATE ON BEHALF OF OR WITH THE SUPPORT OF THEIR MEMBERS MAINLY WITH LARGE A-BRANDS AND PRIVATE LABEL SUPPLIERS

1. ERAs mainly deal with the largest FMCG suppliers (food and near foods) (e.g. Nestle, AB Inbev, Unilever, Procter & Gamble, Coca Cola, L'Oreal, etc.);
2. ERAs deal with international Private Label (PL) suppliers (food and near foods);
3. Smaller, local A-brands and PL suppliers: in very limited cases and at supplier request; ERAs support them to develop international sales;
4. Fresh product producers and farmers: ERAs only deal with processed packaged food producers;
5. Suppliers of goods that are "not-for-resale": one of the recent activities of ERAs.



## RETAILERS ONLY REPRESENT A FRACTION OF AGRICULTURAL PRODUCTS SALES



## CONCLUSION

- **European Retail Alliances:**
  - respond to the need to create a European Single Market for sourcing;
  - are critical to the viability of retailers of all sizes, including SMEs;
  - benefit consumers – price, choice, innovation, quality;
  - support suppliers marketing their products across countries;
  - negotiate, on behalf of or with the support of its members, on processed foods and packaged goods – branded and private labels;
  - do not deal with farmers; the products they buy are so far from what farmers produce that their impact on agriculture market prices is negligible.
- **In many other sectors of the economy, alliances have created significant added value, in particular for consumers.**

# THANK YOU

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