Supermarket Platforms

Javier Berasategi

High Level Forum on Food Supply Chain

Expert Sub-Group on private labels

Brussels, 23.11.2017

DISCLAIMER

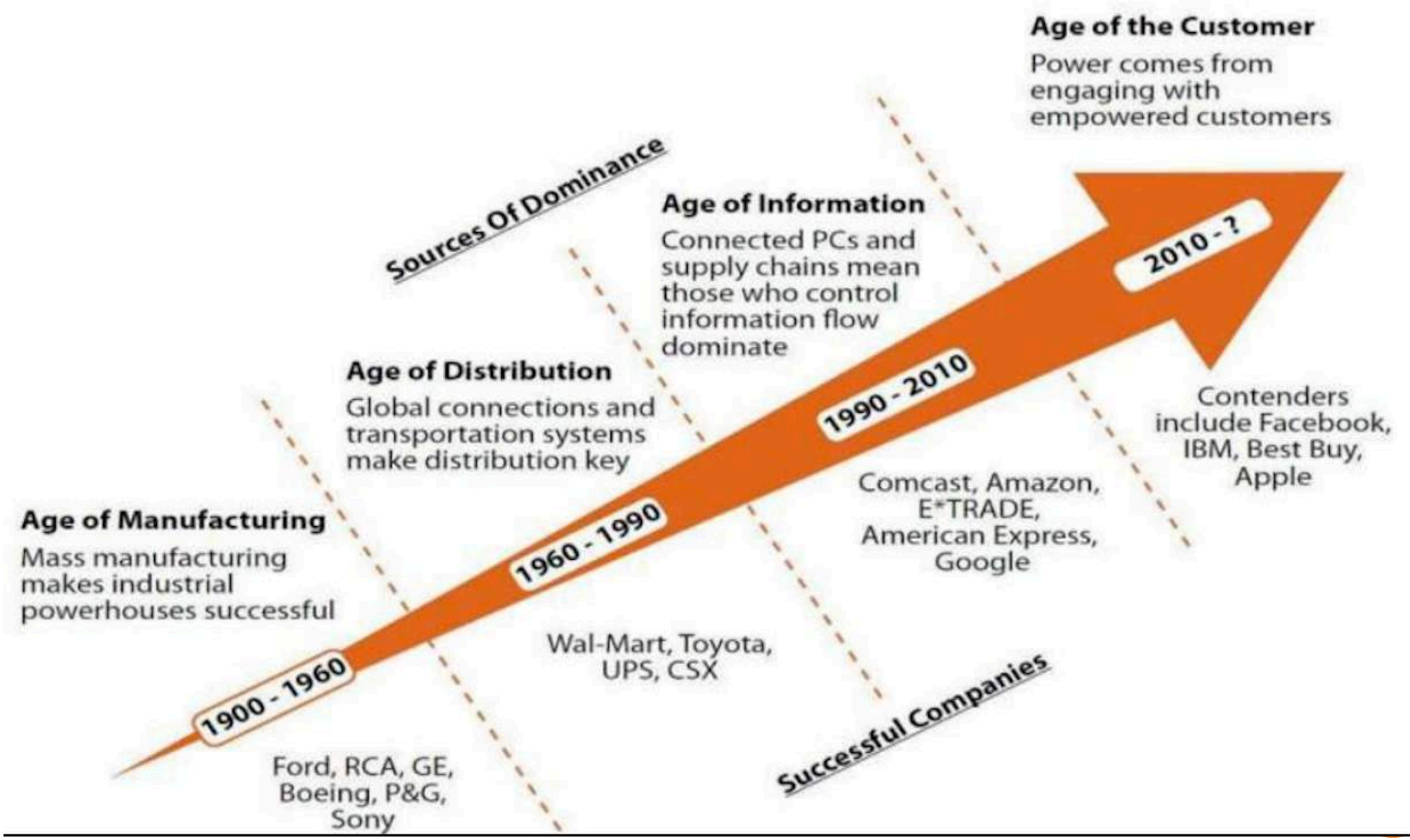
- Own personal views, do not represent views of clients (legal adviser to grocery suppliers since 2010)
- Personal views predate legal advice:

  "*La Distribución de Bienes de Consumo Diario: Competencia, Oligopolio y Colusión Tácita*", Basque Competition Authority (2009)
  http://www.competencia.euskadi.eus/contenidos/informacion/informes/es_informes/adjuntos/INFORME%20DISTRIBUCION%20BIENES%20CONSUMO%20DIARIO-COMPETENCIA,OLIGOPOLIO%20Y%20COLUSION%20TACITA.pdf
- This presentation builds on the Author's study "Supermarket Power: Serving Consumers or Harming Competition? (2014), available at:
  www.supermarketpower.eu
  https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401723

INDEX

- Sources of economic power
- The age of platforms
- Competition policy bias
- Regulation of platforms
- Supermarket platforms
- Vertical integration: Supermarket Brands
- Brave New World of food supply
- Conclusions
- Questions

Sources of economic power



Source: unknown

AGE OF PLATFORMS: MAIN FEATURES

- Facilitate interactions between distinct groups of users that value each other (sometimes negatively – advertising)
- They "regulate" (terms of access and operation) the business ecosystem using the platform
- Exhibit low or no prices on end-users (consumers)
- Business users (suppliers) complain of abuses/foreclosure
- Platforms outside the competition law "consumer price" radar except in unique (super-dominance/competitors' alliance) and yet highly disputed cases
  - EC Google case (2008-2017): market definition? integrated business model? consumer harm?
  - EC Visa (2008-2010/2014) / Mastercard (1992-2007-2014)

Economics of platforms

- Indirect network externalities (more group 1 users brings more group 2 users and vice versa)
- Price structure matters: most valuable user group is priced favourably (subsidy) whilst the other user group is overcharged
- The favoured user group tends to be the end-consumer to induce single-homing (exclusivity)
- Competitive bottleneck: multi-homing user group cannot interact with the single-homing user group outside the platform
- The pricing structure may lead to socially inefficient exploitation/ exclusion of the multi-homing user group
- Counterintuitive effect: platform competition may increase the differential treatment of user groups and the inefficient outcome
- Competition policy does not lead to best outcomes – regulation may be necessary

Rochet & Tirole (2003), Wright (2004), Armstrong (2006), Bolt and Tieman (2006), Armstrong & Wright (2006), Rochet & Tirole (2006), European Commission (2009)

COMPETITION LAW (I)

- Born in the **age of manufacturing** (seller power)
- Consumer welfare = low price (price/cost analysis)
- Inter-brand / **intra-brand competition** only focused on manufacturer (C-56/64, Consten Grundig)
- Retailers = consumers (intra-brand competition)
- Limits on sellers' vertical restraints = retailer freedom = retailer bargaining power
- Competition law "regulates" manufacturers:
  - 1960-1980: very intense
  - 1980-2000: intense (Regulations 1983/83 - exclusive agreements, 1984/83 - beer and gasoline, 4087/88 - franchising)
  - 2000-2022: moderate (Reg. 2790/1999, 330/2010 – absolute prohibitions, risk over 30% (individual) or 50% (parallel agreements) market share) and intense on car distribution (Reg. 1400/2002, 461/2010)

Competition Law (II)

- 1990-2000: **supermarket power** (Rewe/Meinl, Carrefour/Promodès)
- *OECD Buyer Power (2008): "*The exercise of buyer power may affect dynamic efficiency by reducing the incentives of upstream firms to invest. (…). They are long-run effects that will require an assessment of how the transaction and the increase in buyer power will affect industry structure upstream. Moreover, these long-run costs, if any, may be offset in part by gains to consumers in downstream markets in the short run, depending on the extent of competition downstream. To avoid over-enforcement and false positives, the evidentiary threshold should therefore likely be relatively high."
- High **expectations** on EC reform of vertical restraints:

  "Two major developments have marked the ten-year period following the entry into force of the current rules: a further increase in **large distributors' market power** and sales on the Internet."

  Commission launches public consultation on review of competition rules for distribution sector, IP/09/1197, 28.07.09
- **Much ado about nothing**: failure of Reg. 330/2010 and Guidelines to address supermarket power despite the new threshold for buyers (30% market share) and express reference to retail alliances, access fees and category management in the Guidelines

EU REGULATION OF PLATFORMS

- Computer Reservation Systems
- Internet Neutrality
- Credit Card Networks
- Financial Institutions
- Food supply chain
- Online platforms?

CRS

“Computerised Reservation Systems (CRSs - also known today as Global Distribution Systems - GDSs) act as technical **intermediaries between the airlines and the travel agents**. The CRSs provide their subscribers with instantaneous information about the availability of air transport services and the fares for such services. They permit travel agents, whether brick-and-mortar or on-line, to make immediate confirmed reservations on behalf of the consumer.

Source: https://ec.europa.eu/transport/modes/air/internal_market/distribution_en

Source: Impact Assessment, 2007

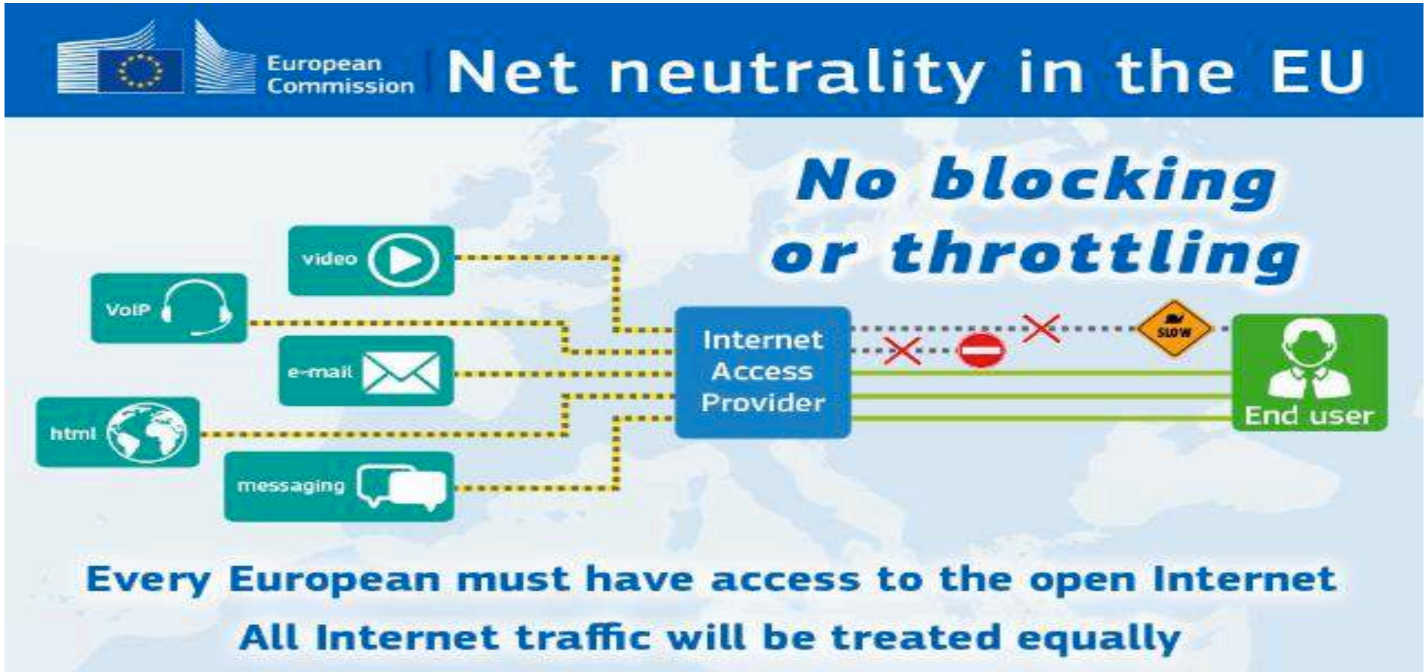
CRS

"As these distribution channels might **influence the consumer choice**, a 1989 Regulation (No 2299/89), last amended in 2009, ensures that air services by all airlines are displayed in a **non-discriminatory** way on the travel agencies' computer screens. Regulation 80/2009 entered into force on 29 March 2009. In comparison to the previous EU legislation on the same subject, technological (developments linked to the internet) and market developments (airlines' direct sales to consumers) allowed for a substantial simplification of the legislative framework by giving more flexibility to CRSs and air carriers to negotiate booking fees and fare content. Regulation 80/2009 nevertheless maintained safeguards that protect against **potential competitive abuses by airlines owning or controlling a CRS (parent carriers)**. It also introduced enhanced rules for the protection of passenger/personal data".

Source: https://ec.europa.eu/transport/modes/air/internal_market/distribution_en

INTERNET NEUTRALITY (EU)

- EU rules on net neutrality (open internet) apply as of 30 April 2016, following the adoption of Regulation (EU) 2015/2120 on 25 November 2015.This regulation is a major achievement for the Digital Single Market. Common rules on net neutrality mean that **internet access providers cannot pick winners or losers on the internet, or decide which content and services are available**.



Source:https://ec.europa.eu/digital-single-market/en/policies/open-internet-net-neutrality

INTERNET NEUTRALITY (US)

- FCC Open Internet Order (2015)
- FCC under Trump proposes to suppress OIO (May 2017): "That decision appears to have put at risk online investment and innovation, threatening the very open Internet it purported to preserve. Requiring ISPs to divert resources to comply with unnecessary and broad new regulatory requirements threatens to take away from their **ability to make investments that benefit consumers**."
- Same lawyers/economists who argue that competition policy is sufficient to address eventual platform discrimination argue that platform discrimination is not anticompetitive (e.g., Joshua Wright, former Republican member of US FTC)

NET NEUTRALITY (US)

Federal Communications Commission
445 12th Street, SW
Washington D.C. 20554

May 7, 2014

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Reilly:

We write to express our support for a free and open internet. Over the past twenty years, American innovators have created countless Internet-based applications, content offerings, and services that are used around the world. These innovations have created enormous value for Internet users, fueled economic growth, and made our Internet companies global leaders. The innovation we have seen to date happened in a world without discrimination. An open Internet has also been a platform for free speech and opportunity for billions of users.

The Commission's long-standing commitment and actions undertaken to protect the open Internet are a central reason why the Internet remains an engine of entrepreneurship and economic growth.

According to recent news reports, the Commission intends to propose rules that would enable phone and cable Internet service providers to discriminate both technically and financially against Internet companies and to impose new tolls on them. If these reports are correct, this represents a grave threat to the Internet.

Instead of permitting individualized bargaining and discrimination, the Commission's rules should protect users and Internet companies on both fixed and mobile platforms against blocking, discrimination, and paid prioritization, and should make the market for Internet services more transparent. The rules should provide certainty to all market participants and keep the costs of regulation low.

Such rules are essential for the future of the Internet. This Commission should take the necessary steps to ensure that the Internet remains an open platform for speech and commerce so that America continues to lead the world in technology markets.

Sincerely,

Amazon
Cogent
Dropbox
Ebay
Etsy
Facebook
Foursquare
Google
Kickstarter
Level 3

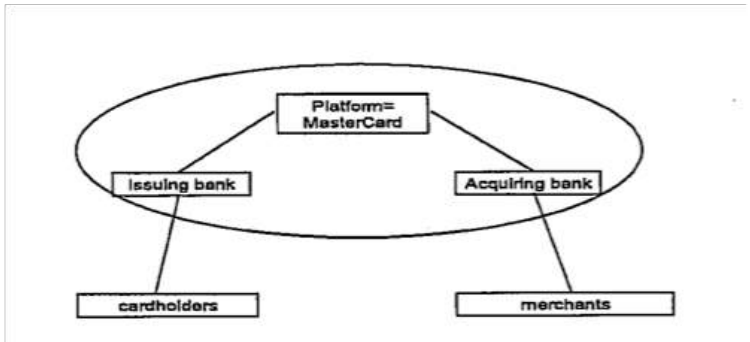
LinkedIn
Lyft
Microsoft
Netflix
Reddit
Tumblr
Twitter
Vonage Holdings Corp.
Yahoo! Inc.
Zynga

Credit Card Networks

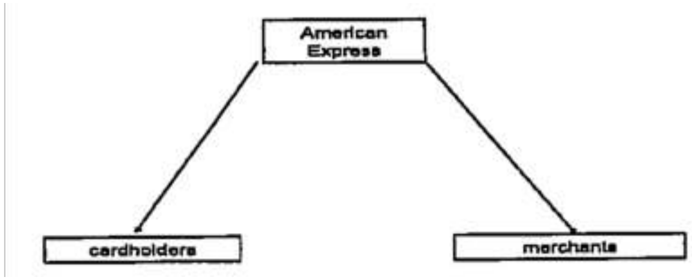
Regulation 2015/751

"(10) Interchange fees are usually applied between the card-acquiring payment service providers and the card-issuing payment service providers belonging to a certain payment card scheme. Interchange fees are a main part of the fees charged to merchants by acquiring payment service providers for every card-based payment transaction. Merchants in turn incorporate those card costs, like all their other costs, in the general prices of goods and services. **Competition between payment card schemes to convince payment service providers to issue their cards leads to higher rather than lower interchange fees on the market, in contrast with the usual price-disciplining effect of competition in a market economy**.

(32) Consumers tend to be unaware of the fees paid by merchants for the payment instrument they use. **At the same time, a series of incentivising practices applied by issuers (such as travel vouchers, bonuses, rebates, charge backs, free insurances, etc.) may steer consumers towards the use of payment instruments, thereby generating high fees for issuers**. To counter this, the measures imposing restrictions on interchange fees should only apply to payment cards that have become mass products and **merchants generally have difficulty refusing due to their widespread issuance and use (i.e. consumer debit and credit cards)**."



Source: EC MasterCard Decision



CREDIT CARD NETWORKS

"The heart of the problem lies in the way the costs (and the profits) are distributed amongst the different participants in the transaction: **most of the costs of card payment systems are borne by retailers through the interchange fee. Yet these fees cover services and "gifts" that are promoted by banks to entice more card users to choose their particular brand. These services and gifts include interest-free period, air-miles, cardholder insurance, promotional campaigns selling these gifts and so on. The interchange fee also covers fraud arising from the banks' own poorly developed products**. Therefore, when **consumers pay with Visa or MasterCard, they are not aware that this simple act results in a significant cost for the retailer.**"

EuroCommerce, "Making Payments Work For Europe" / www.StopUnfairCardFees.eu

Financial Institutions

- Reg. 2016/1011 on financial benchmarks (conflict of interest rules and, if critical, FRAND access)
- Directive 2015/2366 on payments systems (FRAND access of payment service providers to payment systems and credit institutions)
- Directive 2014/65 on markets in financial instruments (FRAND access, co-location and fees)
- Proposal for amendment of Reg. 648/2012 (FRAND access to clearing services)

FOOD SUPPLY CHAIN

- EC Green Paper on UTPs in the B2B food and non-food supply chain (2013), EC Communication on unfair trading practices in the business-to-business food supply chain (2014), EC Report on UTPs in the food supply chain (2016): UTP Regulation in 20 Member States (now 21)
- Initiative to Improve the Food Supply Chain – Consultation (DG AGRI) (2017): "UTPs may be at odds with efficient markets and workable competition. Some view them as symptoms of market imperfections which are liable to weaken the overall efficiency of the supply chain. **UTPs can negatively affect operators who would otherwise be commercially viable**. They may also cause entry barriers to markets and create uncertainty, **stifle innovation and cause underinvestment in the food supply chain and damage to consumers in the long run**. Weaker operators in the food supply chain, including farmers, are vulnerable due to their resource limitations, asset specificity and high switching costs. Consultations have shown that the **food supply chain is particularly prone to trading practices that deviate from fair commercial conduct**. **Small operators in the chain**, including farmers, usually have little bargaining power and are more likely to be victims of UTPs. Surveys among farmers and other suppliers in the chain suggest that a majority of the respondents had been subject to UTPs."
- **Regulation aimed only at farmers/SME doomed to fail**: food supply **chain, supermarket bottleneck and vertical integration** are the main source of chain distortions (e.g., traffic builders: milk, olive oil,…)

ONLINE PLATFORMS

- Wide definition: "Online platforms cover a wide range of activities including online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms, communications services, payment systems, and platforms for the collaborative economy. They share key characteristics including the use of information and communication technologies to **facilitate interactions (including commercial transactions) between users**, collection and **use of data** about these interactions, and **network effects** which make the use of the platforms with most users most valuable to other users".
- Commission's Communication on Online Platforms (2016):
- Mid-term review of the Digital Single Market Strategy (May 2017): by the end of 2017 to prepare actions to address the issues of unfair contractual clauses and trading practices identified in platform-to-business relationships, including by exploring dispute resolution, fair practices criteria and transparency.

https://ec.europa.eu/digital-single-market/en/policies/online-platforms

ONLINE PLATFORMS

- Inception Impact Assessment, Fairness in platform-to-business relations (October 2017):
  - online platforms are now the main **gateway to markets** for the majority of smaller businesses in the digital economy – be it online market places for small sellers, app stores for game developers, or online travel agents for hotels. Many **small but also some larger businesses have come to depend on platforms that provide such easy access to customers and markets**. This dependency entails a certain **imbalance of bargaining power between online platforms and their business users**, causing friction in platform-to-business relationships and giving scope to **unfair behaviour** on the part of platforms. Preliminary results of the Commission's fact-finding indicate that some online platforms engage in harmful trading practices to the detriment of their business users:
    - unilateral and frequently unannounced changes
    - removal ('delisting') of products or services and in some cases unilateral account suspensions
    - general lack of transparency of platforms' practices, notably concerning search and ranking and advertising placements.
    - **some platforms may favour own products or services, or discriminate between different third-party suppliers and sellers, e.g. on their search facilities or by capitalising on superior data access. The general inability for business users to verify the existence or absence of such discriminatory practices also leads to uncertainty that can in itself be harmful.**
    - lack access to and/or the ability to transmit or port certain types of data, both of a personal and non-personal character.
    - meaningful or effective redress is lacking.

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5222469_en

ONLINE PLATFORMS

- EC Public consultation on retail regulations in a multi-channel environment (July 2017): "Trends indicate that the future will be **multi-channel retailing** with retailers being active both offline and online (either through their own web shop or via platforms). Another trend is the creation of platforms that offer retailers the possibility to sell their products in **online 'shopping centres'**. **Some of these platforms are not only providing such a virtual shopping centre but have launched their own range of products competing directly with their retail clients**."
- Amazon and Alibaba obvious targets: marketplace (sellers/buyers), seller and brand owner
- Brands and resellers will benefit from FRAND obligations on online platforms: Nike, Ikea,… supermarkets!

Should online supermarkets be subject to FRAND obligations?

Is it justified to differentiate online and offline supermarkets?

Supermarket: Platforms

- Rochet & Tirole (2003) and Armstrong (2006) identify supermarkets as two-sided platforms (externalities/costs of direct contracting, indirect network effects, bilateral market power - relevance of price structure)
- Rysman (2009) and Hagiu (2015) define platforms as marketplaces ("direct interaction" of seller-buyer), merchants (supermarkets) not included. However, many two-sided platforms lack direct interaction/transaction (e.g., yellow pages, dating clubs, media advertising, search engines).
- Filistrucchi (2015) proposes empirical analysis: "Even a supermarket however might be a two-sided platform to the extent that:- its clients care about the variety of products on display and/or -it is able to make the producers pay (though a discount?) to have their product on the right shelf (then it offers a service to them…).
- Empirical evidence confirms that supermarkets are two-sided platforms:
  - Supermarkets charge access fees on suppliers and offer several services (logistics, shelf-space, promotions, stocking, category management), purchase terms are conditional on performance (guaranteed margins, product return, shrinkage payments, store openings & refurbishments) and retailer prices influenced by manufacturer recommended prices.
  - Amazon is a marketplace, reseller and own-brand seller in the same platform and unilaterally adds discount to third-party resellers' prices

Supermarkets: Competitive bottlenecks

- Supermarkets exhibit a single-homing (end users) and multi-homing (business users) pattern: competitive bottleneck
- Consumer loyalty to the store brand (overall value, proximity driver, time/utility constraint of multi-homing) overwhelms loyalty to any of the thousands of products sold
  - Loyalty to branded products (measured as must stock item) increasingly marginalised : 6% (Bundeskartellamt 2014)
  - Consumer multi-homing is utility constrained (2-3 stores maximum): a consumer will not add a new store just for one product brand
  - If not available in the primary store, the remaining 1-2 stores visited by a multi-homing consumer may not carry the brand (average brand penetration 50%?)
  - If the remaining stores carry the brand, they may yet sell it more expensive or offer a cheaper supermarket brand that distorts the value proposition to the consumer.
- In practical terms, shoppers appear as single-homed to suppliers: if a store terminates an independent brand, the buyers of this store are lost to the independent brand and the chances of recouping them through other stores are small (valid conclusion for 94% of the branded products).
- If brand loyalty existed suppliers would just sell to one large supermarket and the buyers would just shop there: multi-homing aspiration is a market response to shopper single-homing!

Supermarkets: Competitive bottlenecks

- In the supermarket context, competitive bottlenecks reduce social welfare (Armstrong, 2006):

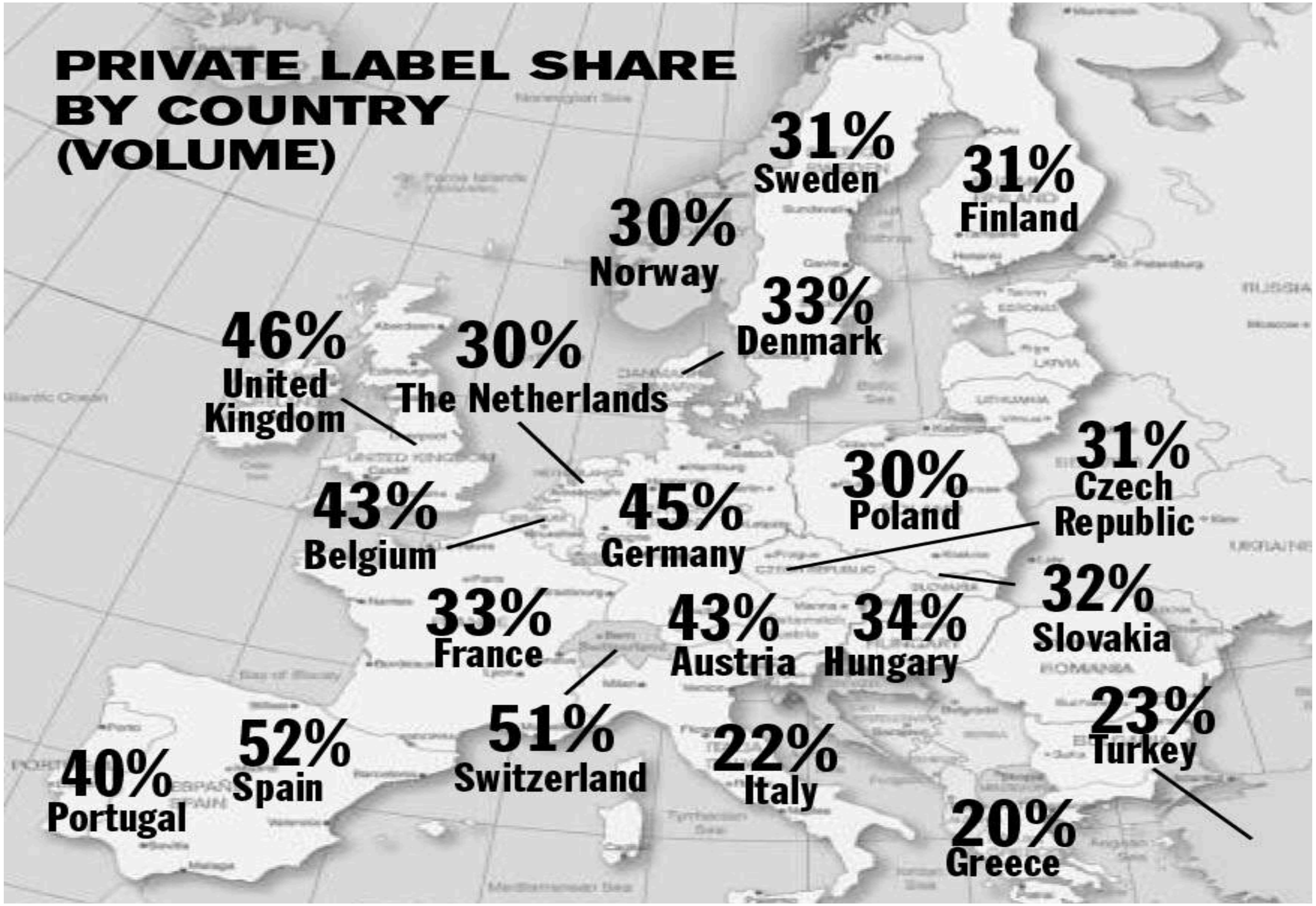
"As with all the competitive bottleneck models, the equilibrium maximizes the joint surplus of the platforms and the single-homing group (supermarkets and consumers in this case), and the interests of the multihoming side (the suppliers) are ignored.

This level of payment will exclude some high-cost suppliers whose presence in the supermarkets is nevertheless socially desirable. In other words, **payments to suppliers are too low from a social point of view and there are too few products on the shelves.**

How well consumers are treated depends on the competitive conditions on their side. If they choose their supermarket according to the Hotelling specification, **consumers keep the joint surplus except for the market power element retained by the supermarkets**.

As with the previous model of informative advertising, **the treatment of suppliers is not affected by the strength of competition between supermarkets for consumers**. In this model, if two supermarkets merge, consumers would be treated less favourably but suppliers would not be affected. Their payment anyway is exactly the payment which would be chosen if there were a single monopoly supermarket."

Vertical integration: Supermarket Brands



Source: PLMA, http://www.plmainternational.com/industry-news/private-label-today

Supermarket Brands: Merit or Bias?

- Absent FRAND obligations on supermarkets, impossible to tell whether success due to **competition on the merits or creeping foreclosure** (access refusal, access fees, misuse of sensitive commercial information, copycat, switch marketing, preferential placement, cross-subsidisation, restricted big data…)
- **Risk of reduction of social welfare** (Armstrong, 2006) and **consumer welfare**: exclusion of independent brands, increase of platform differentiation (shopper single-homing), less innovation, choice and price competition
- **Threat to the innovation ecosystem** in food & groceries
  - Possibly the only platform sector (including regulated ones) where empirical evidence has surfaced...

SUPERMARKET BRANDS: LESS INNOVATION (TIPPING POINT)

"Since the publication of DG Competition's study, The economic impact of modern retail on choice and innovation in the EU food sector, in October 2014, the Consortium have done further work to refine their analysis on the impact of private label penetration on choice and innovation.

In the conference on the report in October, it was highlighted that the relationship between private label penetration and the measures of choice and innovation appeared to be non-linear. Specifically, graphical analysis of the relationship (see section 9.6 the report) suggested that **after a certain "tipping point", private label penetration is associated with a decrease in innovation**. This relationship would have been inadequately captured in the initial analysis however, which tested for a linear relationship.

In order to refine the analysis, the Consortium has now tested for a non-linear relationship between private label penetration and our measures of choice and innovation. Under the refined analysis, the results suggest that there is a **statistically and economically significant negative relationship between private label penetration and innovation. Moreover as the relationship is non-linear, the higher the level of private label penetration, the steeper the decline in innovation.** The refined analysis suggests however that the impact of private label penetration on choice was not economically significant."

Communication of 16.12.2014 from DG COMP's Food Task Force to participants in the conference on DG Competition's study, The economic impact of modern retail on choice and innovation in the EU food sector

NoA1: The study did not confine the term "innovation" to first-entry into the market but to new EAN code. It would appear that the negative relationship is higher if innovation is confined to first-entry.

NoA2: The study did not cover the Member States with the highest retail concentration.

SUPERMARKET BRANDS: LESS CHOICE

- If supermarket brands replace independent brands, neutral or negative effect (Bergès-Sennou and others, 2003)
- DG Competition's study, The economic impact of modern retail on choice and innovation in the EU food sector: “**The impact of the share of private labels in each shop’s assortment on the amount of choice offered was found to be negative but small -** We found some evidence that a larger share of private labels at local level curbed choice, an effect which is larger for cases with higher shares, but the size of this effect was small. In contrast, a larger share of private labels at national level was found to have either no effect or a small positive effect (depending on the measure of choice used).”
- Brand/ product differentiation? single supplier of supermarket brands to individual retailers (Spanish Competition Authority Report, 2011) and retail alliances (SOMO, 2017)

Percentage of ROB suppliers of a retailer who are present in other retailers. 2010

Retailers	% of ROB suppliers present in other retailers
Retailer 1	67%
Retailer 2	50%
Retailer 3	50%
Retailer 4	33%
Retailer 5	56%
Retailer 6	20%
Retailer 7	5%
Retailer 8	0%
Retailer 9	40%

Source: Prepared in-house based on official requests for information sent to suppliers.

Note: The % indicate the percentage of ROB suppliers included in the six main articles of each retailer in eight specific product categories who are also suppliers of another retailer there.

Brave New World?

- Old model: multi-homing brands compete on innovation/quality and supermarkets compete on service/price to deliver them
- New model: reduced upstream/downstream competition between differentiated platforms (exclusive brand, service and price)?
- Economic literature/studies on supermarket brands shifting from the pro-competitive rationale to the anticompetitive effects:
- Bergès-Sennou and others (2003):
  - "Most of the models agree on the positive impact on welfare of the development of PLs in the short term. In these models, PLs are frequently considered as additional goods that allow the retailer to increase his profit to the detriment of the upstream producer, either by decreasing the wholesale price or by capturing a larger share of the surplus of the industry. In these models, consumers benefit from the increase in the number of goods available and from the positive impact of the reduction in double marginalization.20 **In practice in the shop, a PL generally replaces another product, for example a regional brand. In this case the positive impact linked to the increase in the number of goods available for the consumer in a shop disappears. However we have shown that the strategic choice of product quality by a retailer or a producer is not identical. For a given quality of the NB, the retailer designs a less differentiated good than an upstream producer would. Thus the consumer will benefit from an increase in competition between the two products but could be penalised by the lower degree of differentiation between products. Thus, in a more realistic framework, it is not certain that the introduction and development of PLs lead to an increase in consumer surplus and to an increase in welfare**. For example, Caprice (2000), using a framework of non-linear pricing, showed that when the choice of characteristics of the PL is strongly irreversible, the introduction of PL decreases welfare as compared to a case where the characteristics are chosen by the integrated vertical structure. **In a longer term analysis, even if no specific work has been done on this topic, the impact of PL could well be less positive**. The argument is the following: the development of PLs leads to a different share of profits within vertical structures. **A decrease in the profits of the upstream producers could lead to less innovation and thus reduce the variety of goods available to consumers. This mechanism is reinforced by the strategy of retailers who develop 'me-too' products. This strategy is nothing else than free-riding on research and development of new products. This free-riding will discourage the efforts devoted to the development of new products in the long term. Moreover, the development of PLs can modify competition between retailers in the long term. For example, PLs enable greater differentiation between retailers and thus lower price competition among retailers which is detrimental to welfare (for a discussion on long-term effects, see Dobson, 1998)."**

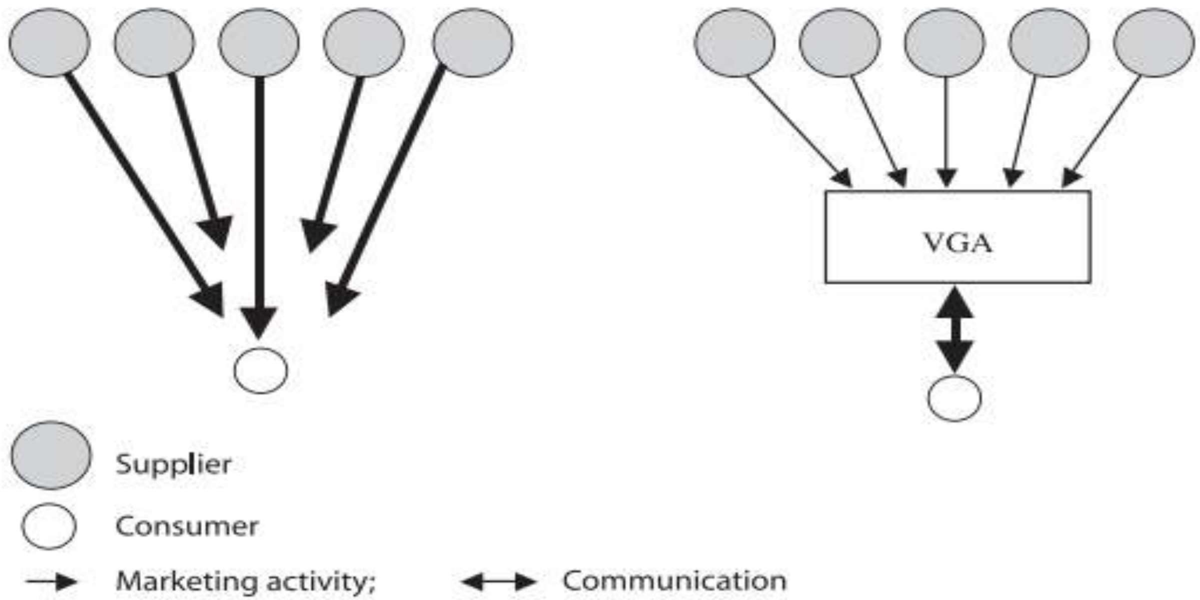
BRAVE NEW WORLD?

- Battigalli (2007): "The allocation of total surplus affects the incentives of the producer to invest in product quality, an instance of the hold-up problem. **An increase in buyer power not only makes the supplier and consumers worse off, but it may even harm the retailers, that obtain a larger share of a smaller surplus**"
- Inderst, Jakubovic and Jovanovic (2015): "Our analysis starts from the observation that with progressive consolidation in retailing and the spread of private labels, retailers increasingly take over functions in the vertical chain. Focusing on innovation, we isolate various reasons for why when a large retailer grows in size, this can lead to **an inefficient shift of innovation activity away from manufacturers and to the large retailer**. One rationale for this is the **retailer's control of access to consumers, which gives rise to a rent-appropriation motive for innovation, next to a hold-up problem**. With retail competition, through crowding out the manufacturer's innovative activity, a large retailer obtains a competitive advantage vis-à-vis smaller retailers. We further analyze when **inefficiencies are aggravated in case a large retailer's presence threatens the manufacturer with imitation of his innovations**."
- DG Comp study (2014)**: inverse relation between supermarket brands and innovation (tipping point**) even though the definition of innovation unduly broad (me-too) and sample of Member States excluded most concentrated ones (higher private label share).

Brave New World? Virtual Guardian Angel (VGA)

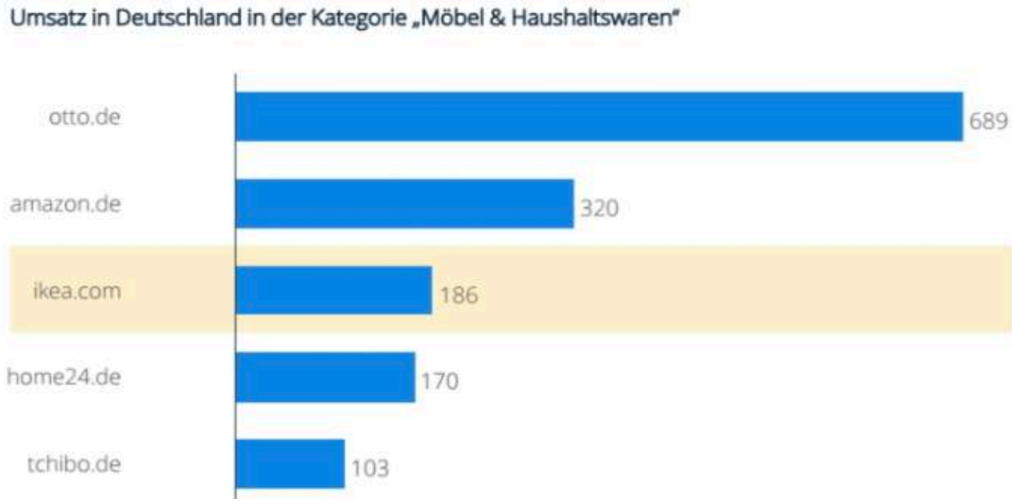
- Poiesz (2004), Economic Psychology: "Consumers do not choose anymore between different brands or different products, but different multi product systems [meta-brands]. **Consumer disciplining of markets can only take place at this level, but is seriously limited by long term relationships**. In this sense, competition at the consumer level is strongly reduced. **Competition will continue to exist between manufacturers supplying the VGAs**. **The government may play a rule in setting rules for such VGAs to perform**. **It is very unlikely that the available anti-trust rules apply in the expected new market situation**. The government is advised to monitor market changes closely and to be ready for new VGA-like structures and processes in markets to develop."

The conventional and VGA-based market structures (resp. left and right)



Brave New Online World? Grocery v. Furniture

- Furniture Germany



Source: https://ecommercenews.eu/the-biggest-online-furniture-retailers-in-germany/

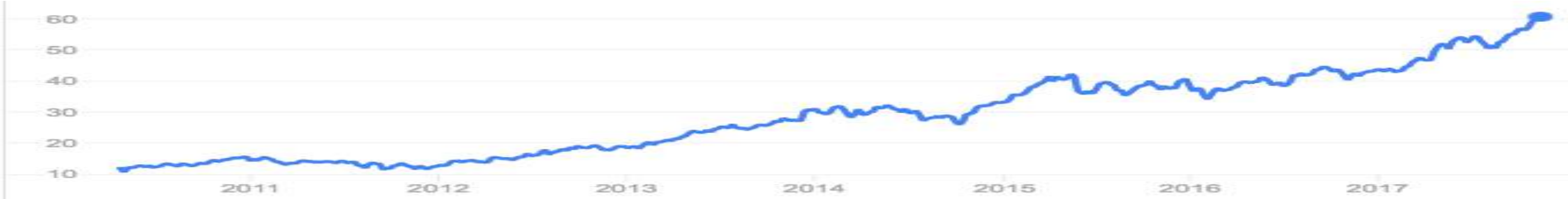
- Grocery worldwide
  - Off-line supermarkets going online, yet local competition (supply): click&collect v. home delivery (costs)
  - Online does not suppress barriers to entry: Ocado UK strugling, Amazon and Alibaba buy/ partner with off-line supermarkets

Conclusion

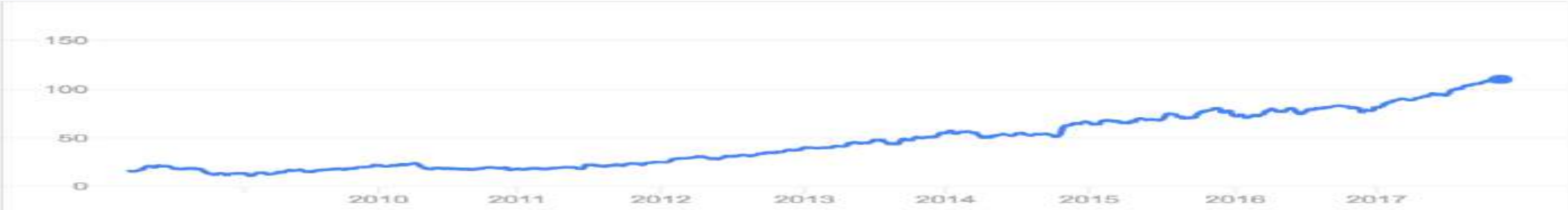
- Competition law useful in the manufacturing age but now outdated– efforts to update it strongly opposed ("hipster antitrust")
- **Regulation necessary in the distribution and platform age**: FRAND obligations on all/large platforms across different sectors (CRS, ISP, credit card networks, financial institutions, supermarkets and considered on online platforms)
- Economics support this regulation: **competitive bottlenecks** and **vertical integration** endanger the innovation ecosystem and social welfare (consumer welfare as well)
- Platforms oppose regulation, unless it is aimed at other sectors (retailers v. credit card schemes/payment systems, online platforms, online platforms v. ISPs)…
- Regulated platform ecosystems are operating competitively (FRAND = smart regulation)
- Regulation of platforms seemingly no impact on their stock (innovation incentives)

FRAND obligation on (all/large) supermarket platforms is justified and coherent

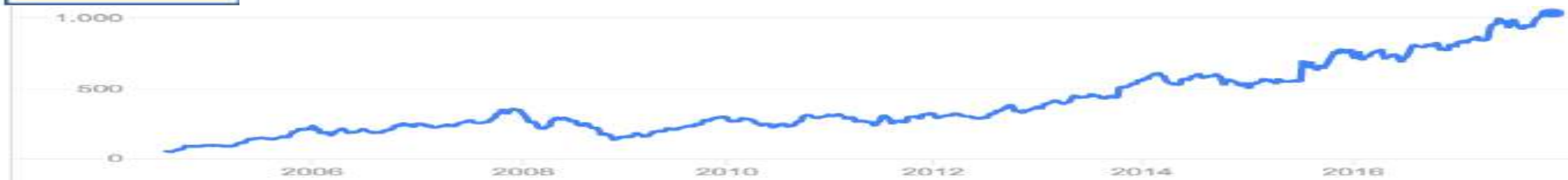
Stock impact of Frand obligations?



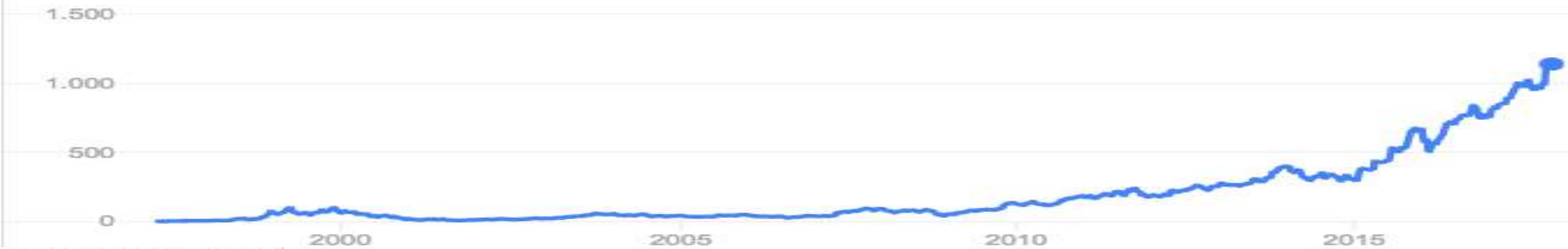
amadeus



VISA



Alphabet



amazon.com

FRAND? NOT SO MUCH REVOLUTION

"(210) While in most cases category management agreements will not be problematic, they may sometimes distort competition between suppliers, and finally result in anticompetitive foreclosure of other suppliers, where the category captain is able, due to its influence over the marketing decisions of the distributor, to limit or disadvantage the distribution of products of competing suppliers. **While in most cases the distributor may not have an interest in limiting its choice of products, when the distributor also sells competing products under its own brand (private labels), the distributor may also have incentives to exclude certain suppliers, in particular intermediate range products. The assessment of such upstream foreclosure effect is made by analogy to the assessment of single branding obligations** (in particular paragraphs (132) to (141)) by addressing issues like the market coverage of these agreements, the market position of competing suppliers and the possible cumulative use of such agreements."

European Commission Guidelines on Vertical Restraints

QUESTIONS

1. Do we know any economic sector where competitors must rely on a few other competitors to reach customers?

2. Do we think that ensuring an open innovation ecosystem for food suppliers through FRAND obligations on supermarket platforms is as important as preserving the same objective for online content developers vis-à-vis ISP, online sellers (online marketplaces), airlines (CRS), merchants (credit cards), payment systems (banks), financial operators (benchmark indices)?

BIBLIOGRAPHY (I)

- Armstrong, M., 2006, Competition in Two-Sided Markets, RAND Journal of Economics, 37(3), 668-691
- Armstrong, M. and Wright, J. 2007, Two-Sided Markets, Competitive Bottlenecks and Exclusive Contracts, Economic Theory, 32, 353-380.
- Battigalli, P., C. Fumagalli, and M. Polo, 2007, Buyer Power and Quality Improvements." Research in Economics 61: 45-61
- Bergès-Sennou, Bontems and Réquillart, 2003, Economic impact of the development of private labels, 1st Biennal Conference of the Food System Research Group, University of Wisconsin, Madison, June, 26-27,
- Bolt, W., and A. F. Tieman, 2006, Social Welfare and Cost Recovery in Two-sided platforms Review of Network Economics Vol.5, Issue 1.
- Bundeskartellamt, 2014, Sector Inquiry into the food retail sector
- DG Competition, 2014, The economic impact of modern retail on choice and innovation in the EU food sector
- Ezrachi, A., 2010, Unchallenged Market Power? The Tale of Supermarkets, Private Labels and Competition Law, World Competition, Vol. 33, No. 2.
- Filistrucchi, L., 2015, Platforms as Multi-sided Markets: Challenges in the Definition of The Relevant Market and Market Power, Entrance Workshop on Antitrust Enforcement in Traditional vs Online Platforms, European University Institute, Florence
- OCDE Roundtable on Monopsony and Buyer Power (DAF/COMP(2008)38)
- Hagiu, A. and Wright , J., 2015, Marketplace or Reseller?, Management Science Vol. 61, No. 1, pp. 184–203.

Bibliography (II)

- Hagiu, A., and Wright, J., 2015, Multi-Sided Platforms, International Journal of Industrial Organization 43, pp. 162–174.
- Inderst, R., Jakubovic, Z. and Jovanovic, D. (2015), Buyer Power and Functional Competition for Innovation, MPRA Paper.
- OCDE Roundtable on two-sided markets -- Note by the Delegation of the European Commission, DAF/COMP/WD(2009)69 (European Commission, 2009)
- Poiesz, T., 2004, The Free Market Illusion: Psychological Limitations of Consumer Choice", Tijdschrift voor Economie en Management, Vol. XLIX, 2,
- Rochet, J. and J. Tirole, 2003, Platform Competition in Two-Sided Markets, Journal of the European Economic Association, 1 (4), 990-1029.
- Rochet, J. and J. Tirole, 2003, Defining Two-Sided Markets, Paper
- Rysman, M., 2009, The economics of two-sided markets, Journal of Economic Perspectives, 23, 125-143.
- Rochet, J. and J. Tirole, 2006, Two-Sided Markets: A Progress Report, RAND Journal of Economics, 37(3), 645-667.
- SOMO, 2017, Eyes on the price: International supermarket buying groups in Europe
- Wright, J., 2004, One-Sided Logic in Two-Sided Markets, Review of Network Economics, 3, 42 - 63.