

POSITION PAPER

**Notice on the definition of relevant market for
the purposes of Community competition law
(97/C 372 /03)**

Response to the Commission Consultation

October 9, 2020

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1. Introduction

- 1.1. AIM, the European Brands Association, represents over 2,500 consumer goods manufacturers who innovate, create and invest across the European Union.
- 1.2. AIM welcomes the opportunity to submit views in the European Commission's consultation on the Market definition Notice (97/C 372 /03) (**the Notice**). We believe the Notice has been valuable in communicating the Commission approach. We consider however there are areas for review.
- 1.3. Key considerations:
 - AIM supports the Commission's commitment to applying competition law in an equal manner to on and offline business. Companies need clear guidance that confirms that the rules of competition apply to all players indiscriminately, whether off or online, and taking full account of modern consumers' omni-channel approach. E-players are entering the off line in-store environment while traditional brick and mortar retailers are developing their offer and presence online, including via the creation of their own platforms.
 - It is important to adapt the Notice on market definition to reflect the evolution of the markets, and notably the structural changes with respect to the functioning of many markets, which have taken place since the last revision (Appendices 1 and 2). AIM and its members believe that currently there are a number of areas that are not covered in the Notice with the potential of leading to significant competition law enforcement gaps.
 - With regard to product market, AIM would call for the Notice to be adapted to reflect the relevant Commission and NCA practices and to ECJ case law. AIM calls upon the Commission to ensure that all substitution tools are considered, price being only one, so that there is a greater reliance on representative, quantifiable samples to assess markets. Current terminology could lead to endless, sometimes insignificant, market segmentation. The Commission is also called upon to consider the (semi) 'verticalisation' of the procurement markets where customers are increasingly fiercely competing with their suppliers (dual role).
 - AIM calls for the Commission to ensure that the Notice does not allow for any enforcement gap in respect of horizontal agreements between large buyers (e.g. in grocery retail alliances).

2. The Market Definition Notice (97/C 372 /03)

- 2.1. As an introduction and general statement, the Notice would benefit from a comprehensive and holistic approach to market definition.
- 2.2. It is clear that the Commission has various concepts available that may apply in various scenarios, in various areas of guidance. For example, distinction between product and technology markets can be found in the R&D BER. However, such distinction may have relevance outside the scope of R&D. Therefore, setting out in detail in the Notice the various approaches to various markets in different contexts (101, 102, mergers, specific sectors) by way of examples of case studies may significantly increase the value of the Notice in its function to provide guidance to parties when assessing their transactions, behaviors and market positions.
- 2.3. At times, there appears to be a gap between the Notice methodological approach and the practices of authorities.

2.4. Definition of relevant market (§7-9)

- 2.4.1. We would suggest adjusting the Notice to specify in clearer ways that it applies to all sectors and undertakings whose activities bear an economic effect, even if not monetised directly (e.g. in the case of social networks).
- 2.4.2. We also believe that this opportunity should be used by the Commission to ensure that the Notice reflects the importance of a balanced approach to theories of harm. As the Court reminded, beyond consumer welfare, it is of utmost importance for competition law to avoid harm made to competition dynamics, harm to companies¹. It was also the conclusion of the experts report for the Commission on competition law and digital².
- 2.4.3. The Notice would greatly benefit from the inclusion of wording on the concepts of “gatekeeper” and on how a market will be defined for the purpose of assessing a gatekeeping³ position. As the Court ruled: “*all (suppliers) are dependent of the retail in order to sell their production*”.⁴ This was defined years ago for grocery. It is now at the core of the Commission approach to digital. A common approach and recognition is called for.

2.5. Product market - Demand substitution - Evidence

- 2.5.1. The Notice states (§7) “*a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use*”.
- 2.5.2. A comprehensive, representative approach to market definition
- 2.5.2.1. We would invite the Commission to give more importance to objective, quantifiable, evidence factors and apply caution with regard to qualitative appraisal based on mere impression or opinion in defining markets. The terminology used may indicate such possibility (e.g. “for “intended use”).
- 2.5.2.2. Data on usage, purchases, etc., which demonstrate actual patterns of behaviour will be the optimal source for an objective, facts-based appraisal. It will help provide better forecasts and projections. It would ensure that the concept of “intended use” is approached in a more objective manner.
- 2.5.2.3. Consumers change their purchasing choices within and across “markets” for a whole range of reasons. This includes – but not exclusively - the introduction of new products on the same or related markets, consumers need to balance their expenses with their budget at any given time across their entire spending, across multiple categories (e.g. energy, transport, leisure...). Relying solely on substitution for product market definition leads to a definition of the market that might appear overly narrow and far removed from market reality and competitive constraints assessments. There are many factors to explain consumers substituting products.⁵

¹ C-8/08, *T-Mobile*; T-286/09, *Intel*; T-461/0

² J. Cr  mer, Y.-A. de Montjoye and H. Schweitzer (2019), [report](#) for DG COMP, p.3

³ *Keska/Tuko (COMP IV/M.784- rejected merger of grocery retailers)* the Commission recognized a change in market dynamics introducing the notion of gatekeeper retail control over both up and downstream market.

⁴ Court (Paris) 01.10.2014 13/16336, p.13

⁵ Bank of Greece, *Analysing price level differences in the Euro Area, Competition structure and Consumer Behavior*, 27.10.2014; JRC, Consumer Footprint Basket of Products, variation of food consumed by an average citizen in a reference year using EFSA database;

- 2.5.2.4. The consumer journey can be increasingly regarded as a fluid omni-channel process, in which consumers change easily within the online channel, between online and offline channels, within the offline channel and between mono-brand and multi-brand retailers. As a result, the Notice will gain in clarity if it considers such types of elements, in contrast with risks of parasitism between the channels, when assessing the substitution for product market definition.
- 2.5.2.5. In its analysis of demand substitution, the Notice only relies on one of the factors of substitution, namely price, for mere “operational and practical purposes” (§15). It defines a price test on a range of a 5% to 10% as a “small permanent price increase” (§17).
- 2.5.2.6. We would strongly invite the Commission to adapt its approach to product market definition by considering all the factors that define the perimeter of a product market. In relying only on price as a relevant factor, a product market definition might fall short of apprehending or anticipating restriction on competition. A broader approach is also warranted in light of what is stated in the Horizontal Guidelines: *“restrictive effects on competition within the relevant market are likely to occur where it can be expected with a reasonable degree of probability that, due to the agreement, the parties would be able to profitably raise prices or reduce output, product quality, product variety or innovation.”*⁶
- 2.5.2.7. Approaching product market definition by other criteria than price will also allow the Commission to define a market in situations where commercial activity is not monetized, often referred to as “zero price markets”, such as for example, social network platforms.

2.5.3. Price and substitution

- 2.5.3.1. The measure of price elasticity is used for assessing product substitution relying on price factor. The significance of price elasticity will vary across product markets and sectors. In consumer markets, a determination of price elasticity will include factors such as consumer purchase power, consumer preferences and behaviour, and cultural and regional differences. Relying on a price elasticity test for defining the breadth of a product market leaves room for a volatility in the “product market definition” across countries. It falls short of the Commission’s willingness to harmonise competition law practices across Member States in the pursuit of a Single Market.
- 2.5.3.2. In its “Competition and e-commerce” report published in May 2020, the French Competition Authority has specified that price elasticity’s analysis are not systematically conducted because they can be relatively long and/or costly, and their results are not always usable (insufficient data, uncertainties associated with the quality of survey responses). They therefore generally constitute only one element of the set of indices that help the authority to conclude on the existence of competitive pressure from the online sales channel over the physical store sales channel.
- 2.5.3.3. The Notice would benefit from an explanation of the 5-10% price bracket provided in the Notice. We would suggest that the price bracket for such test should be adapted to the price level (value in €). A price variation of 5% or 10% have various importance on consumers depending on the absolute product price: buying a yoghurt at 1.05€ instead of 1€ will not lead to the same competitive issue than a 5% to 10 % price increase on an industrial equipment whose price runs into several hundred thousand.

Centre for Economic Policy Research (CEPR), *The price of the same product often varies across stores*, 13 March 2018, French Central Bank research

⁶ See also *Intel*; T-461/0

- 2.5.3.4. While the Notice presents demand substitution only by reference to a price analysis (§15-19), it appears that the Commission does not habitually run such tests if it can be avoided⁷. The General Court confirmed in 2017 (T-699/14, §82) that this test may be substituted by other means. We invite the Commission to review this approach in the Notice.
- 2.5.4. Dual role: the retailer as a supplier of its own brands, competing against manufacturer brands
- 2.5.4.1. AIM supports⁸ the call for the Notice to take stock of (semi) vertical integration in the upstream market.
- 2.5.4.2. This phenomenon is especially acute for the consumer goods sector as retailers off and online increasingly develop and offer products under their own retail brands.
- 2.5.4.3. This development has created multiple competition concerns⁹. Through their own private-label brands, the retailers compete directly against their suppliers or resellers¹⁰. This dual role may raise a conflict of interest that threatens the competitive process in consumer goods markets when the same company acts as both player and referee¹¹ (Annex 3). DG COMP in its 2014 report on modern grocery raises the issue of tipping points in competition between retailer and manufacturer brands.¹²
- 2.5.4.4. For consumer markets, the analysis of shopper basket purchases has consistently shown that shoppers purchase branded or private label products alike, which demonstrates a high degree of substitutability. It is also visible in retail advertising campaigns comparing their retailer brands to manufacturer's quality while claiming a lower price.
- 2.5.4.5. In Appendix 4, we illustrate by a case study how retailer and manufacturer brands are actually competing head to head in the same product market and how artificially considering them to be part of two separate markets has led to incorrect competitive assessment and possibly a gap in enforcement as currently investigated by a number of NCAs, and the Commission with regard to Amazon.
- 2.5.4.6. As the French Competition authority acknowledged¹³, half of the competition cases on branded and private label products conclude that they are part of the same product markets, the other half come to the opposite conclusion. Clearly, this illustrates the need for greater clarity in establishing the parameters used in assessing a product market, bearing in mind that retailers themselves also consider their products to compete in the same market as branded goods.¹⁴
- 2.5.4.7. To address this issue, we would suggest that the Notice recalls its rule and its step-wise approach, first considering the downstream market, as set out in the Notice (§14). The Notice should explain if and why the market definition for upstream markets would change.

⁷ Geographic Market Definition in European Commission Merger Control, 2016

⁸ Geographic Market Definition in European Commission Merger Control, 2016

⁹ Currently investigated by DG COMP https://ec.europa.eu/commission/presscorner/detail/en/ip_19_4291

¹⁰ "... the "dual aspect to brand/private label competition needs careful consideration when undertaking competitive assessments about behaviour and outcomes in FMCG markets." As such, "their relationship entails elements of both vertical competition (in the battle for profit share between successive stages of the supply chain) and horizontal competition (in the battle for market share at the product level). Paul W. Dobson & Ratula Chakraborty, *Assessing Brand and Private Label Competition*, European Competition Law Review, 76 (2015)

¹¹ [Commissioner Vestager](#), "New technology as a disruptive global force", *Youth and Leaders Summit, Paris, 21.1.2019*.

¹² The economic impact of modern retail on choice and innovation in the EU food sector, 2014

¹³ France Competition authority [Avis](#) n° 15-A-06 du 31 mars 2015

¹⁴ Eurocommerce, [Response](#) to the Commission consultation on Market Definition

2.6. Geographic market (§8- §28 – 31) – Market integration in the Community (§32)

- 2.6.1. The methodological approach to the Notice is generally clear. We would like to challenge some stakeholders' views that digitalisation might change the approach required to trade flows or the analysis with regard to the homogeneous conditions of competition. We would argue that some stakeholders views relate more on how they would like the legal interpretation to be in case law.
- 2.6.2. While the Commission volunteers that the price test is not necessarily used, we would add with regard to the geographic market that the Notice could benefit from further clarification on how the Commission would approach the relationship between the upstream and downstream markets.
- 2.6.3. We would like the Commission to explain how they would approach the activities of European retail alliances, where different undertakings bundle their activities across several Member States, while they might not be active in all the same national markets, on the procurement or selling markets.
- 2.6.4. Homogeneous conditions of competition (Appendix 5)
- 2.6.4.1. We would like to challenge some stakeholders' view that digitalisation might change the approach or the analysis with regard the homogeneous conditions of competition.
- 2.6.4.2. As the Notice specifies (§8) : *"The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas, because the conditions of competition are appreciably different in those areas."*
- 2.6.4.3. The review by NCAs confirmed the great variety of demand patterns within and across Member States which affect volume, price and companies share, whether at the customer or supplier level (Notice §28-29).
- 2.6.4.4. This is especially true for consumer products where cultural preferences and consumption patterns vary significantly. We provide (Appendix 5) an illustrative quantification of the retailer and manufacturer variety in share, across a number of regions and countries but also, as raised by some national authorities, per product market. This illustrates the great variety in the conditions of competition at national or subnational level, at product level for the same companies.
- 2.6.4.5. Despite often being global players, European retailers have limited their expansion in the Single Market while expanding in Asia and Latin America: *"There are legal and commercial reasons for retailers not to sell everything everywhere just as there are reasons for not opening a store in every country and every town in their home state or abroad"*.¹⁵ Carrefour (9th biggest retailer in the world) is only established in 7 Member States in Europe; Ahold Delhaize (N°15 globally), a Dutch retailer, is present in 6 Member states while 60% of its turnover is done in the USA. The European retail association declares that retail purchases 80% of products locally. If retail sources 80% of their stores products locally¹⁶ in order to meet consumer preferences¹⁷, the market for new manufacturers brands entries is limited in all Member States. This illustrates the reason why there are still generally heterogeneous competition conditions across markets, which are in no way an expression of competitive issue at stake (Annex 5)

¹⁵ Eurocommerce, Geoblocking, Issue [Brief](#) September 2017, p.2

¹⁶ Eurocommerce, *Supply chain tryptic*

¹⁷ CMA, 2019, *Anticipated merger between J Sainsbury PLC and Asda Group Ltd*, Appendix E, *"the Parties (retailers) stated .. that differences ... are largely as a result of the mix of products sold, which is primarily driven by differences in demographics between local areas"*

- 2.6.4.6. E-players also differentiate their product offer by countries. Amazon¹⁸ has multiplied its establishment in Europe in all neighboring markets while cross border distribution would have been thought possible. The difference of product range and /or resellers illustrate the weight of local, even for digital giants.
- 2.6.4.7. The report commissioned to review the Commission practices in defining geographic market confirms that markets are most frequently national as *“Distribution systems are often national, rather than multinational, and cater for local demand idiosyncrasies and customer requirements for reliability, frequency and flexibility of delivery and payment terms. They can also be subject to economies of scale and scope and are not easily replicated.”*¹⁹
- 2.6.4.8. We believe in this matter that the Notice is clear, correct and comprehensive. We observe that the Commission in its merger practices also recognizes it as reviewed by the experts report. We believe the considerations in the Notice allow to apprehend the realities of the market, even with digitalization.
- 2.6.4.9. We would, however, suggest that the Notice specifies that the analysis must be carried out for each market by “clusters” of product and geography (Appendix 6) in an objective and balanced way as the respective undertakings position and power vary at sub-national, product level.²⁰ An average across all product markets reduces artificially the retail position vis-à-vis individual market participants. Likewise if a retail controls a few main sub-regions, it becomes an “unavoidable” market player, hence its power, as it can restrain suppliers access to markets.
- 2.6.5. Trade Flows / Patterns of shipments (§49-50)
- 2.6.5.1. Likewise, we do believe that the Notice consideration for trade flows analysis is still accurate. Trade flows may have intensified because of internationalisation of players. However, the company’s organisation and the importance of having a local logistics network did not change. On the contrary, its need has even been reinforced with the objective of a sustainable Europe.
- 2.6.5.2. The Notice invites to consider actual patterns and evolutions of trade flows to obtain useful supplementary indications as to the economic importance of each demand or supply factor, and the extent to which they may or may not constitute actual barriers creating different geographic markets.
- 2.6.5.3. In particular, the Notice provides that the analysis of trade flows will generally address the question of transport costs and the extent to which these may hinder trade between different areas, having regard to plant location, costs of production and relative price levels.
- 2.6.5.4. The Notice rightly insists, however, that trade flow analysis might *“be used ..provided that the trade statistics are available with a sufficient degree of detail....trade flows provide useful insights and information for the purpose of establishing the scope of the geographic market but are not in themselves conclusive.”*
- 2.6.5.5. The report for the Commission²¹ illustrates from a number of cases reviewed that the Commission carries out such an assessment. In most cases, ranging from consumer to industrial

¹⁸ Amazon has established a portal/service, in UK, Germany, France, then Italy, Spain, recently the NL. The German authority in its review of Amazon established that 80% of consumers purchasing on Amazon.de are German, 10% of sales come from Austria, the rest from other countries. Similar data are defined in Amazon France authorities investigation and Court Case

¹⁹ Geographic Market Definition in European Commission Merger Control, a study for DG COMP January 2016

²⁰ Geographic Market Definition in European Commission Merger Control, a study for DG COMP January 2016

²¹ Geographic Market Definition in European Commission Merger Control, a study for DG COMP January 2016

products, suppliers and customers generally emphasise the need of a local logistics network, without which some markets cannot be entered.

- 2.6.5.6. Reasons raised vary, beyond costs, from customers requesting quick and flexible local deliveries, concerns for sustainable supply chain, some products not being able to travel well for reasons of freshness, weight, product volatility etc. All reasons which explain supplier organisation at local level.
- 2.6.5.7. The importance of local physical presence is emphasised when we look at E-Players establishing logistics facilities in a number of European countries.
- 2.6.5.8. The French competition authority has defined that despite strong competitive pressure from online sales, the local dimension of the analysis is to remain paramount due to (i) a strong consumer preference for in-store purchases and (ii) a strong variability in the market shares of online sales sites at the regional level.
- 2.6.5.9. We would support this approach, which confirms no amendment is required in the Notice.

2.6.6. Retail alliances

- 2.6.6.1. The Notice should ensure that the role of buying groups and retail alliances is captured by the revised Notice. In addition to mergers between retailers, the creation of purchasing alliances has allowed retailers to amass market power just as would have been the case through other forms of concentration. Such alliances are increasingly prevalent in a variety of retail sectors, such as grocery, electronics, para-pharmacy, etc.
- 2.6.6.2. Such alliances behave like merged entities for specific activities, yet they are not submitted to merger review, with the exception of France which introduces a notification process for creation of such undertakings.
- 2.6.6.3. The joint procurement of products reduces the channels available to suppliers to bring their products to market (see Annex 1). This development further reinforces concentration at the purchasing side of the market i.e. the retail level²². This brings along significant competition challenges.²³ If 4 groups do the procurement of all retail players on the market, it creates a concentration in the procurement market, despite having different retail banners or different stores. If the stores cannot procure independently, the alternative of supply in the markets is reduced.
- 2.6.6.4. Some national authorities have come to either restrain or cease their activities, as in some markets they were attaining 90% of market share in the procurement or selling market. Recently the French Competition Authority proposed to restrict the activities of retail alliances in some products markets, fearing that the joint activities would reduce the supply of products and thereby reduce consumer choice²⁴.
- 2.6.6.5. AIM surmises that the market should be defined at the procurement level, regardless of the downstream retail market. It is at the procurement level that retail alliances have an anti-competitive effect through the accumulation of their buyer power. These entities act as

²² See AIM submission to DG COMP consultation on the Horizontal Guidelines for further review and quantification

²³ Belgian and French NCA current investigations. Austria, Italy and Czech rulings condemning retail alliances for competition infringements. See AIM submission to open consultation on Horizontal Guidelines.

²⁴ French Competition authority, 25.06.2020, inquiries to examine the joint purchasing agreements in the food retail sector, Auchan/Casino/Metro/Schiever. Also with regard the Carrefour and Tesco [alliance](#) 8.10.2020

gatekeepers and may restrain market entry. As such, they are at the origin of greater market concentration and cumulative buyer power.

- 2.6.6.6. Given the internationalisation of such undertakings, AIM would welcome that the Notice indicates how it would approach the market definition in the context of European retail alliances, this association of undertakings whose activities run across product/service and geographic markets in hybrid ways, as not all the undertakings are active in all the same markets, yet their combined effort in negotiation in procurement bear effect on buyer power towards suppliers.
- 2.6.6.7. Alliances between retailers based in different Member States have a significant impact on the retailers' market power vis-à-vis their suppliers. By way of example: Retail Alliance A has five members based in five different Member States. Suppliers still have to negotiate at national level with each alliance member their supply contracts. The international head office of the alliance ensures that all national negotiations run in parallel and are closed at more or less the same time. A multi-national company with presence in all these Member States has to negotiate locally with the alliance members. If in only one Member State the negotiations risk to fail because of too high demands by the retailer, the Retail Alliance through its international head office would threaten to de-list the multi-national supplier not only in the Member State in question but in all other Member States where alliance members do business with the supplier. Although the commercial issue is restricted to only one Member State, retaliation in the form of a co-ordinated boycott takes place in five.
- 2.6.6.8. The Notice should ensure that the role of European Retail Alliances is included in the revised notice as an important parameter for defining the relevant geographic market and assessing market power. The objective of defining the relevant markets correctly is to allow the Commission to address market power issues and restrictive practices in the interest of consumers. Market definition must not hinder it to pursue this goal.
- 2.6.6.9. The creation of European retail alliances (horizontal agreements between retailers) appear also to have affected retail expansion in the Single Market.
- 2.6.6.10. The Horizontal Guidelines themselves may generate a chilling effect on incentives for retailers to expand into other national territories, a reality the Italian Competition Authority raised in the context of its grocery retail alliances investigation in 2014.²⁵
- 2.6.6.11. The Guidelines encourage buying groups to exclude potential members that will be present on the same markets. This may discourage retailers hoping to enter an alliance from entering other alliance members' territories, and similarly discourage existing alliance members from territorial expansion.
- 2.6.6.12. During the 2019 French Parliament hearings on the grocery sector, some retailers declared they consider it unfeasible to be a member in an alliance with a direct competitor. Some moved from one national alliance with a national competitor to a European alliance with non-competitors²⁶.

²⁵2014 Centrale italiana case, I768 CENTRALE D'ACQUISTO PER LA GRANDE DISTRIBUZIONE ORGANIZZATA , *Provvedimento n. 24649*, §30 *"The competitive dynamics of the sector is also strongly affected by the nature of such buying group, .. disincentive to carry out competition...decision to enter local market only through swap of stores between retailers members of alliance ...to avoid "costly" confrontation "* See AIM submission to HGL Consultation.

²⁶ Stéphane Prunelé [link](#) parliamentary hearing on 11.7.2019 (Leclerc now in European retail alliance) explained: *"Leclerc firstly created a retail alliance with System U "Lucie". To come together around a table, to negotiate with suppliers or to build commercial strategies But Leclerc soon realized that partnerships between retailers competing downstream were harmful .." Michel Biero (Lidl): "it is nonsense: we cannot ally with our worst competitors on one side and on the other side compete downstream."*

- 2.6.6.13. When announcing their European retail alliance in 2018, Carrefour and Tesco declared in their press release that the only market where they are both present, Poland, would be excluded from the retail alliance activities. Tesco is currently moving out of Poland, selling its assets.
- 2.6.6.14. The same market exit has been acknowledged in the past for retailers entering some European alliances. Such “barrier to entry/lack of entrance on national markets “is even set out in the bylaws of one European alliance.²⁷ Clearly, this prevents competition to take place.
- 2.6.6.15. We would invite the Commission to consider in the Notice how to better apprehend these cross borders agreements, which in several cases led to retail removal from, or prevent retail entry into markets.
- 2.6.6.16. Such Alliances might benefit from an enforcement gap that finds its origin in the way the Commission practices its approach to the definition of the relevant markets. We would therefore call for the Notice to clearly specify such approach.

2.7. Market power (§2)- Buyer power (§17) - Market share (53-55)

- 2.7.1. The Notice should provide further precision as to the indicators used for establishing market and buyer power such that it allows for the proper analysis of the competitive constraints acknowledged to exist in the context of gatekeeper situations role and of network effects. Data has also become a power indicator.

2.7.1.1. Data as a competitive tool

- 2.7.1.1.1. Data has become an essential input for sales/services, production processes, logistics. Its importance on economic growth has been recognised for over two decades. Data is therefore critical to ensure healthy inter-brand competition.
- 2.7.1.1.2. The lack of access to data is generally considered as a competitive constraint and sign of market power. It should be taken into account in the assessment of market and buyer power²⁸, as referred to in §17 of the Notice.
- 2.7.1.1.3. For the consumer goods industry, scanned data of consumer in-store purchases allow considerable analysis on shopper behaviors, shoppers reaction to retail services and suppliers products offer. Data for online sales are similar.
- 2.7.1.1.4. It is clear that the retailers, and the retailers alone, have extremely granular data available about their own product and the directly competing manufacturer branded product. This information encompasses product formulation, in-store positioning, consumer perception, and of course pricing and profitability. With this information in hand, retailers can throttle and adjust any parameter of competition that would place its own product at a competitive advantage compared to the branded product, that cannot benefit of the same level of granularity. Indeed, retailers often refuse to provide or refuse others, such as Nielsen for scanned data, to provide the information that is available to it. The challenge is even greater to have visibility on consumer behaviors and purchases online.

²⁷ Coopernic (European retail alliance) bylaws on [BCE](#), 13.09.2016, article 16, exclusion of a retail alliance member if it purchases a “significant competitor on a downstream national market”, competitor to one of the retail alliance members (“concurrent significatif sur une part substantielle d’un marché national de détail”)

²⁸ 2001 Nobel Prize in Economics introducing the concept of asymmetric information, more recently “The Revolution of Information Economics: The Past and the Future”, Joseph E. Stiglitz, 2017

2.7.1.1.5. Certain marketplaces and pure online players are active not only as retailers, but also control search engines and other social networks, which allows them to collect and analyse large amounts of data, giving them a significant competitive advantage over brand manufacturers. The same can be said for off line retailers which, in addition to the purchase scanned data, collect, through their loyalty and customer retention schemes, large amount of data on shoppers behaviours.

2.7.2. The indicators of Market Power

2.7.2.1. While the market definition allows for the quantification of the market importance, in sales value (€) or volume (§54), the Notice recognises that the market share is only one indicator of market power.

2.7.2.2. We note, from the Staff Document published by the Commission on the renewal of the vertical block exemption regulation, that respondents and NCAs question the suitability of current applicable rules to determine relevant product and geographic markets²⁹ notably due to the emergence of online platforms. Similar challenges appear in the stakeholders submissions to the consultation on the Horizontal Guidelines.

2.7.2.3. As confirmed by the Court, high market share is not necessarily a proxy for market power as long as competitive pressure exists³⁰. In reverse, power can exist even in case of lower market share in combination with other indicators.

2.7.2.4. As illustrated in the introduction, national authorities in the last decade have emphasized the need to consider the existence or lack of alternative channels to establish the existence of market power.

2.7.2.5. In addition, as online sales have developed, intermediaries and platforms have been able to benefit from network externalities that today lead some of them to have significant market power.

2.7.2.6. With this in mind, building on the Notice where some other indicators are listed, we would suggest, in addition to “*the number of players on a market (§54)*” to include the concept of “reach” as a measure for market power. This refers to the percentage of the population in a given market which are involved with the undertakings activities, such as the number of shoppers purchasing at a retailer (off/online) or a user of digital application, of a social network. This will give an idea of the relative power of each undertaking concerned. Such measure can be applied across all sectors, from primary to end products, as well as for all services provided through platforms. The inclusion of this indicator allows a quantification of the network effects.

2.7.2.7. Network effects may be more important in online markets than in physical markets; in any event, they contribute to increasing barriers to entry.

2.7.2.8. In addition, where access to a large volume or variety of data is a competitive factor in the market (which is notably the case for consumer goods products), their collection may constitute a barrier to entry if new entrants are unable to collect or purchase the same type of data as existing firms.

²⁹ P. 160 : « For some respondents, the rules currently used to define the relevant market, which were designed based on more traditional markets, are not well suited to determine relevant product and geographic markets in emerging online markets or when online intermediaries (e.g. platforms) are involved. This view is also shared by some NCAs. ».

³⁰ Microsoft/Skype case

- 2.7.2.9. The existence of an asymmetry of information between retailers and manufacturers when they both compete for shelf space in the retail environment, in store and on platform, needs to be recognized and addressed by the Commission when setting the parameters for the identification of a relevant market and the position that the various players occupy in such market. Indeed, this will go beyond strict market shares as indicators of market power that the Commission identified as the principal indicator in its 1997 Notice.
- 2.7.2.10. Beyond economic literature, competition has also recognized that asymmetric information and asymmetric analytical capacity may distort the relationship between users and service providers (in this case retailers) and allow the latter to exploit users.³¹ The French Competition authority also calls for more vigilance in this area.³²
- 2.7.2.11. In summary, we would suggest to introduce a measure of “% of traffic” in stores, on platforms, a measure of data access, measure the asymmetry of information, to assess buyer power.

2.7.3. Buyer Power

- 2.7.3.1. We believe that the Notice will gain in clarity if it details the quantifiable measures suggested above to “better reflect the relative position and strength” of each undertaking, (§55) be it supplier or off or online buyer/retailer.”
- 2.7.3.2. The Notice references the need to “*identify the alternative distribution channels or outlets for the supplier's products.*” (§17), *the number of players on a market* (§54). The lack of players on a market is generally considered as an indirect measure of a barrier to entry. It is an indicator of competitive constraints.³³
- 2.7.3.3. **Supplier dependency – the result of buyer power as gatekeeper (Appendix 7)**
- 2.7.3.3.1. The introduction of the gatekeeper notion in competition law has led to the recognition that buyer power can occur at market share levels below dominance, and more frequently in retail markets than in other markets (Kesko/Tuko, Rewe/Meinl).
- 2.7.3.3.2. National authorities have recognized the potential for retailers to generate considerable buyer power notwithstanding their downstream market shares. For example, in *Metro-Allkauf*, the Bundeskartellamt found that if a supplier achieved more than 7.5% of its turnover with a retailer, it was economically dependent on that retailer. The UK Competition Commission report on Supermarkets recommended that retailers with more than an 8% market share should be required to abide by a code of practice on dealings with suppliers, as it found that above that threshold there was clear evidence of a position of market power.
- 2.7.3.3.3. The retail gatekeeper power is reinforced by the asymmetry in the relationship between retailers, be them off or online/platforms, and brand manufacturers. Retail compete on several products and service markets. As retailers stated themselves, “*supermarkets ...do not*

³¹ Ariel Ezraki, EU Competition Law Goals and the Digital Economy, Oxford Legal Studies Research Paper No. 17/2018.

³² Contribution de l'autorité de la concurrence au débat sur la politique de concurrence 9.2.2020, p.11

³³ Bundeskartellamt, 2014 inquiry “Buyer power in the food retail sector” p.8- 13 English Summary “*In negotiations with the food industry the leading retailers are largely able to use their strong market positions to their advantage. As a consequence they are in a stronger bargaining position than the manufacturers . p.14 “Even strong manufacturers with high turnover shares in the food retail sector can be faced with strong bargaining power from their customers, if they have even fewer outside options than their customers”. “Shifting sales to another distribution channel is either regarded as not economically viable or doubt is cast on the “absorptive capacity” of alternative distribution channels”.*

compete with individual products but with their full product portfolio”³⁴. “They compete on the retail offer as a whole.”³⁵

- 2.7.3.3.3.1. We would suggest to adopt the practices already initiated by some national authorities and to establish an indicator of economic dependency as a proxy for buyer power. It necessitates a quantification of the share of sales to the purchaser/retailer in the total turnover of a supplier on a relevant market.
- 2.7.3.3.3.2. The French Competition authority³⁶ defined that *“to assess the purchasing power of a buyer vis-à-vis one or more suppliers, the main criterion to take into account is the proportion of supplier sales that this buyer represents, that we can then compare to the proportion of the buyer's sales represented by the supplier”*.
- 2.7.3.3.3.3. Some national authorities have consequently introduced a notion of dependency into their competition law as in Germany, the Czech Republic or more recently Belgium. France has defined a level of “threat” for its competition review. All notions build on the recognition that suppliers in many markets have no real alternative options beyond retail for their products sales.

2.7.3.4. Buyer power can be accumulated and exploited across markets

- 2.7.3.4.1. Buyer power aggregation and exploitation can have harmful effects on upstream competition among suppliers. In the grocery market, this applies to retail alliances whose practices can bring competitive constraints on markets, across Europe.
- 2.7.3.4.2. As recent case by the Commission³⁷ illustrates, buyer power and competitive issues appear across actors active on a number of separate geographic markets.
- 2.7.3.4.3. The report for the Commission³⁸ recommends to consider the impact of behaviours on multiples markets. We would argue that the reality of the Single Market and trans-border relationships does require this.
- 2.7.3.4.4. We invite the Commission to reflect on its own practices and see how best to apprehend this factor in the revision of the Notice.

³⁴ Ahold, leading Dutch retailer, (N°14 global retailer in 2019) 28.09.2009, letter, HT.1171 stakeholder input, comments regarding review block exemption regulations and guidelines on vertical restraints.

³⁵ “Competition between the differentiated retail offers also involves a variety of factors important to grocery customers that are key parameters of competition, including: (i) convenience of store locations locally; (ii) value for money on product quality and price (not just price); and (iii) other aspects of the in-store offer, including range or service, and other aspects of the in-store shopping experience. Some retailers have business models that rely on high volumes and low cost, accompanied by substantial growth of new stores, (some) have a proposition that is centred on a “premium” customer perception and high quality/convenience, (some) have grown in the convenience sector, larger stores may have a wider range of products and a greater offer of amenities such as cafés, concessions, general merchandise, and specialist food counters. Asda Sainsbury Merge, (Retailers) Parties response to issues statements, p20 §86, p44-46

³⁶ France Competition authority, [Avis](#) n° 15-A-06 du 31 mars 2015, “the respective bargaining powers of suppliers and distributors largely depends of the alternatives to which they could resort in the event of a failure of their negotiations. The analysis must therefore also take into account the respective “exit options” of the operators”.

³⁷ https://ec.europa.eu/commission/presscorner/detail/fr/ip_19_6216; T-255/17

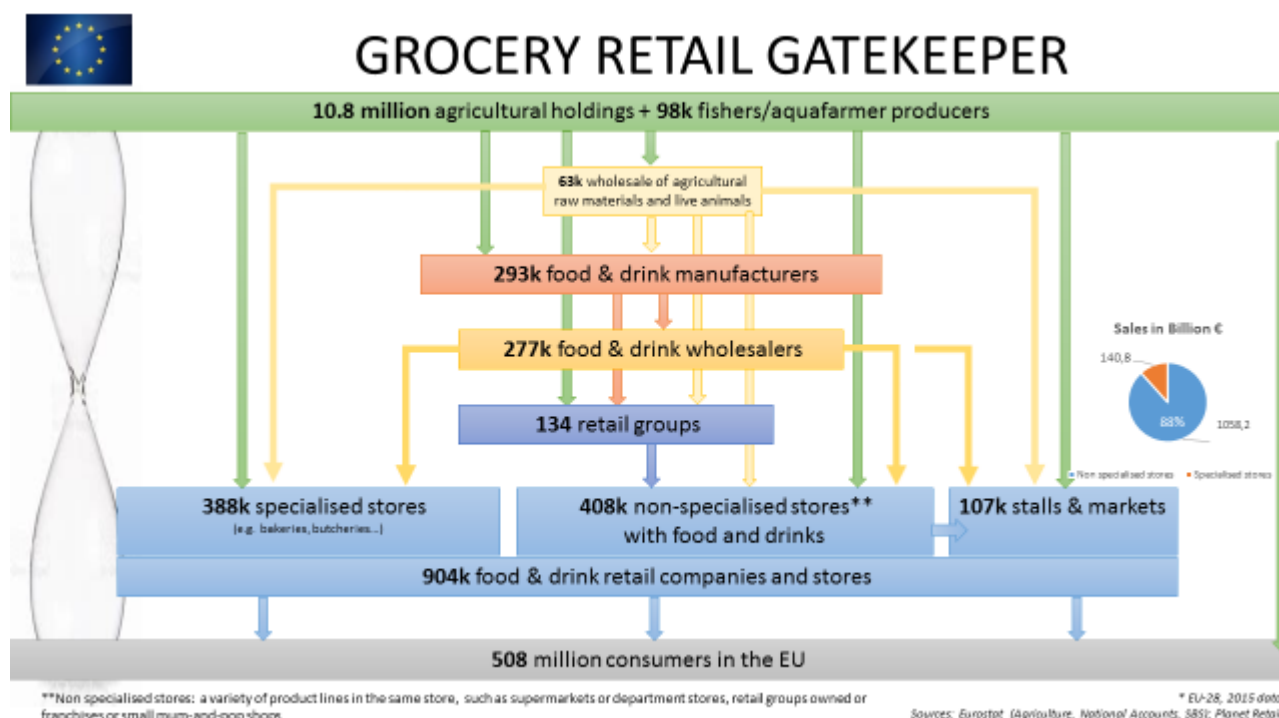
³⁸ J. Cr  mer, Y.-A. de Montjoye and H. Schweitzer (2019), [report](#) for DG COMP

Annexes : Data for illustration

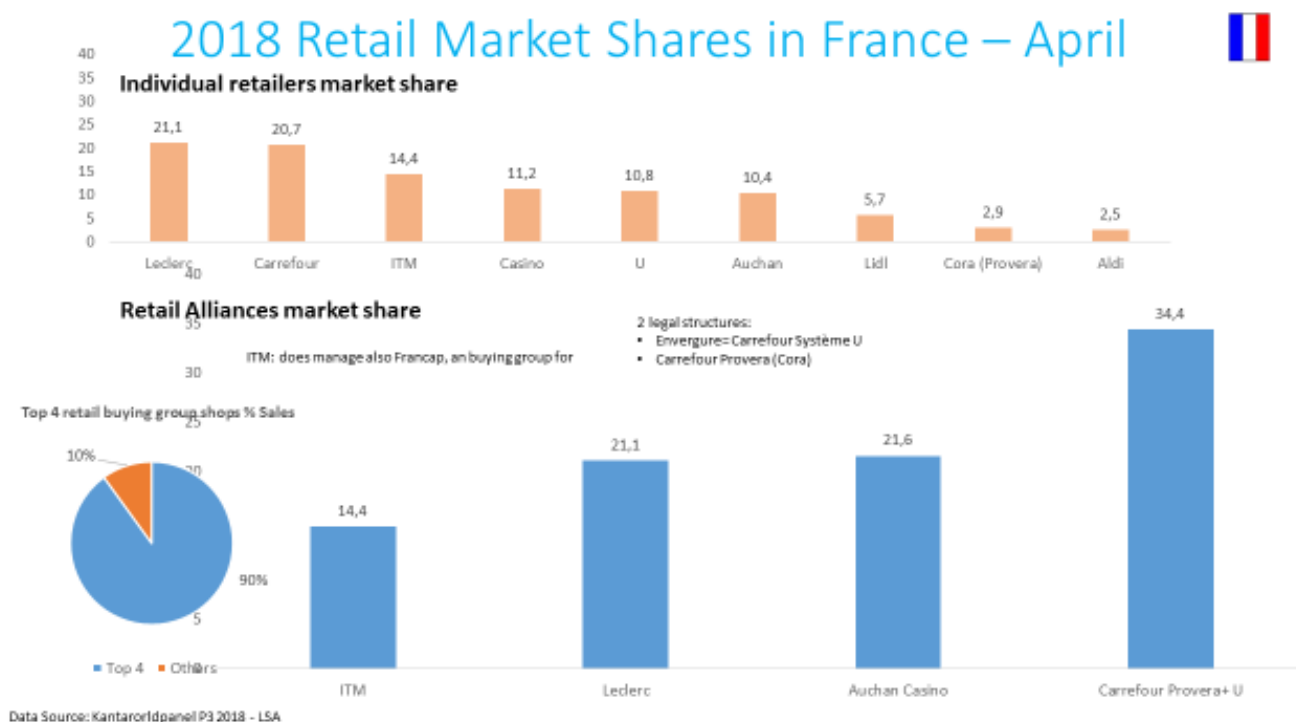
A1. Retailers in Europe : the selling market for consumer goods	16
A2. European retailer consumer sales, grocery retailers largely ahead of all other retail and e-players	17
A3. Retailer brands: from 30% to 50% of consumer sales per markets (products, geographies)	18
A4. Case study: manufacturer and retail brands, alternative competitive analysis	19
A5. Homogeneous conditions - Heterogeneous markets.....	26
A5. Dispersion of market share, power, at subnational or sub product level.....	27
A6. Suppliers dependency: gatekeeper buyer power.....	28

Annex 1 (see AIM submission to the open consultation for the Horizontal Guidelines for further data)

A) Retail as gatekeeper –upstream-downstream markets – Reduction of alternative channels



B) Further concentration through the association of retailers in retail buying groups: 90% of grocery selling markets controlled by 4 retail alliances, merging the purchase of the top 7 retailers. These alliances also include smaller retailers.



Annex 2 : Grocery retailers leaders on markets ahead of platforms and other retailers

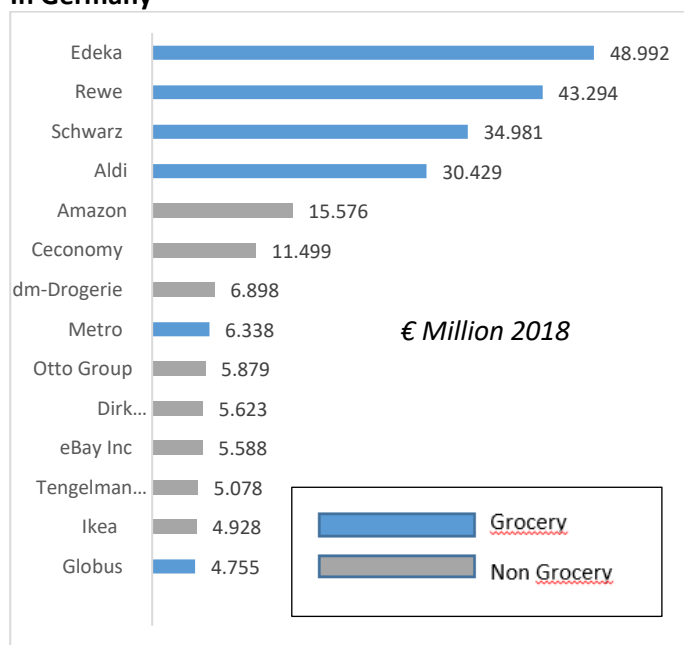
European retailer consumer sales, starting with 90 Billion € by Schwarz (Lidl & Kaufland). Amazon is 9th with 30 billion €. All 8 retailers before Amazon are grocery retailers. 10th is Ahold Delhaize.

Top EU Retailers – 2018 consumer sales in Europe

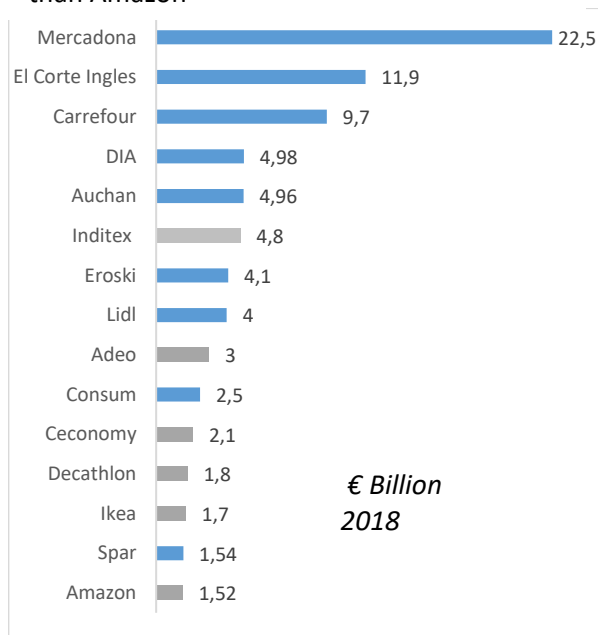


Source: Euromonitor, retail consumer sales, 2018, EU24 (not incl. Cyprus, Luxembourg, Malta, not including automotive, fuel, foodservice, fresh food)

In Germany



In Spain, grocery is leading, 22 times bigger than Amazon



Source: Euromonitor, consumer sales 2018 * not including automotive, fuel, foodservice, fresh food in grocery, rentals

Annex 3: Retailer brands

- A) **Dual Role of Retailers** – Graph taken from *European Competition Law Review, February 2015, p.76*
 “Assessing Brand and Private Label Competition” Paul W. Dobson & Ratula Chakraborty;

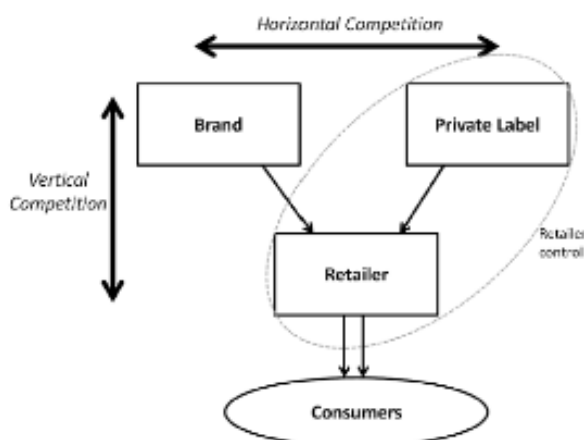
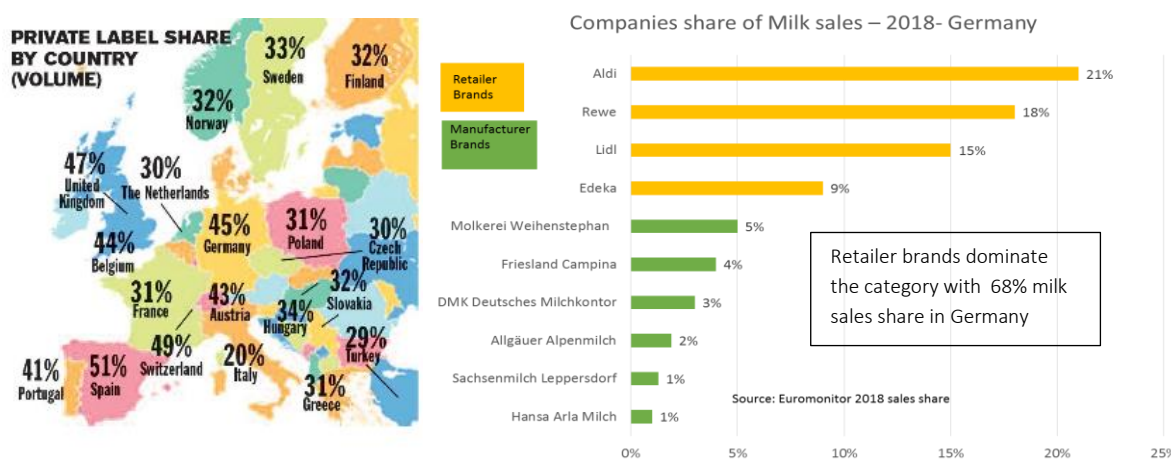


Figure 1 — Brand and Private Label Competition

- B) Retailer brands – their market share varies per product market and per geographic market



- c) Wide variation of retailer brands price across Europe – Retail vertical integration

Difference in price, packaging and pack size, no multi language label for the neighbouring markets



Carrefour Bio Corn Flakes: Belgium: 51% more expensive (kg-wise) in Belgium than in France; 47% more expensive in Italy than in France; 3% more expensive in Belgium than in Italy. The difference is partially hidden by different size offer (smaller in Belgium by 50%, by in Italy; 40% smaller in Italy than in France). Yet the appearance of shelf price to consumer is cheaper price in Belgium!

Carrefour: 4.2€/Kg in France, 500g package, Consumer price: 2.1€ ; Belgium : 6.35€/kg, 250 g package, Consumer price: 1.59€ ; Italy: 6.17€/kg, 300g package, consumer price: 1.85€

Annex 4: Assessing gap in the competitive assessment – Dual Role

The economic impact of modern retail on choice and innovation in the EU food sector, 2014

AIM [submission](#), Annex 3 (Milk)p.28 , Annex 4 (Olive Oil) The Commission did not in the study explain how it run its product market analysis. The analysis presumes the existence of two separate markets which AM challenges as per below. AIM also challenges the analysis derived.

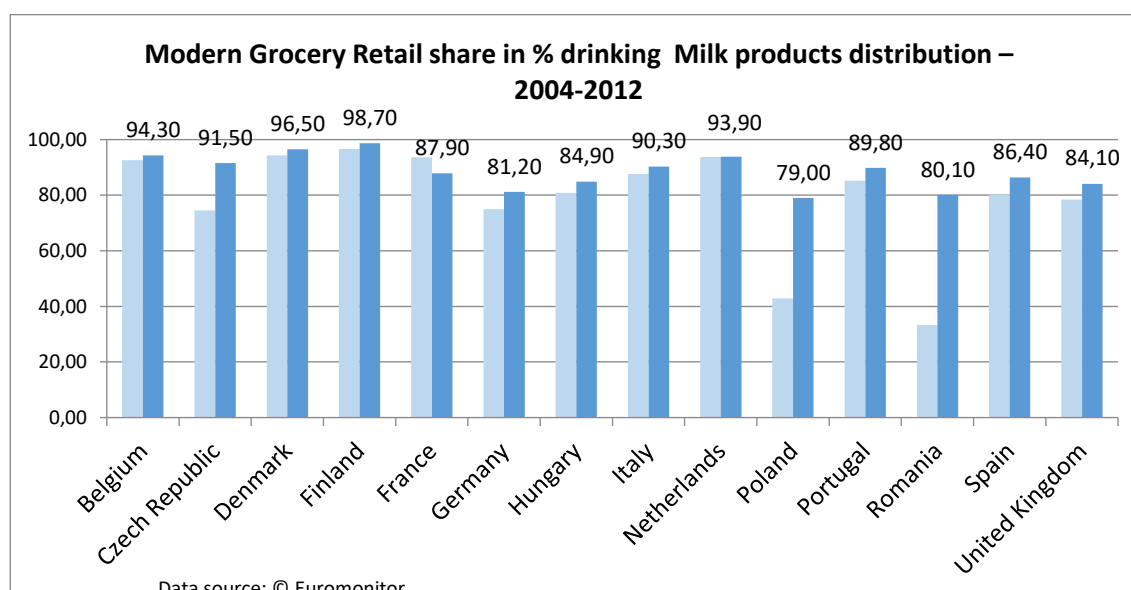
In this annex, we take a closer look at some of the study's conclusions with regard to the alleged imbalances between supplier and retailer concentration. As we demonstrate, the study frequently exaggerates these imbalances in favour of retailers. This is for the following reasons:

- The study ignores the competitive pressure exerted by private label on suppliers. In some categories, private label accounts for more than half of the market. It is not possible to draw reliable inferences on imbalances between suppliers and retailers without taking this into account. By ignoring private label, the supplier market appears significantly more concentrated than it is in reality.
- When the share of private label increases, some branded suppliers may decide to exit the market. On the measures of the study, supplier concentration is, as a result, increasing and the market is becoming more imbalanced towards suppliers. But, this conclusion is exactly at odds with reality. Retailers' private labels have displaced supplier brands and the market is therefore becoming more imbalanced towards retailers.

We illustrate these points with respect to the milk category. In this category, the study suggests that supplier concentration is increasing in 9 of the 14 countries studied. The highest increases occur in Germany (+9.6%) and Poland (+9.7%)¹. A measure of imbalance between supplier and retail concentration is being reported for 10 of the 14 markets (p371).

According to the report, the share of private label in those markets ranged in 2012 from 1% to 67%, an average of 34%², with an average annual increase of 13%. Euromonitor data show a similar picture. According to Euromonitor, the share of private label in the EU-25 countries in 2012 ranged from 5% (Bulgaria) to 74% (UK).

In the markets considered, modern grocery retail controlled in 2012 between 79% and 99% of milk distribution. The control over milk distribution has increased on average by 12% in 8 years.



These figures already show that in many cases, retailers exert a considerable degree of control over the milk category. In a country like the UK where private label accounts for 74% of the market, retailers clearly represent formidable competitors to the remaining suppliers of branded products.

This case shows the retailers' control over the category, not only in terms of the control of distribution – leaving no alternative channels for suppliers to market their products as reported by German competition authorities in their 2014 market inquiry, but also as direct competitors with private labels.

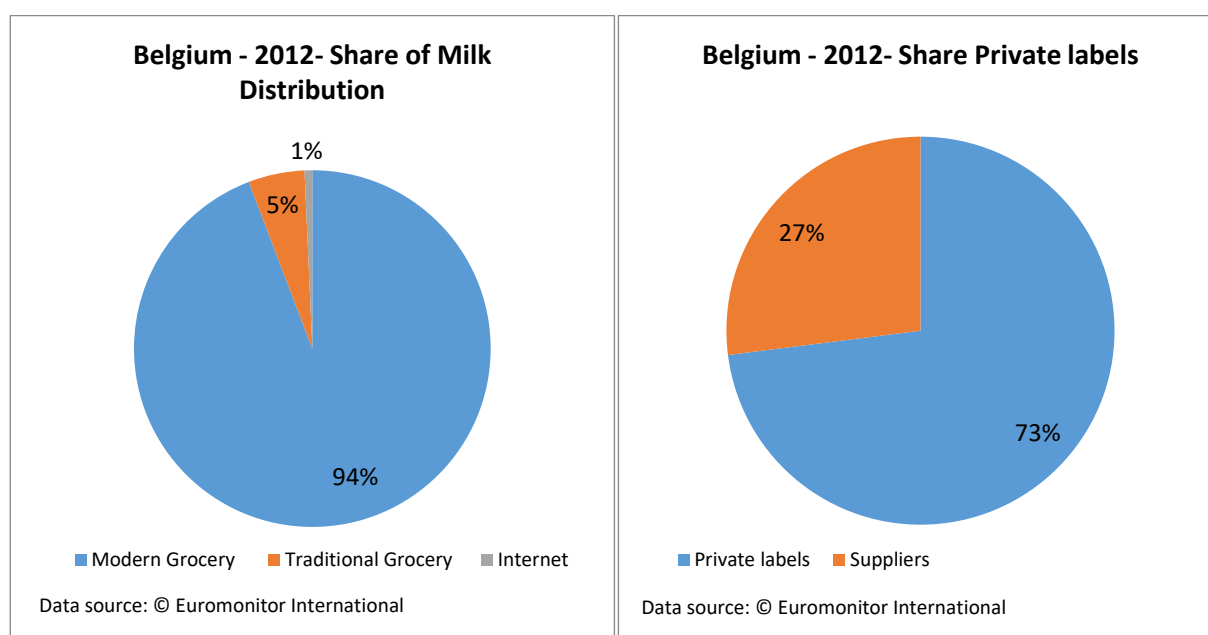
With this background in mind, we now consider in further detail the distribution of milk in two countries. You will find in the following pages two case studies: one for Belgium and the other one for Germany.

Belgium

According to DG COMP study, Belgium shows the highest growth of imbalance, with supplier concentration growing faster than retail concentration (p371). For 2012, the study indicates the following:

- a private label share of 62% in milk (p292);
- a supplier concentration with ³⁹ an annual growth of 2.3% since 2004 (p304);
- a retail (group level) concentration decreasing annually by 1 % since 2004 (p303);
- a modern grocery retail share of edible grocery of 83% (p67) at national level – i.e. 11 points below the modern grocery retail share of the milk category;
- a measure of imbalance: supplier concentration increasing at the detriment of retail concentration by 11.5% a year since 2004 (p372).

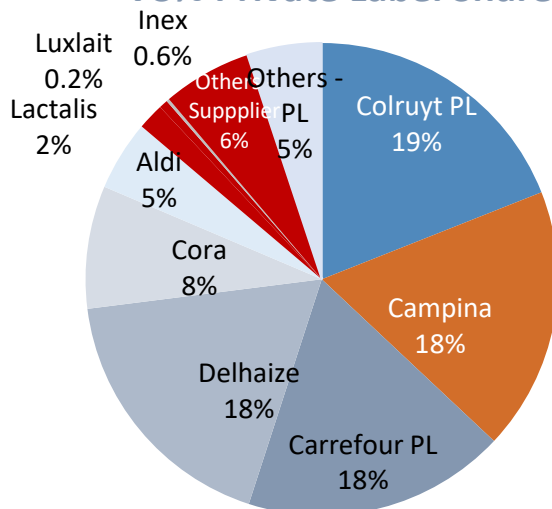
However, it is not credible to claim that the distribution of milk in Belgium is balanced in favour of suppliers. The opposite is true. The reason for this is that private label accounts for a clear majority of the supply of milk in Belgium. The study suggests the share of private label to be 62%. Euromonitor data, shown in the figures below, indicates that private label accounts for a share of 73% of the distribution of milk in Belgium.



³⁹ HHI: the sum of the squares of market shares of suppliers for category supplier only market (in this case on the remaining category market of 38%)

2012 - Share of Milk Sales - Belgium

73% Private Label Share



Based on the above data, we see on the contrary that:

- there are no alternative channels left for suppliers for selling milk in Belgium, as modern grocery retail controls 94% of the distribution
- In addition, Belgium is among the countries with the highest private label shares in the category: among the top 5 suppliers in the category, we find 4 retail brands for one brand supplier.

Contrary to the study's conclusion, the Belgian milk market is therefore characterized by a strong imbalance in favour of retailers, rather than in favour of suppliers. The study's erroneous conclusions are due to the following two factors:

- the report doesn't consider – as the consumer does - the whole category with all the players – be they retail or manufacturer brands, it analyses the market as two different markets;
- the “supplier market” has been reduced to 27% - with consequently less suppliers

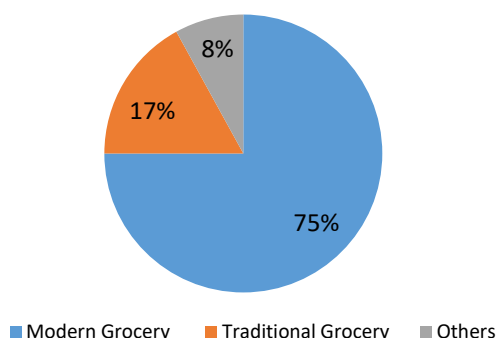
Let us now consider the second case study on the following pages: Germany.

Germany

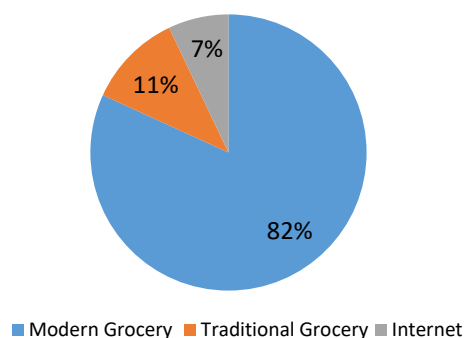
On the measures of the study, the German market has seen the highest growth of supplier concentration for milk in the EU (p137) -9.6% annually (from HHI 441 to 915) from 2004-2012. But again this is a misleading conclusion.

- modern grocery retail share of the distribution of drinking milk products grew by 7 points
- According to the German competition inquiry, the top 5 retailers control 70% of the distribution of milk:

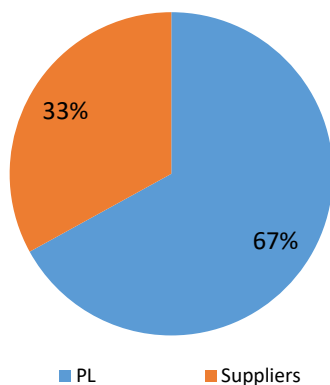
Germany - 2004- Share of Milk Distribution



Germany - 2012- Share of Milk Distribution

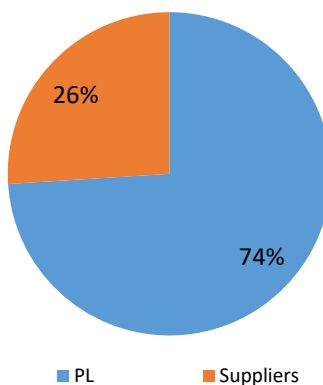


Germany - 2005- Share of PL



Data source: © Euromonitor International

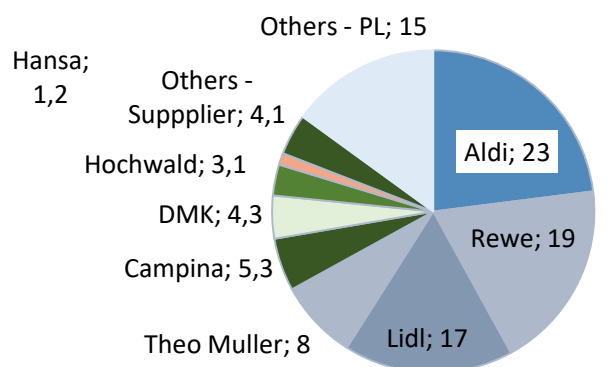
Germany - 2012 Share of PL



Data source: © Euromonitor International

- Euromonitor finds the share of private labels in Germany in 2012 to have been:
 - for all drinking milk products – flavoured or not: 62,5%
 - For milk only 74.3%

2012 - Share of Milk Sales - Germany - 74% PL



Data source: © Euromonitor International

The study finds that:

- Supplier concentration increased, at an annual growth (CAGR) of 9.6% since 2004 (p372)

- While recognizing an imbalance, the retail side being more concentrated than the supplier side, the imbalance would decrease annually by 1.4% (p372), retail concentration growing at a lower rate than supplier concentration (5% at national level, p300, versus 9.6% for milk suppliers).

Based on the above data, we see

- An increase of modern grocery retail share of distribution by 7 points
- An increase of private label share by 7 points too – which means that the “supplier market “ has been reduced by the same amount.

In conclusion,

- if increased supplier concentration is found, the reasons are:
 - A reduction in the number of players – in 2005, there were 13% “other players” with share below 0.1%, it dropped to 4.1% in 2012.
 - Among the suppliers identified, we see a reduction of 8% in numbers if looking only at “suppliers without identified private labels”. If we consider the category with all its suppliers – be they manufacturer or retailer brands, we see a reduction of 10% in the number of players.

A mathematical demonstration

1. Were we to consider the category as a market, and apply the measure of national supplier concentration in a product category as defined in the report for the full market (p 87) considering “private labels” as one supplier (p219) we would have a supplier concentration level for the milk category at 5711 in 2012

Company Shares (by Global Brand Owner) | Historic | Retail Value RSP | % breakdown

Geograph	Categ	Companies	2005 % share	2005 HHI	2012 % share	2012 HHI	CAGR
Belgium	Milk	Royal FrieslandCampina NV	18,1	328	18,1	328	0
Belgium	Milk	Lactalis, Groupe	2,1	4	1,8	3	-4%
Belgium	Milk	Inex NV SA	0,5	0	0,6	0	5%
Belgium	Milk	Luxlait SA	0,2	0	0,2	0	0
Belgium	Milk	Chevardennes NV SA	0,2	0	0,1	0	-18%
Belgium	Milk	Danone, Groupe	2,7	7	0,0	0	-100%
Belgium	Milk	Private Label	72,5	5256	73,1	5344	0,30%
Belgium	Milk	Others	3,7	14	6,0	36	15%
Belgium	Milk	Total	100,0	5610	100,0	5711	0,30%

Research Sources:

© Euromonitor International

2. Were we as the report does to consider the share of suppliers in the ‘branded market’ (excluding private labels altogether), as a measure of national supplier concentration in a product category, we would have a supplier concentration level for the milk category of 5.113 and growing in 2012... while the “supplier market” shrank following private label growth.

Company Shares (by Global Brand Owner) | Historic | Retail Value RSP | % breakdown

Geograph	Categories	Companies	2005 % category share	2005 % share of supplier market	2005 HHI on supplier market	2012 % category share	2012 HHI on supplier market	2012 HHI on supplier market	CAGR
Belgium	Milk	Royal FrieslandCampina NV	18,1	65,8	4332	18,1	67,5	4561	
Belgium	Milk	Lactalis, Groupe	2,1	7,6	58	1,8	6,7	45	
Belgium	Milk	Inex NV SA	0,5	1,8	3	0,6	2,2	5	
Belgium	Milk	Luxlait SA	0,2	0,7	1	0,2	0,7	1	
Belgium	Milk	Chevrardennes NV SA	0,2	0,7	1	0,1	0,4	0	
Belgium	Milk	Danone, Groupe	2,7	9,8	96	0,0	0,0	0	
Belgium	Milk	Others	3,7	13,5	181	6,0	22,4	501	
Belgium	Milk	Total "Supplier Market"	27,5		4672	26,8	100,00	5113	1,3%

Research Sources:

© Euromonitor International

3. Were we to measure imbalance as the study does by $\log \frac{HHI(\text{retail side})}{HHI(\text{supply side})}$, using the retail concentration HHI at retail group level provided by the report which appears to have been used for their estimate p303: Belgium = 2023

Log (2023/5113) = - 0.4 – supplier concentration stands higher than retail concentration.

4. Were we – as the consumer does – to look at the category offer of all individual suppliers – be they retail or manufacturers brands, we would have a supplier concentration level at 1542 HHI in 2012 for milk

Company Shares (by National Brand Owner) | Historic | Retail Value RSP | % breakdown

Geograph	Categories	Companies	2005 % share	2005 HHI	2012 % share	2012 HHI	CAGR in %
Belgium	Milk	Etn Franz Colruyt NV	18,4	339	19,0	361	0,9
Belgium	Milk	FrieslandCampina SA NV	18,1	328	18,1	328	0
Belgium	Milk	Carrefour Belgium SA/NV	18,8	353	17,7	313	-1,7
Belgium	Milk	Delhaize 'Le Lion' SA	18,1	328	17,7	313	0
Belgium	Milk	Others	9,1	83	11,4	130	6,6
Belgium	Milk	Cora SA/NV	7,4	55	8,4	71	3,7
Belgium	Milk	Aldi NV/SA	4,2	18	4,8	23	3,6
Belgium	Milk	Lactalis Europe du Nord	2,1	4	1,8	3	-4,0
Belgium	Milk	Inex NV SA	0,5	0,3	0,6	0,4	4,0
Belgium	Milk	Luxlait SA	0,2	0,0	0,2	0	0,00
Belgium	Milk	Chevrardennes NV SA	0,2	0,0	0,1	0	0,00
Belgium	Milk	Danone NV/SA	2,7	7	0,0	0	-100
Belgium	Milk	Total		1514		1542	0,2

Research Sources:

© Euromonitor International

5. Were we then – as the study does – to establish a measure of power or imbalance, between retail and suppliers, and consider the category as two different “markets”, we could

- A) ° Compare the respective HHI of each “supplier” market – retail and manufacturer brands: the measure of imbalance shows a retail concentration higher than suppliers’ “ $\log (1106/367) = + 0.47$

Company Shares (by National Brand Owner) | Historic | Retail Value RSP | % breakdown

Geograph	Categories	Companies	2005 % share	2005 HHI	2012 % share	2012 HHI	CAGR in %
Belgium	Milk	Etn Franz Colruyt NV	18,4	339	19,0	361	0,9
Belgium	Milk	Carrefour Belgium SA/NV	18,8	353	17,7	313	-1,7
Belgium	Milk	Delhaize 'Le Lion' SA	18,1	328	17,7	313	0
Belgium	Milk	Cora SA/NV	7,4	55	8,4	71	3,7
Belgium	Milk	Aldi NV/SA	4,2	18	4,8	23	3,6
Belgium	Milk	Others PL	5,4	29	5	25	

Private Label "concentration" level

1121

1106

0

Company Shares (by Global Brand Owner) | Historic | Retail Value RSP | % breakdown

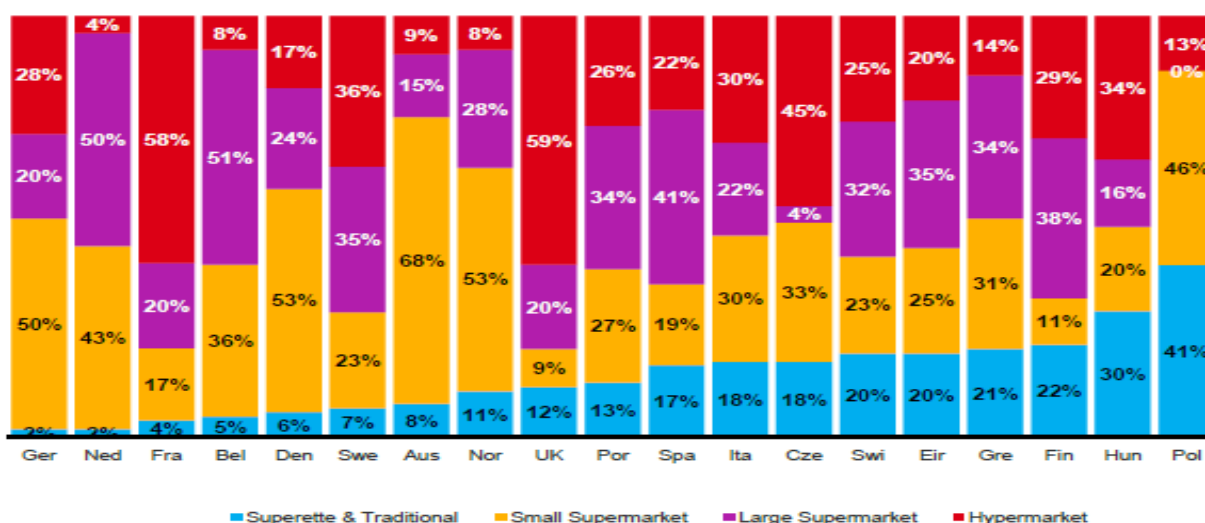
Geograph Categories		Companies	2005 % share	2005 HHI	2012 % share	2012 HHI	CAGR in %
Belgium	Milk	FrieslandCampina SA NV	18,1	328	18,1	328	0
Belgium	Milk	Lactalis Europe du Nord	2,1	4	1,8	3	-4,0
Belgium	Milk	Inex NV SA	0,5	0,3	0,6	0,4	4,0
Belgium	Milk	Luxlait SA	0,2	0,0	0,2	0	0,00
Belgium	Milk	Chevrardennes NV SA	0,2	0,0	0,1	0	0,00
Belgium	Milk	Danone NV/SA	2,7	7	0,0	0	-100
Belgium	Milk	Others suppliers	3,7	14	6	36	
Belgium	Milk	Supplier concentration level		354		367	-1%

- B) Compare the degree of modern grocery retail concentration with the brand supplier concentration in the category. Ideally that measure should be done with the modern grocery retail concentration for the category and not – as the report does – using a single national modern grocery retail concentration level.

In spite of this, were we to use the retail concentration HHI used by the study for Belgium in 2012 (HHI=2023), the measure of imbalance: $\log(2023/367)$ would be – again – but even more, to the detriment of suppliers. The degree of retail concentration being higher, the level of imbalance would stand at + 0.74.

Appendix 5: Homogeneous conditions – heterogeneous markets

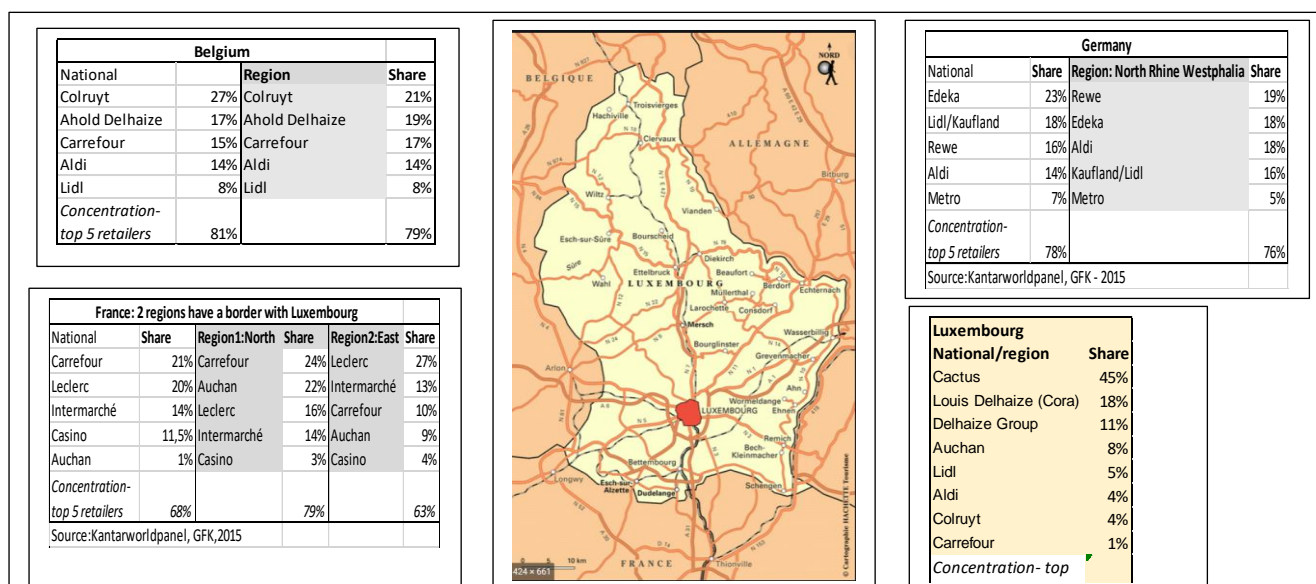
1) Heterogeneous formats- stores size, various spaces, hence various assortments



2) Heterogeneous suppliers – power of local brands suppliers – Soft drink suppliers – Rank order

Diversity of Soft Drinks suppliers - top 15 in each market - 2018		© Euromonitor International	Retailer brands - Retailer dual role as supplier	
Portugal	France	Belgium	Germany	Croatia
Sumol+Compal SA	Alma Group, The	Coca-Cola Co, The	Aldi Einkauf GmbH & Co oHG	Agrokor dd
Coca-Cola Co, The	Nestlé SA	Spadel SA, Groupe	Coca-Cola Co, The	Coca-Cola Co, The
Heineken NV	Danone, Groupe	Nestlé SA	Lidl & Schwarz Stiftung & Co KG	Kofola SA
Super Bock Group SGPS SA	Coca-Cola Co, The	Alma Group, The	Rewe Markt GmbH	Stanic Beverages doo
Águas das Caldas da Penacova SA	Carrefour France SA	Danone, Groupe	PepsiCo Inc	Atlantic Grupa dd
Grupo EAA	Suntory Holdings Ltd	PepsiCo Inc	Bitburger Braugruppe GmbH	Naturalis doo
PepsiCo Inc	Galec - Centre Distributeur Edouard Leclerc	Etn Franz Colruyt NV	Hassia Gruppe	Vindija dd
Waterbunkers SGPS SA	Auchan France	Ahold Delhaize 'Le Lion' SA	Danone, Groupe	Kofola CeskoSlovensko as
Unilever Group	ITM Entreprises SA	Suntory Holdings Ltd	Franken Brunnen GmbH & Co KG	PepsiCo Inc
Sonae Modelo Continente Hipermercados SA	PepsiCo Inc	Carrefour Belgium SA/NV	Rheinfelsquelle H Hövelmann GmbH & Co KG	Nectar doo
Águas Canalvelhos SA	Système U Centrale Nationale SA	Unilever Group	Nestlé SA	Nestlé SA
Suntory Holdings Ltd	Unilever Group	Red Bull GmbH	Eckes-Granini Group GmbH	Dona Napitici doo
Outeirinho - Turismo e Indústria SA	Nerios Groupe	Eckes-Granini Group GmbH	Vilsa-Brunnen O Rodekohl GmbH & Co	Lidl
Nestlé SA	Britvic Plc	Monster Beverage Corp	Adelholzer Alpenquellen GmbH	Suntory Holdings Ltd
Unicer - Bebidas de Portugal SA	Eckes-Granini Group GmbH	Standard Investment Management BV	Mineralbrunnen Überkingen-Teinach AG	Rauch Fruchtsäfte GmbH & Co OG

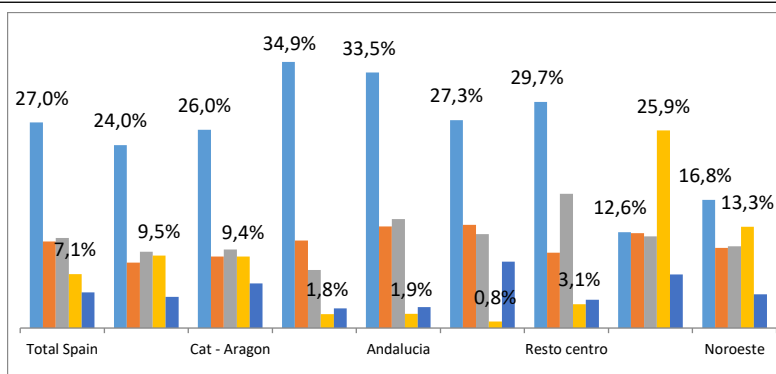
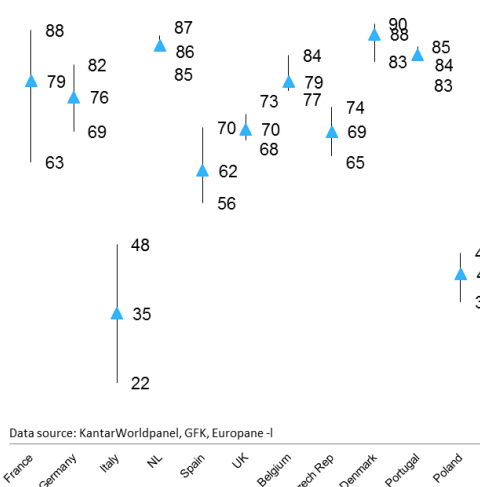
3) Heterogeneous competitive environment – different retail at sub- cross national levels



Appendix 6: the need to adapt market power measures per each sub-market considered

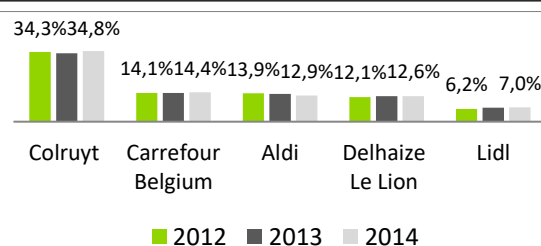
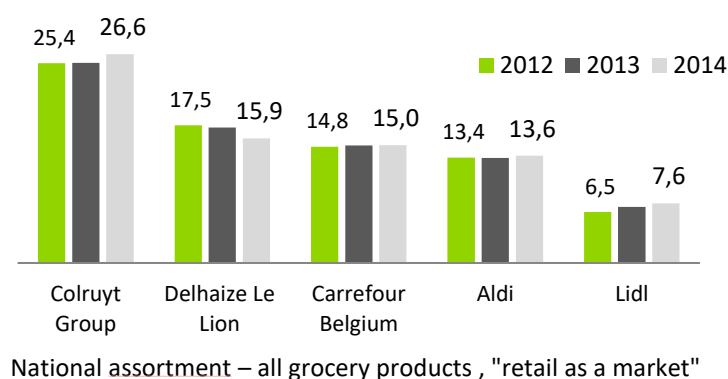
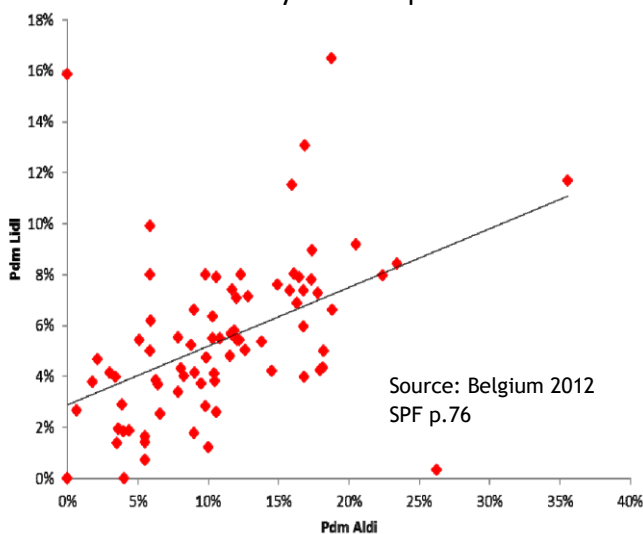
1) Spread of retailers concentration level at sub national level

Top 5 retailers concentration in 2015 per region: min, max and national average



- Market leader – gap with others
- Dispersion of share from 13% to 35%
- Challenger from 1% to 26%

2) Spread of retailer share per different products categories sold, at time dominant, twice the national average. An analysis using retail market national share per all products does not reflect correctly the competitive concern for certain suppliers



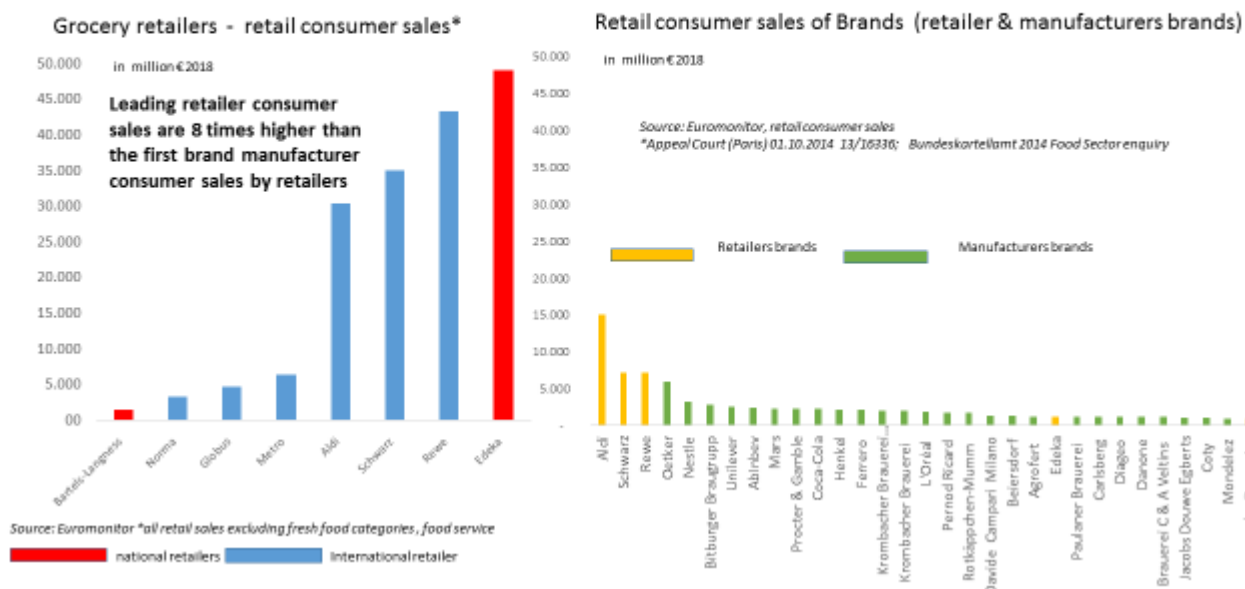
Assortment at National Level on 78 product categories
Market leader share close to dominance, (35% vs 27%):
+ 8%

Appendix 7: Economic Dependency –Gatekeeper power

1) The respective weight of the undertakings on a given market

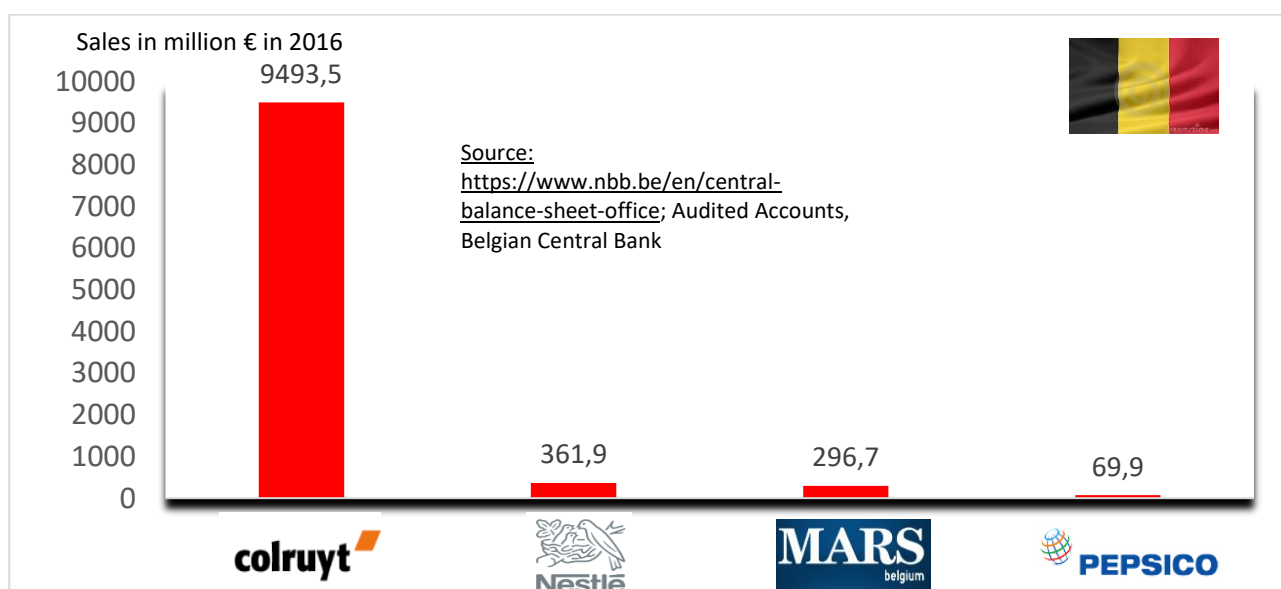
Imbalance of forces: Retail buyer power in grocery– Germany 2018

*“all suppliers are dependant of the retail order to sell their production”**



The retail gatekeeper power is reinforced by the asymmetry in the relationship between retailers, be them off or online/platforms, and brand manufacturers. Retail compete on several products and service markets. Retail compete on several products and service markets. As retailers stated themselves *“supermarkets ...do not compete with individual products but with their full product portfolio”*⁴⁰.

2) Buyer Power : the need for like for like comparison. Same geographic market with regard each full range



⁴⁰ Ahold, leading Dutch retailer, (N°14 global retailer in 2019) 28.09.2009, letter, HT.1171 stakeholder input, comments regarding review block exemption regulations and guidelines on vertical restraints

About AIM

AIM is the European Brands Association representing brand manufacturers in Europe on key issues which affect their ability to design, distribute and market their brands.

AIM comprises 2500 businesses ranging from SMEs to multinationals, directly or indirectly through its corporate and national association members. Our members are united in their purpose to build strong, evocative brands, placing the consumer at the heart of everything they do.

AIM's mission is to create for brands an environment of fair and vigorous competition, fostering innovation and guaranteeing maximum value to consumers now and for generations to come. Building sustainable and trusted brands drives investment, creativity and innovation to meet and exceed consumer expectations. AIM's corporate members alone invested €14 billion in Research & Development in Europe in 2014, placing them fifth in the EU ranking of R&D investment.

AIM's corporate members

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