



Regulating Retailer Buyer Power: What Role for EU Competition Law?

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Buyer power and the rise of retail chains

- The food retail sector in historical perspective
- Changes in the power balance between buyers and suppliers
- Developments not unique to the EU
- Developments not unique to the grocery sector

The complaints

- Excessively low purchasing prices
- UTPs
 - Ambiguous contract terms
 - Retroactive contract changes
 - Unfair transfer of commercial risk
 - Unfair use of information
 - Unfair termination of contractual relationships
- Private labels

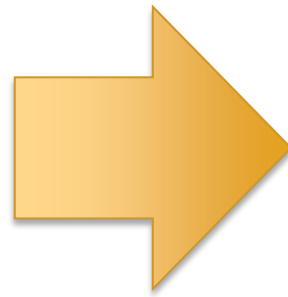
Retail power and EU competition law

- **The €1 000 000 question: Is retailer buyer power problematic under EU competition law?**



The “standard” approach to buyer power

- Emphasis on consumer welfare/downstream effects
- Suspicion about rent-seeking
- Preference for non-intervention or for “other remedies”



- Limited intervention at the EU level
- Uncertainty about the scope of application of the competition rules
- Proliferation of divergences in the EU
- Continued pressure for solutions

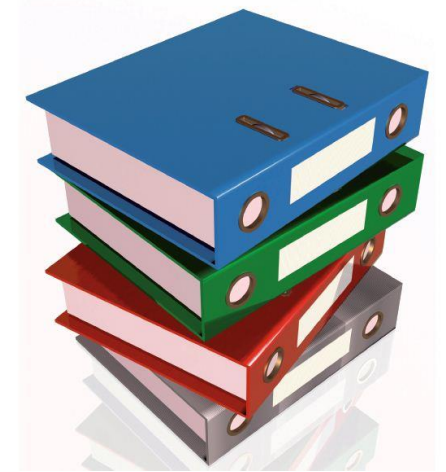
Rethinking the standard approach

- Three reasons to rethink the standard approach:
- State of the law
- Concerns about the effect and effectiveness of “other” laws
- Role of EU competition law

Buyer Power: State of the Law

Buyer power and competition law: state of the law

- Buyer cartels, market sharing and information exchange agreements – restrictions by object
 - *Raw Tobacco Spain, Raw Tobacco Italy, T-Mobile*
- Rules on VRs
 - Market share thresholds introduced
 - Exclusive supply, exclusive distribution, upfront access payments
- Abuse of dominance (exploitative and exclusionary abuses)
 - *CICCE*
 - *British Airways*
- Mergers (in the food sector)
 - *Kesko/Tuko, Carrefour/Promodes, Rewe/Meinl*
 - *Danish Crown/Vestjyske Slagterier, Sovion/HMG, Sovion/Südfleisch*



The consumer welfare question

- Introduced and embedded in *soft* law
- One among several elements of analysis - market integration objective remains important
- Primacy or necessity of consumer welfare – dismissed by the Courts:
 - *T-Mobile, Glaxo*
 - *British Airways, Intel*
- *Legally* speaking, EU competition law is not meant to protect only or even primarily consumer welfare.



The verdict

- There is no legal basis for treating buyer power any differently from seller power
- Contradiction: consumer welfare/downstream effects analysis remain a fundamental part of competition law assessments in Commission soft law.
- Contradiction: if the rules apply to buyer power, why no EU case on the exercise of buyer power in the food sector?



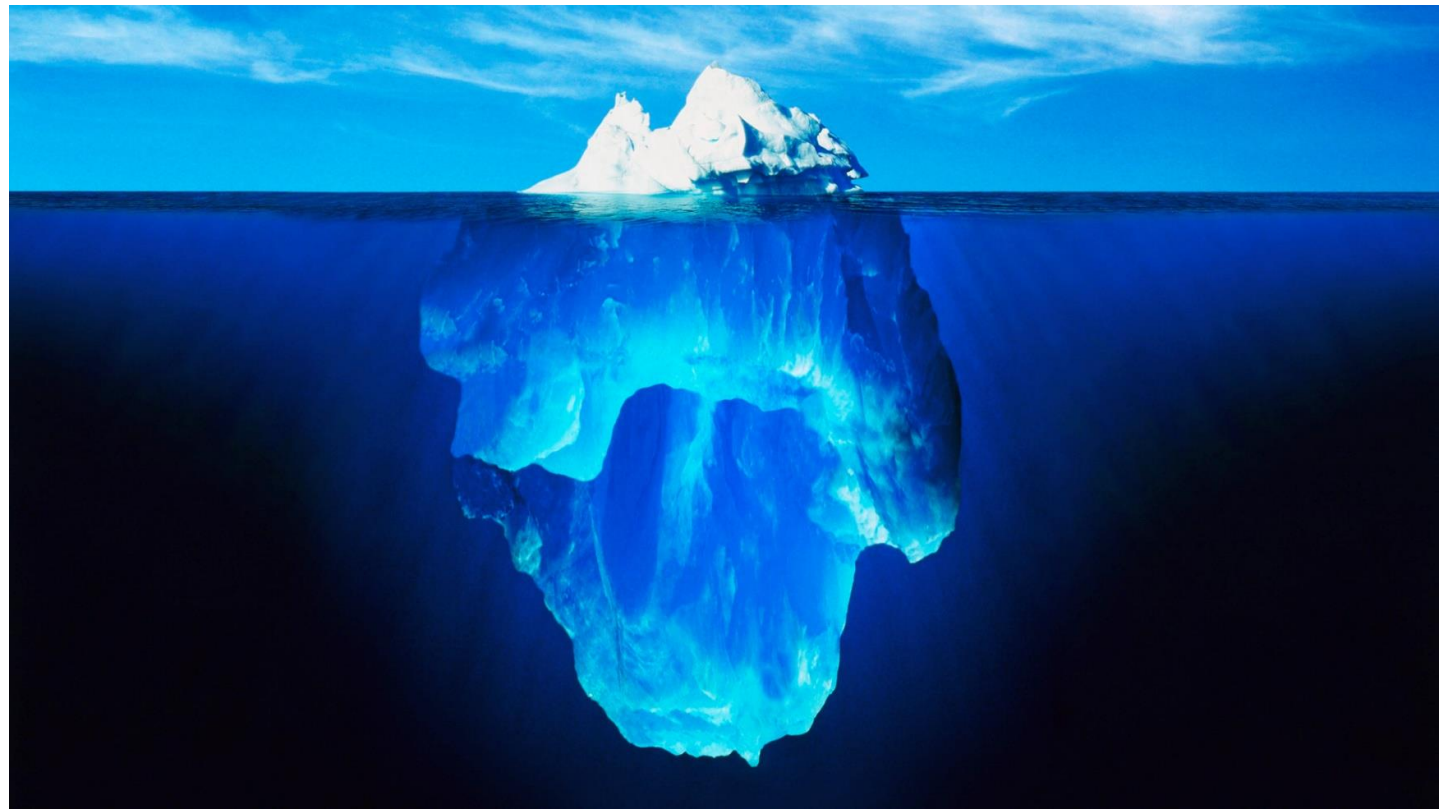
The “Other” Laws

A fragmented legal landscape?

	Stricter competition law	Legislation on UTPs	Private/Soft Regulation	Economic Dependency
Food Sector Specific	Czech Republic Finland Latvia	Austria France Hungary Italy Lithuania Portugal Romania Slovak Republic Spain	Belgium France Netherlands Slovenia UK EU	
General	Germany	Germany		Austria Cyprus France Germany Greece Hungary Italy Portugal Romania Spain

Concerns

- Effectiveness
- Competition
- European integration
- Perverse (side) effects
- Costs of regulation



The Role of EU Competition Law

The goals of EU competition Law

- Efficiency, growth, consumer interest
- Competitiveness
- Internal market
- Competition law as part of the economic constitution of the EU

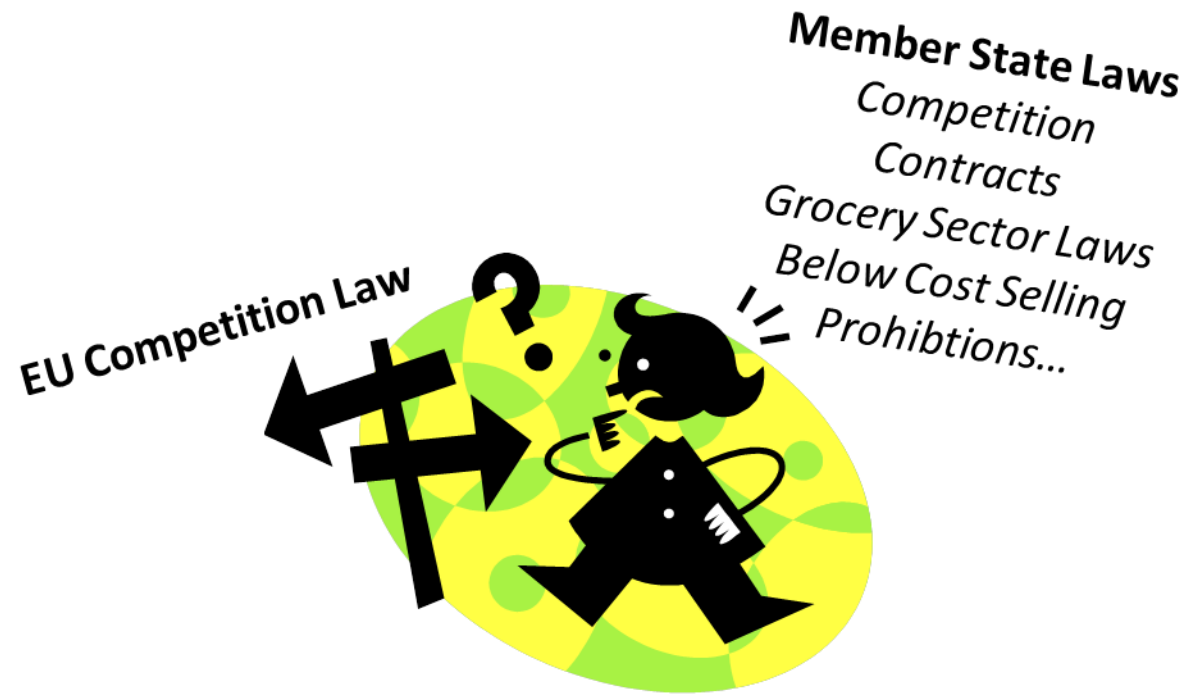


The food sector “issues” and the modernization agenda

- More economically sensible enforcement
- More efficient enforcement
- More enforcement

Without compromising

- Uniformity
- Quality of decision-making



EU competition law : the solution to issues in the food sector?

- Legal certainty
- Efficiency
- Effectiveness
- Coherence of law
- Level playing field

A photograph of a modern university building with large windows and a concrete walkway. In the foreground, there are several bicycles parked in a rack, a trash bin, and a concrete planter with green plants. Two people are sitting on a ledge in front of the building. A large green semi-transparent overlay covers the right side of the image, containing the text 'Thank you' and an email address.

Thank you

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