

The Power of Supermarkets: Serving Consumers or Threatening Competition?

Javier Berasategi

Seminar om maktforholdene i verdikjeden for mat i et europeisk perspektiv
Norwegian Agricultural Authority
Oslo, 9.11.2011

Food for Thought

"We can't solve problems by using the same kind of thinking we used when we created them"

Albert Einstein

Google

- High market shares in Internet search engine market
- Free service but Google makes money out of other services (B2B mainly)
- Google vertically integrates into other “upstream” service markets
- Allegations of discriminatory treatment of competing upstream service providers (bait & switch deception)
- Competition investigations in the US and EU
- Political/regulatory debate on Net Neutrality
- Google’s main defence
 - Rival search engines do the same
 - Consumers are one click away...or not?

Sellers

- Competition law is about competitive markets
- Use of indirect (structural) evidence:
 - Market structure (market shares)
 - Countervailing power
 - Barriers to entry and expansion
- Direct evidence relegated
- Heavily regulated: 40% dominance presumption, 30% safe harbour for vertical agreements, hard core restrictions, parallel networks
- OECD Roundtable: Dominance/Monopoly power (2006)

Supermarkets

- Competition law is about end-consumer welfare
- Supermarket buyer power in the procurement market is not harmful as long as the retail market is competitive
- Pricing and net operating margins suggest that retail markets are competitive
- The waterbed theory is too speculative: low procurement/selling prices are good even if they exclude competitors
- Legal barriers to retailer entry and expansion are high so competition advocacy required
- OECD Roundtable: Buyer Power (2008)

Two-sided Platforms

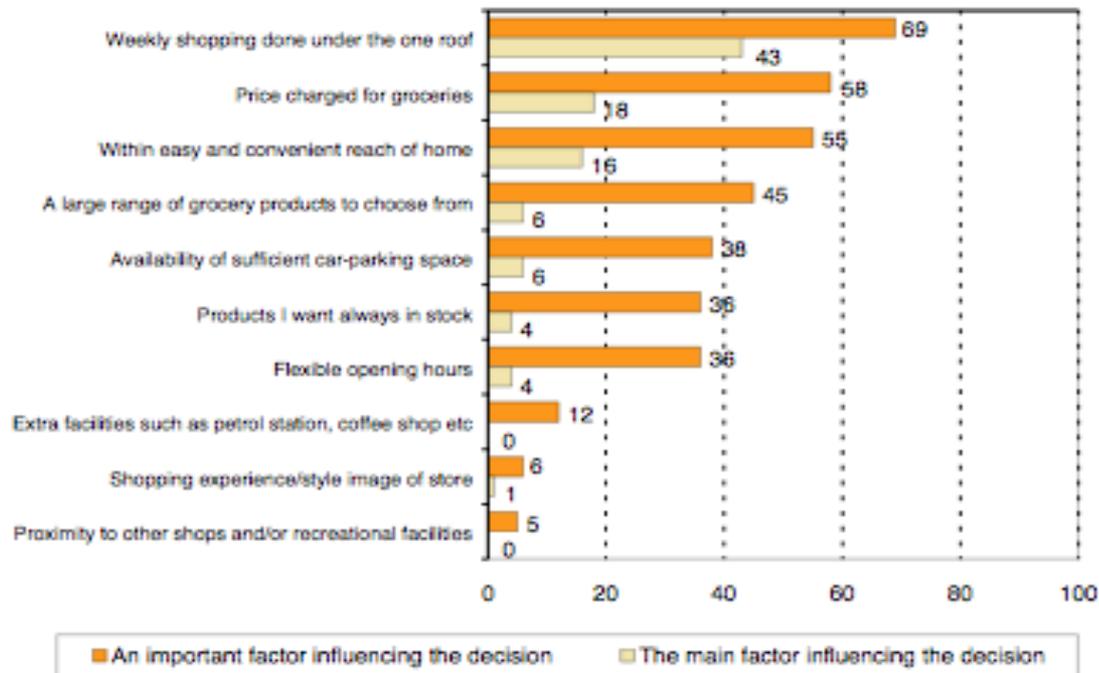
- Concept:
 - two distinct groups of consumers who need each other in some way and who rely on the platform to intermediate transactions between them
 - indirect externalities across groups of consumers
 - the price structure of the platform affects the level of transactions
- Competition law focuses on each affected market: media advertising, call termination, credit card networks, Internet platforms
- Scope for cross-efficiencies is limited/absent
- Competitive bottleneck problems if single-homing in one side (Armstrong, 2002; endorsed by EC)
- Regulation may be necessary when the single-homed side is competitive but total welfare is reduced (Armstrong, 2002; endorsed by EC)
- OECD Roundtable: Two-sided Markets (2009)

Law must conform to business reality

- Supermarkets are not buyers but sellers of services to independent brands and consumer (two-sided platforms)
- Supermarkets are competitive bottlenecks (consumers single-home)
- Supermarkets lever this power into brand market (vertical integration)
- Theory of harm (restriction of competition):
 - Brands (procurement): innovation, quality, variety...even prices!
 - One-stop shop (retail): monopolistic (spatial) competition
 - Self-reinforcement (Rewe/Meinl)
- Practical cases: prices and innovation

Competitive Bottlenecks

Determinants of store choice



Q. What are the factors influencing your decision about where to do your main grocery shopping?

Base: All respondents (982)

Competitive bottlenecks

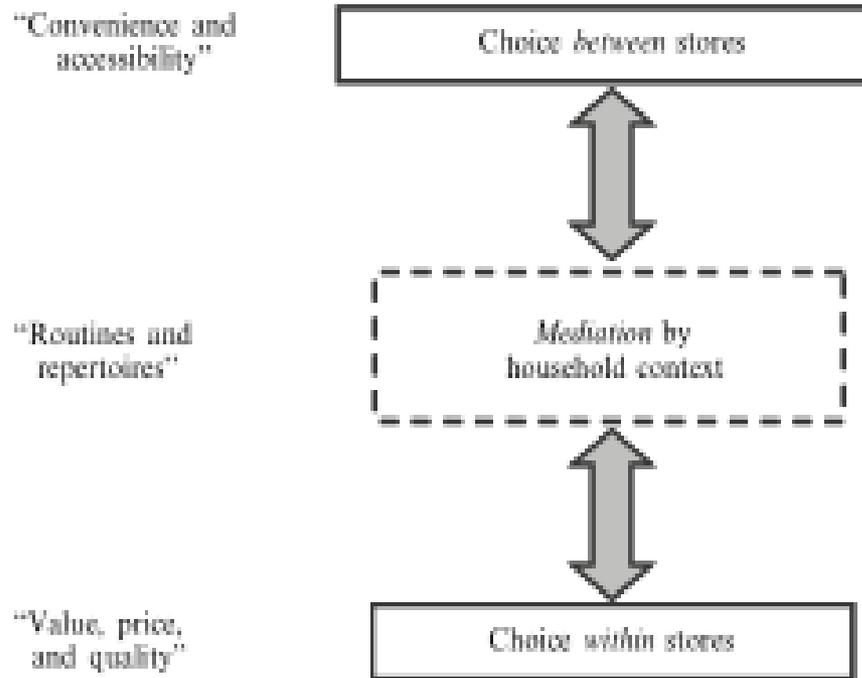


Figure 1. The mediation of consumer choice by household context.

Hallsworth et. al. “Retail restructuring and consumer choice 2. Understanding consumer choice at the household level”, Environment and Planning A, 2006

Competitive bottlenecks

- 85% of shoppers had used the same store over the past year. For those who had made a change to a 'new' store, a third did so for price-related reasons.
- 54% of shoppers claimed to almost always visit the same supermarket for their main grocery shopping, whilst 26 per cent were semi-loyal and 14 per cent regularly used two stores. The main reasons for not changing store were ease of access by car (36 per cent), unfamiliar store layout (34 per cent) and relative convenience of location (30 per cent).
- A sizeable 2 in 5 could [not] shop at their first choice of supermarket—almost 3 in 5 of these were of social class C2DE and less likely to utilize a car, therefore transport/distance from home were potentially the impeding factors.
- The survey results were examined in more detail in an attempt to identify particular influences on switching behaviour, and to find out more about the general profile of the 15 per cent of main shoppers who had switched supermarkets for their main grocery shopping within the last 12 months. This was potentially an important group that might exercise a constraint on the price-setting behaviour of the multiples.
- There does indeed appear to be a relationship between likelihood of having switched supermarket within the last 12 months and frequency of price comparison across different supermarkets/stores. 10 per cent of those who never compared prices had switched, a figure that rises steadily to 22 per cent of those who always compared prices.

TABLE 7 Propensity to switch supermarket for main grocery shopping, cross-tabulated against frequency of price comparison between different supermarkets

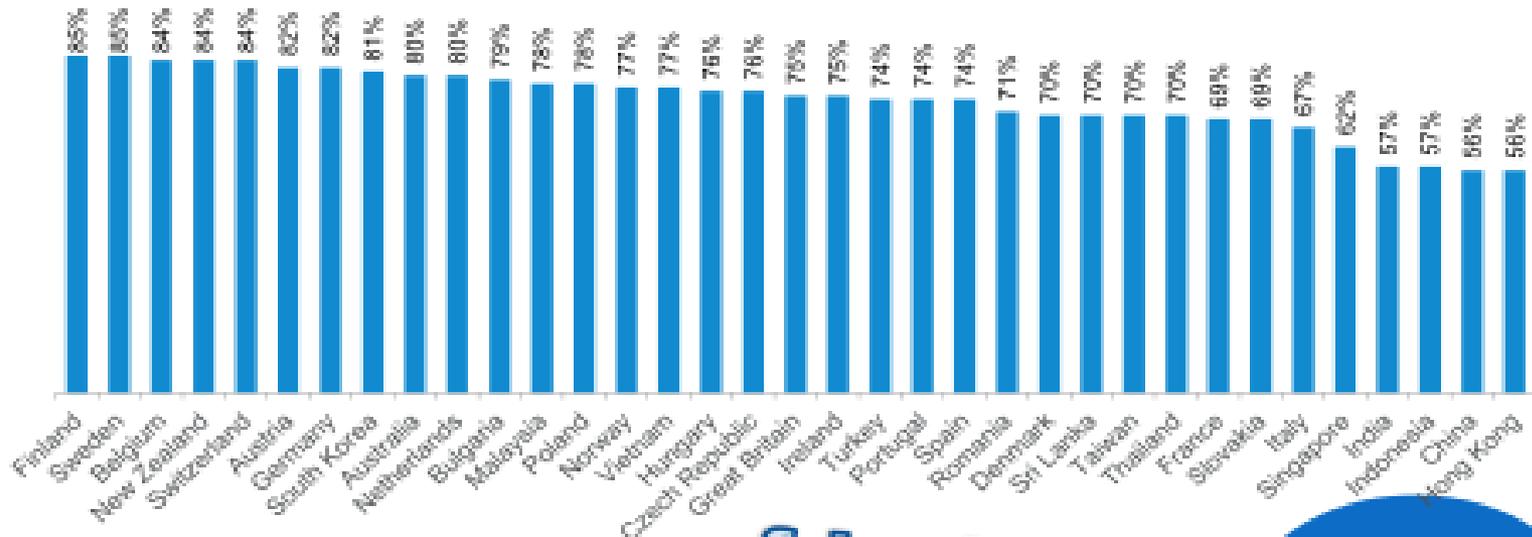
Switched?	Total	Frequency of price comparison					per cent
		Never	Rarely	Sometimes	Usually	Always	
Yes	15	10	16	17	20	22	
No	85	89	84	82	79	78	

Source: CC consumer survey.

Competitive Bottlenecks

Store visit Triggers

"I shopped at the same store I always do"



The power of habit



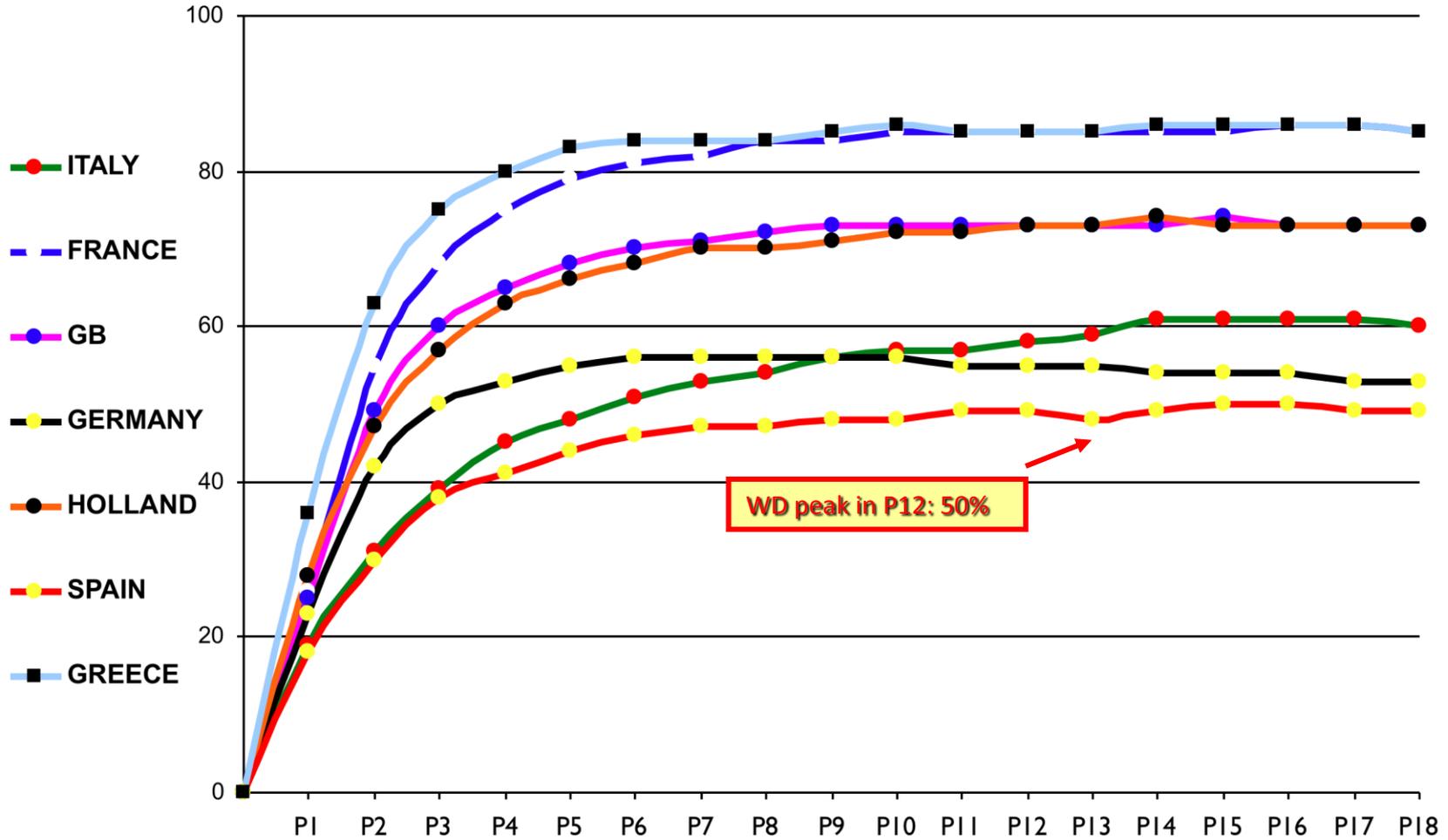
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Prices

- French Delegation, OECD Roundtable: Buyer Power
- Galland Law (off-invoice payments not accounted for below cost selling prohibition)
- Supplier payments in 1999-2005: from 22% to 33,5%
- Inflationary effect on retail prices
- Confirmation bias: suppliers fixed minimum retail prices through increased payments
- Supermarket power: payments increase revenues, reduce retail competition and promote retailer brands (foreclosure)

Innovation

Average Weighted Distribution of best launches (2006)

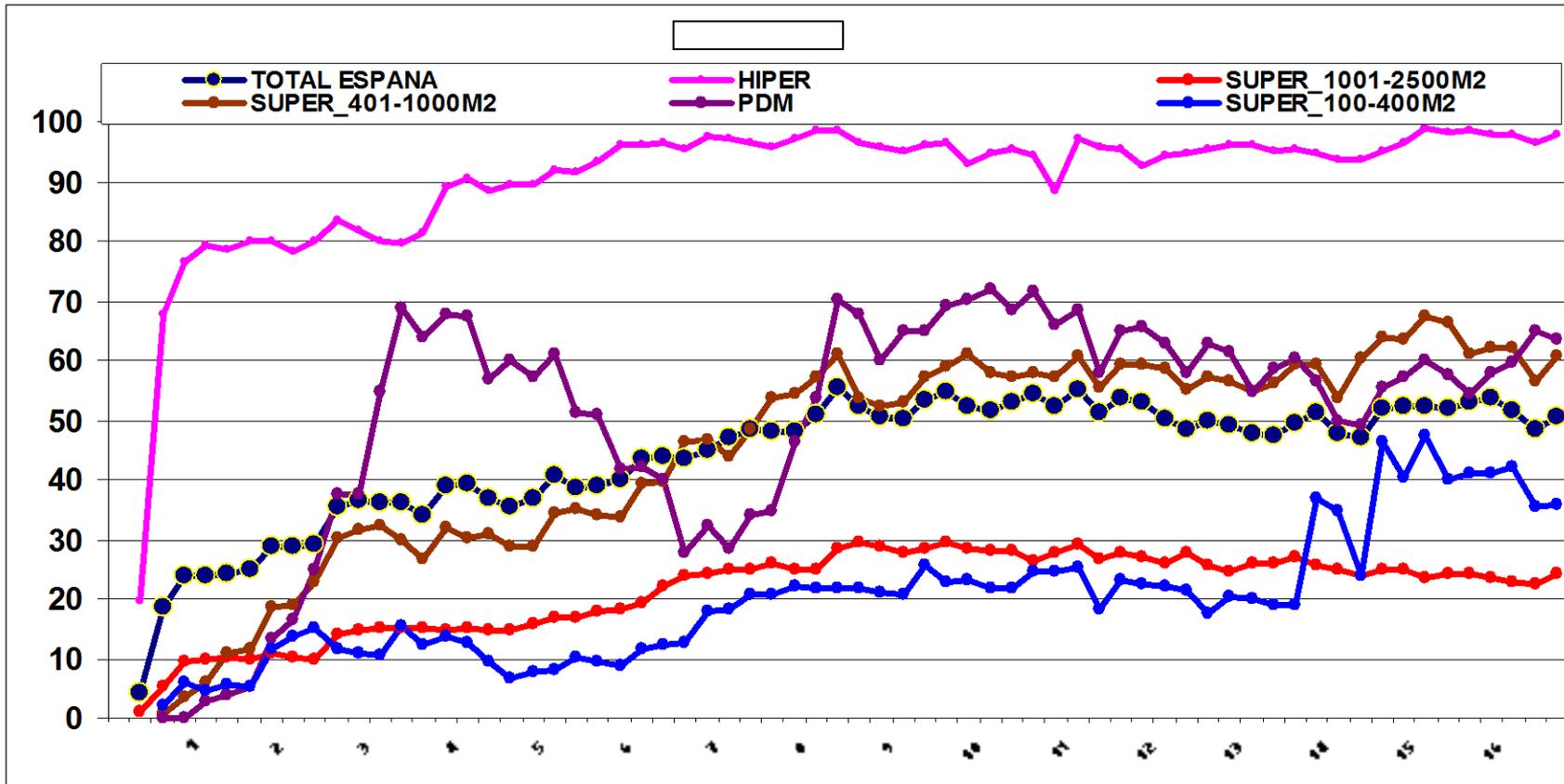


WD peak in P12: 50%

Source: SymphonyIRI Group, Estudio Lanzamientos Europeos 2006

Innovation

- Launch of new household product only achieves 50-55% retail distribution (limited to 25% in large supermarkets) in Spain



Innovation

Table 5.13 Number of products introduced in 2009

	France	Germany	Hungary	Italy	NL	Spain	UK	Total
Baking ingredients	33	124	15	72	74	6	54	378
Bread & bread products	104	94	37	218	151	32	65	701
Breakfast cereals	42	75	22	40	66	7	71	323
Cakes & pastries	90	166	18	202	95	16	230	817
Cereal & energy bars	43	68	18	61	27	7	84	308
Savoury biscuits/crackers	29	85	20	89	60	7	42	332
Sweet biscuits/cookies	187	251	60	232	122	26	159	1037
Total	528	863	190	914	595	101	705	3896
Cheese	218	202	71	350	34	13	43	931
Creamers	11	17	18	18	2	0	12	78
Dairy alternative drinks	11	3	4	20	21	5	13	77
Dairy drinks	24	96	30	69	31	24	43	317
Fats & spreads	10	17	35	28	6	0	11	107
Other dairy products	1	7	2	3	0	0	0	13
Yogurt	89	176	30	77	18	24	84	498
Total	364	518	190	513	112	66	206	1969
Fruits	86	66	10	103	38	6	51	360
Potato products	39	36	2	43	10	5	13	148
Vegetables	199	63	3	215	31	7	49	567
Juice & juice drinks	191	148	34	174	88	14	92	741
Total	515	313	49	535	167	32	205	1816

Source: Own elaboration on the basis of the INNOVA database.

Grand Total 1.407 1.694 429 1.962 874 **199** 1.116 8797

Source: The impact of private labels on the competitiveness of the European food supply chain (DG Enterprise, 2011)

Competition Remedies

- **Substance:** Two-sided markets are covered by competition rules!
 - Exclusionary practices (listing and category management)
 - Unfair terms (Article 102 but also BERs)
- **Legal means**
 - Article 102
 - Narrower market definition: Is each supermarket platform a market for brand competition (analogy with “call termination” and aftermarkets)?
 - Narrower market-share threshold (Rewe/Meinl)?
 - Focus on local concentrated retail markets?
 - Article 101
 - Abolish par. 27 Vertical Guidelines
 - Sector-specific Guidelines?
 - Grocery Retail Chapter in the Horizontal Guidelines: non-reciprocal commercialisation agreement between competitors?
 - Inapplicability of Vertical Regulation to abusive/unfair practices?
 - Tighter national competition rules: Report of the Spanish Competition Authority - unfair practices that restrict competition in the market (Article 3 Spanish Competition Law) - Latvia

Regulatory remedies

- **Supported by competition authorities: UK, Russia, Latvia, Spain, Portugal – Germany next?**
 - Fair dealing (UK / SP)
 - Written contracts (UK / SP)
 - No retroactive changes (UK /SP)
 - Compensation for changes to supply-chain procedures (UK)
 - Timely payments (UK / SP)
 - No payment for: marketing costs, shrinkage, wastage, consumer complaints unless attributable to supplier (UK /SP*)
 - Access payments limited to promotions (partial funding) and risk of new products (UK /SP*)
 - No tying of third-party products/services in exchange for remuneration (UK /SP)
 - Delisting for genuine commercial reasons and with a reasonable notice (UK/SP)
 - Non-discrimination between integrated and non-integrated brands: access, copycats, shelf space, margins, switch marketing (SP*)
 - No Most Favoured Customer clauses or access to other retailers' information (SP)
- * Partially covered
- **Beyond Competition Law**
 - Czech Republic, France, Hungary, Romania, Slovak Republic, Ireland (?)
- **Codes of Conduct:** unfit for market power unless substance and enforcement akin to regulation
- **Enforcement** is key: independent enforcer with ex officio investigatory powers

Conclusions

- The pro-buyer mindset is distorting the competition analysis (“confirmation bias”)
- If supermarkets’ service platform dimension is accepted market power and consumer harm can be found
- Widespread refusal of access, access degradation and other unfair practices may justify pro-active competition intervention (BER/Guidelines)
- Regulation may be necessary and efficient in light of widespread practices (market failure) and the enforcement trap

Up & down seller power v. in-between platform power



Javier Berasategi Torices

Email: jb@berasategi.es

Móvil: +34 688 606 389

T. 94 657 86 01

F. 94 494 50 29

Rodríguez Arias 23

B I L B A O

T. 91 423 09 90

F. 91 800 30 47

Claudio Coello 124

M A D R I D