

Examples of unfair trading & anticompetitive Practices in the European Supply Chain

2021

April, Belgium

The Belgian Competition Authority ruled that the negotiation of the purchasing conditions in the retail alliance, **Carrefour Provera**, present significant risks of information exchange between the parties and that the functioning of the purchasing alliance could likely impact the commercial strategy of Carrefour and Provera, notably by requesting a common assortment of products between the two retailers. The retail alliance engages to restrict its activities as well as create a separate legal entity, with strict protocol to avoid the exchange of sensitive information among the competing retailers. [Décision](#) n° ABC-2021-I/O-06-AUD du 28 avril 2021.

March, France

French Court [confirmed](#) the authority fine on **Carrefour** for having imposed on its suppliers payments not related to the sales of their products, out of the scope of the existing supply agreements.

<https://www.economie.gouv.fr/dgccrf>

March, Germany

The Federal Cartel Office is investigating the retail giants **Edeka**, **AgeCore** member, and **Kaufland**, EMD retail alliance member, on suspicion that they may have abused their buying power vis-à-vis suppliers and violated the so-called "tapping ban" in the ongoing takeover of Real (**Metro**, Horizon retail alliance member) stores by Edeka, Kaufland and other chains. They would have request suppliers discounts in violation of antitrust law. Bundeskartellamt's 20th International Conference on Competition 4.3.2021 in [press](#) [5.3.2021](#)

February, Spain

The Supreme Court confirmed the decision of the Appeal court on **DIA** repeated violation of the Food Law through its retail alliances with Eroski, requesting unjustified payment to 40 suppliers and unilaterally changing the supply agreements <https://www.poderjudicial.es/Roj>: ATS 1168/2021, N° de Recurso: 5756/2020. DIA is member of the retail alliance, **Horizon** International, which the French competition authority has forced to review its practices and contract terms towards SMEs (October 2020).

February, France

French authority brings to Court **Intermarche (ITM)** and asks for a fine of 150 million € (1% of the retailer turnover in France) after an investigation of retail abusive practices towards 93 suppliers through the operation of **European Retail alliance AgeCore**. The retailer cancelled orders without notice, changing unilaterally the contract terms in order to pressure suppliers to pay for advertising and marketing by the retailer of the products <https://www.economie.gouv.fr/dgccrf>, [press release N°689](#)

January, Switzerland

Pursuant to its earlier investigation of the retail alliance **Markant** last September, the competition authority [launched](#) a probe for abuse of dominant position against **Coop Schweiz**, member of **Agecore** European retail alliance. According to the art.7 of the Swiss cartel law, c&f, are prohibited the practices which force unbalanced trade terms, forcing trade partners to accept to pay for additional services in order to get a contract signed. Coop would have request its suppliers to use the services of Markant.

2020

December, Poland

The Polish supermarket chain Biedronka, owned by **Jerónimo Martins**, was [fined](#) 723 million zlotys (161.7 million euros) in that country for unfair trading practices on over 200 suppliers while approximately 80% of the instances pertained to fruit and vegetable supplies. The retailer did not respect the contractual terms, also requested additional, unjustified, payment from suppliers, which the retailer automatically deducted from the suppliers invoices without their agreement. The investigation demonstrated that the money taken by the retailer was not passed on to consumers in the mean of lower retail price. “ *This is an absolutely unacceptable use of market power*” stated the authority “*which deprived suppliers of hundred of million of revenues*” <https://www.uokik.gov.pl/>

December, France

The competition authority concludes that the joint purchasing by retail alliance **Carrefour and Tesco** impacts negatively competition by presenting unfavourable terms to suppliers, especially SMEs. *By reducing the suppliers' margin, the agreements could reduce their ability to invest and innovate, and even reduce their incentive to stay in the market which may affect the welfare of consumers in the retail market.* The authority [requests](#) the alliance to exclude from the agreement **agricultural products as well as a set of product categories.** <https://www.autoritedelaconcurrence.fr/> Decision 20-D-22 of 17 December 2020.

December, Norway

The Competition Authority publishes a statement of objection in which it states that the three grocery chains, **Norgesgruppen, Coop and Rema 1000**, have cooperated in their pricing policy which they consider may explain higher grocery prices, harming consumers. The information seized during the inspections provided the Authority with insights into the communication between the grocery chains and their behaviour in relation to price changes. The authority is considering imposing fines totalling 21 billion NOK <https://konkurransetilsynet.no/>

December, Portugal

The competition authority [imposed](#) for the practice of concerting prices for various products in harmful to consumers a total fine of circa €304 million on six large retail food chains **Modelo Continente (Sonae), Pingo Doce (Jerónimo Martins), Auchan, Intermarché, Lidl and Coplecnorte (E. Leclerc).** <http://www.concorrenca.pt/>

December, Czech Republic

The Czech Competition Authority [announced](#) that it had imposed a fine of CZK 32m (approximately EUR 1.2m) on the Czech retail chain HRUŠKA, for requesting food suppliers to pay the retailer unjustified rebates, transferring all commercial risks on suppliers. The retailer must remove from its contracts the so-called full-service provision (under which the retailer could return goods to the supplier before the expiration date or lower the purchaser's price of the stock nearing the expiration date) . <https://www.uohs.cz/> 20/117, 4.12.2020

October, France

The competition authority during its investigation of the retail alliance **Horizon (Auchan, Casino, Metro, Schiever)** [found](#) that the joint purchasing agreement could be detrimental both to suppliers and consumers. “*The suppliers, in particular small farmers, could see their already limited margins further reduced, affecting their capacity to invest and innovate. Consumers could end up with less choice on supermarket shelves*”. The authority also acknowledged that the retail alliance was exercising pressure on suppliers by cutting down their order prior the negotiation. The retail alliance proposed a settlement under which its joint purchasing agreements will no longer include a number of agricultural products, including milk, eggs, cider and certain types of meat. For 12 types of products, including potatoes, flour, sugar and vegetables, the retailers commit

to limit their cooperation to 15 percent of the market volume. <https://www.autoritedelaconcurrence.fr/>
 Décision 20-D-13 du 22 octobre 2020

October, European Court of Justice

The Court confirmed that the Commission did have sufficient evidences of exchange of information on price and trade terms between the retailers and various set of retail alliances (**ICDC, AgeCore, Coopernic and Eurelec**), justifying the Commission investigation and dawn raids on retailers offices. T-249/17 : **Casino**, [T-255/17: Intermarché](#), [T-254/17](#): Incaa, French retail alliance of Intermarché & Casino

September, Switzerland

In a similar case condemned by the Czech authority, the competition authority [announced](#) its investigation of the retail alliance, **Markant**, and of its retail members. They would have forced suppliers to pay the retail alliance to access the stores of the retail alliances members by threatening suppliers to stop ordering and delivering their products to the stores. The agri-cooperatives [raised](#) the concern to authorities as the complex invoicing process increases the costs of supply and thereby reduce the price paid to farmers.

April, Spain

The National Court confirmed the Food Authority fine of 6 Million € on the retailer Dia, for 86 serious violations of the Food Chain Law on over 40 suppliers, requesting additional payments out of the supply agreements pressuring suppliers by means of threats of stopping orders [https://www.poderjudicial.es/Madrid Audiencia Nacional. N° 559/2017](https://www.poderjudicial.es/Madrid/Audiencia Nacional. N° 559/2017). The Tax authority also [opened](#) a file on the revenues generated by the Dia Eroski alliance.

2019

September, France

French court following **French authority** investigation [declares Amazon](#) unfair trading with 3rd parties resellers on its marketplace on 7 accounts. It requests changes in behaviour and in a set of terms and conditions change (general terms, Amazon Services terms, Amazon Fulfilment terms, policies relating to performance evaluation). It rules against Amazon unilateral decisions with regard sellers accounts. Some of practices considered as anticompetitive as resellers are Amazon Retail competitors. <https://www.economie.gouv.fr/dgccrf>, press release N°1394

August, Czech Republic

Ahold Delhaize banner Albert has been [condemned](#) to change contract terms by Czech authorities for the upcoming negotiations as they were considered unfair as unilateral, no balanced by obligations on retail side (e.g.: terms related to penalties imposed by retailer unilaterally for so called suppliers having not met performance criteria , pay for no services...). The authority also pointed out issues with retail mechanism of changes in purchase prices and setting of discounts, imposed on suppliers. Authority press release <https://www.uohs.cz/>

July, France

The French government [brought a case](#) against **Leclerc** (the no. 1 French retailer) and some of its companies for unfair trading practices organised through its Belgian-based **retail alliance, Eurelec** (a joint venture with the German retailer, **Rewe**). The French inquiry established that the retail alliance had forced suppliers to pay for no/fake services, in violation of French law. To achieve their goal they threatened suppliers with delisting. <https://www.economie.gouv.fr/dgccrf>, press release N°1354, 22 July 2019

July, Germany and Austria

Competition authorities after investigation did find a set of unfair dealings by **Amazon** in relation to 3rd parties resellers (companies selling on Amazon marketplace), some considered as anticompetitive, as trying to remove some resellers of the platform as in competition with Amazon own retailing activities. A settlement was reached in part: Amazon requested to change practices and a set of contract terms. On-going

investigations for some other practices. <https://www.bundeskartellamt.de/> Case B2-88-18. <https://www.bwb.gv.at/> Investigation based on official complaint of Austrian Retail Association

May, Belgium

The Belgian Competition Authority [conducted inspections](#) at the premises of **Carrefour** and **Provera (Cora Benelux)**, a preliminary step in the investigation of suspected anti-competitive & unfair practices related to a purchasing partnership for consumer goods. This followed the announcement by Carrefour and Provera in November 2018 of the creation of a Belgian retail alliance. <https://www.belgiancompetition.be>, press release N°15, 20 May 2019. <https://trends.levif.be>, 21 May 2019

March, UK

The Groceries Code Adjudicator [found that](#) the **Co-operative Group (Co-op)** had not respected the Groceries Supply Code of Practice as “a significant number of suppliers have been affected by de-listing without reasonable notice. This includes suppliers of various sizes and across different categories”. The GCA found that the short notice given of significant reductions in orders or removal of a product resulted in suppliers “incurring significant costs” and for some “resulted in wastage of packaging and products”. Further, this created “adverse effects on the efficiency of suppliers’ businesses, the resources used by suppliers trying to obtain information from Co-op and uncertainty about the stock suppliers would be required to provide to Co-op at any given time”. <https://www.gov.uk/government/publications/>, Groceries Code Adjudicator, 25 March 2019

February, Czech Republic

The Office for the Protection of Competition [fined](#) the German retail group **Rewe** CZK 164 million (c.€6.4 million) because its **Billa and Penny** chains demanded payments from suppliers for no consideration, a practice contrary to Czech law. <https://www.uohs.cz/en/>, Office for the Protection of Competition, case 19/015/VTS001-S0127/2017, 22 February 2019

2018

September, Italy

The Italian Competition Authority launched an [investigation](#) into five retail chains - **Coop Italia, Conad, Esselunga, Eurospin, Auchan** and **Carrefour** - for their unfair trading practices with bakery companies. The retailers demanded that suppliers of fresh bread withdraw, and dispose of at their own expense, all unsold product at the end of the day. This practice was considered as an undue transfer of retail commercial risk to weaker suppliers (craftsmen with few employees). <https://en.aqcm.it>, AL15, 27 September 2018

September, France

The Supreme Court confirmed that **Systeme U, member of Envergure retail alliance** with Carrefour, must pay back 77 million € fine to its suppliers. These amounts represents the unilateral unjustified payments the retailer requested its suppliers to pay. The retailer is also fined for such practices. [LSA](#)

September, Czech Republic

The Office for the Protection of Competition [decided that](#) the German retailer **Kaufland** and its retail alliance **Markant** should repay, or compensate, their suppliers for payments requested by Markant. The Office noted that “participation in the Markant system is not a condition for the supply of food to the Kaufland chain and suppliers may terminate their participation in the Markant system without prejudice to existing or future business relations between them and Kaufland”. <https://www.uohs.cz/en/>, Office for the Protection of Competition, case 18/053/VTS001-S0139/2017, press release, 6 September 2018

August, Belgium

The Gent Commercial Court [held that](#) **Ahold Delhaize** could not force its suppliers to boycott an abattoir. [L'Echo](#), 9 August 2018

January, Germany

The Federal Court of Justice [upheld](#) the German Competition Authority's decision against **EDEKA** for requesting over 500 suppliers to pay a “wedding rebate” when it acquired **Plus** in 2008. The Court agreed with the Bundeskartellamt that EDEKA’s demands for an “alignment of conditions”, an “adjustment of payment terms” and a “partnership reimbursement” (to share the costs for refurbishing outlets) amounted to illegal unfair trading practices whereby a powerful retailer shifts an excessive amount of its entrepreneurial risk to manufacturers. <https://www.bundeskartellamt.de>, press release 29 January 2018

2017**December, France**

The French Ministry of Economy [conducted an inquiry](#) into e-commerce platforms, including **Rue du Commerce (Carrefour)**, **Cdiscount (Casino)** and **Amazon**. It found that Amazon employed practices prohibited by French law, including the imposition of contractual terms on its suppliers allowing for the unilateral modification of commercial terms and the suspension/cessation of commercial relationships, and referred this case to court. Further to an injunction, Casino and Carrefour removed their contractual terms that had required pricing alignment. <https://www.economie.gouv.fr/dgccrf>, press release 18 December 2017

September, UK

The Groceries Code Adjudicator [published a case study](#) about **Asda’s** “Project Renewal”. This practice, mainly designed by external consultants to deliver cost price savings and range reduction to the retailer, included requests to suppliers “for significant financial contributions to keep their business with Asda. In some cases, this was as much as 25% of the annual turnover of the stock keeping unit (SKU). If they were not successful in negotiating terms on which to remain listed, some reported being given non-negotiable periods of notice of de-listing, with periods of between four and eight weeks being reported to the GCA. Changes to terms of supply, including cost price reductions and routes to de-listing were presented to suppliers during the course of their existing agreements with Asda, as variations to agreed terms. Suppliers reported being given very little time to agree to any proposed changes, sometimes as little as 24 hours; in one case, overnight.” The GCA found Asda to be in violation of the Groceries Supply Code of Practice.

<https://www.gov.uk/government/publications>, Groceries Code Adjudicator, 4 September 2017

Mars, Spain

The authority rules against DIA and Eroski for practices contrary to the Food Chain Law (LCA) carried out on the occasion of a joint purchase agreement between the two groups of the retail distribution which created a retail alliance late 2015. The ruling established three groups of infractions committed against their suppliers: 1) disclosure of sensitive commercial information from their respective suppliers, 2) imposition of additional payments not foreseen in supply agreements 3) unilateral changes to agreements terms. The retailers announced they would appeal the authority ruling. <https://www.poderjudicial.es/> Recurso nº 49/2017.-E, Dia : Nº de Recurso: 559/2017.

January, France

The Supreme Court [upheld](#) the 2015 decision of the lower Court of Appeal, which found that **Galec**, the retailer **Leclerc’s** buying alliance, had illegally forced 46 suppliers to pay an end-of-year additional fee. Leclerc was fined and requested to reimburse the suppliers (€61 million). <https://www.legifrance.gouv.fr/>, Cour de cassation, Case 15-23.547, 25 January 2017

2016**November, France**

The French Ministry of Economy [brought a case](#) against **Carrefour** for requesting significant additional non-contractual payments, or “supplementary distribution discounts”, from its suppliers for no consideration.

Such practices are contrary to French law. <https://www.economie.gouv.fr/dgccrf>, press release no. 222, 9 November 2016

October, Spain

The Spanish Food Authority [initiated proceedings](#) PSC / 2016/900 concerning the 2015 joint purchasing agreement between **Dia** and **Eroski**. The Authority found unfair trading practices, 88 by Dia and 90 by Eroski, including unilateral contractual modifications, demands for additional payments over the contract price and demands for/ revelation of sensitive commercial information. Such practices are contrary to Spanish law. <https://cincodias.elpais.com/>, *El País Economía*, 10 October 2016

June, UK

The Groceries Code Adjudicator [published a case study](#) about **Wm Morrison Supermarkets'** 2014-15 requests that suppliers pay lump sums (*"figures of around £2m for each half year were mentioned by a number of suppliers"*), without negotiation, outside of their supply agreements and with indications of retaliatory measures for non-payment. The retailer accepted that 19 of these requests were in breach of the Groceries Supply Code of Practice. <https://www.gov.uk/government/publications/>, *Groceries Code Adjudicator*, 20 June 2016

April, France

The French Ministry of Economy [brought cases against](#) **Intermarché**, **Casino** and their retail alliance **INCA Achats** for unfair trading practices, following an investigation by the Competition Authority. These practices, contrary to French law, included unjustified additional financial demands after the conclusion of the framework contract with retaliatory measures for non-payment. <https://www.economie.gouv.fr/dgccrf>, press release, 13 April 2016

January, UK

The Groceries Code Adjudicator [confirmed that](#) **Tesco** had seriously breached the Groceries Supply Code of Practice in making unilateral deductions from suppliers, accounting errors and delaying payments to suppliers – sometimes intentionally. (The false accounting practices were considered as fraud leading to fines under a Deferred Prosecution Agreement in 2017).

<https://www.gov.uk/government/publications/>, *Groceries Code Adjudicator*, 26 January 2016

<https://www.sfo.gov.uk/cases/tesco-plc/>, *Serious Fraud Office*, 10 April 2017

2015

September, France

The Supreme Court [confirmed](#) the decision of the Appeal court on **EMC Casino** for imposing abusive terms to its suppliers and unilateral change to the supply agreements. <https://www.legifrance.gouv.fr/ECLI:FR:CCASS:2015:CO00818>

June, Italy

Acting on information provided by a supplier of fresh fruit and vegetables, the Italian Competition Authority [launched an investigation](#) into **Coop Italia** and **Centrale Adriatica** for abuses of commercial power in the agri-food sector. The Authority questioned the companies about their requests that suppliers should give *"a number of discounts and overly burdensome financial contributions"* that did not appear to be *"proportionate to the current relationship between the parties"*. <https://en.aggcm.it/en/>, press release 24 June 2015

March, Hungary

The Hungarian Competition Authority [imposed a fine](#) of over HUF 1 billion (c. €3.6 million) on **Auchan** for unilaterally demanding after sale price discounts from its suppliers in order for the suppliers' products to be stocked, or continue to be stocked. These practices are contrary to Hungarian law.

<http://www.gvh.hu/>, Case number: Vj/60/2012, 23 March 2015