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**COMPETITION LAW ENFORCEMENT ISSUES RAISED BY
MONOPSONIES**

Case Law and Future Perspectives

Presentation

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Competition law enforcement issues raised by monopsonies: case law and future perspectives

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Recall of last year's discussion at the IGE

During **July 2022 IGE**, several developing countries and regional organization, notably in **Africa**, raised issues concerning abuses of buying power in critical areas

The critical areas for developing countries identified in **July 2022** were partly determined by both supply and retail crises, namely in the areas of **food** and **energy**

In **July 2023**, it appears that the geopolitical determining factors of 2022 have loosen up, while market structure issues are again in forefront

Still, this presentation will show the controversies related to potential solutions



Introduction: monopsony buying power definition

- The term “monopsony” appears to originate from Joan Robinson’s “**The Economics of Imperfect Competition**” → it indicates the existence of a single buyer of a specific food or service
- The monopsonist faces **a large number of sellers**, which have to take the monopsonist’s unilaterally determined market price for their supplies
- The current presentation results from elements presented in a *contribution from EU Commission at the OECD Roundtable on Buyer Power and Buyer’s cartels* in June 2022 (DAF/COMP/WD (2022)16.



Introduction: issues raised by monopsonies

First circumstance:

- A dominant firm as well as retail alliances may include *exclusivity* or *similar provisions* in their contracts with suppliers;
- The result would be cutting out other competitors to the monopsony (or oligopsony) from the market
- It can be dealt with through the EU's anti cartel laws

Second circumstance:

- An undertaking may hold *both a monopsony and a monopoly position* in the market
- The result would be depressing the price of its inputs by withholding demand and increasing the price of its outputs
- It can be dealt with by preventing abuses of its monopoly position

Third circumstance:

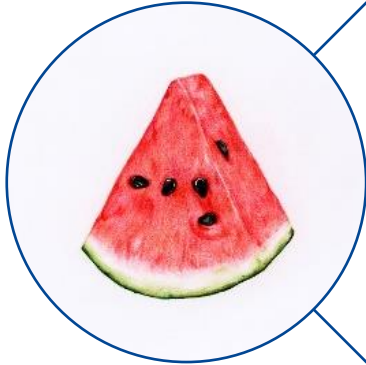
- The third situation may involve *buyers at the same horizontal level entering into a purchasing agreement or buying alliance*
- A market share above 15% may not indicate automatically buyer coordination, but could raise concerns and require a more detailed assessment

Introduction: tools applicable to monopsonies

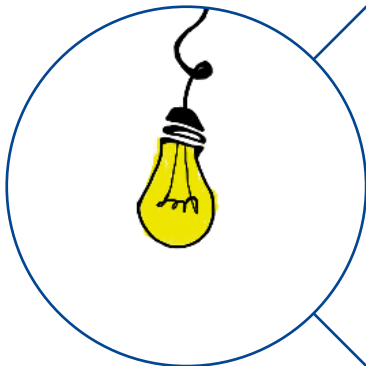
Art. 101 TFEU

The views expressed by the speaker are not necessarily those of the European Commission

Case law examples : two monopsony cases

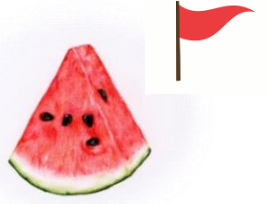


Food sector



Energy sector

M.5046 – Friesland Foods/Campina (2008)



A merger between the two leading Dutch dairy producers, covered the entire production chain of dairy products (vertical integration)



The merger would lead to the creation of a strong buyer in the procurement of raw milk (combined market share 70-80%) and suppliers were very small (dairy farmers)



The in-depth investigation assessed whether the new entity could “*obtain lower prices from farmers by reducing its purchase of raw milk, which would in turn lead to lower output also in the downstream markets and thus harm consumer welfare*”

Friesland Foods/Campina ('08): conclusions

- The Commission found that there was little competition for sourcing from each other's farmers pre-merger therefore, despite the resulting post-merger overlap, the merger would **not** lead to a significant impediment of effective competition
- Moreover, due to the merged entity's cooperative structure (their primary aim is to achieve long-term optimal pay-out prices for their members – the farmers), it would be unable to sustainably pursue a policy which results in lower income for its members

However, the new entity would have the ability and the incentive to leverage its strong position in the procurement market for raw milk to foreclose existing or potential downstream rivals, by limiting or raising the costs of their access to raw milk.

- Following commitments - establishing a 'Dutch milk fund' (i.e. drawing rights for a certain volume of raw milk in favor of downstream rivals) and inserting in its statutes that its members/farmers were free to leave the entity at any time without retaliation - the Commission cleared the merger

Case AT.40018: Car battery recycling (2017)



The **Car Battery Recycling** case concerns a Commission decision from 2017 prohibiting a cartel among four battery-recycling companies fixing the purchase price of scrap lead- acid automotive batteries paid to scrap dealers and collectors for used car batteries in **France, Germany and the Netherlands**



The Car Battery Recycling cartel aimed at coordinating the purchase price policy through **the fixing of target prices, maximum prices and fixed- amount price reductions**, mainly through exchanging commercially sensitive information



In doing so, the cartelists lowered the value of used batteries sold for scrap to the detriment of used battery sellers and disrupted the normal functioning of the scrap battery purchasing market by **preventing competition on price**



Car battery recycling (2017): conclusions

The three fined companies challenged the Commission decision in Court but, in 2019, the General Court of the European Union dismissed the appeals and upheld the Commission decision in full, including on the fines

In its judgement, the Court held that:

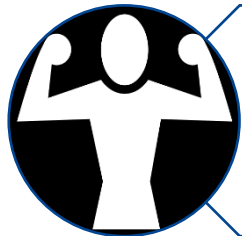
“Such coordination of purchase prices, with the aim of reducing or preventing their increase and thus, ultimately, increasing the cartel participants’ profits margins, reveals a sufficient degree of harm to competition that there is no need to examine its effects”.

It added with specific reference to the first example in Article 101(1)(a) TFEU that *“it involves inherent restrictions on competition in the internal market”*

Conclusion (I)



The objective of Competition law in the EU is *consumer welfare centric*



Having a buyer power is *not* contrary to EU law per se



Rather, the cartels and abuses of dominance that affects consumer welfare are *considered anti-competitive*



Conclusion (II)

Often, the interest in Monopsony buyer power highlights the plight and problems faced by **small suppliers**

It is clear that some of these concerns relate to issues that are not a matter of competition law but rather highlight **social or political concerns treated under unfair competition laws**

With this in mind, ex ante regulation to protect small producers would be more politically desirable, if uneconomical, means to help **smaller producers**
Cf. *Directive (EU) 2019/633 on unfair trading practices in Business to Business relationships in the agricultural and food supply chain*

Thank you



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