

Kangaroo Group

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Threats to the Internal Market: What role for retailers?

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Kangaroo Group: 'Free Movement and Security'

Thank you, it is a great honour to join you for lunch and to have the opportunity of discussing with you issues impacting on large European retailers and their

- dependence on...
- contribution to...
- hopes for...
- and concerns about...

...the European Internal Market.

ERRT: small organisation, 14 members, so few I can list them: Ahold, Asda, C&A, Carrefour, Delhaize, El Corte Inglés, H&M, IKEA, Inditex, Kingfisher, Marks & Spencer, Mercadona, Metro and Tesco.

€400bn sales per year; 35,000 European stores, 41,000 worldwide. Most important of all, given the current climate: 2.3 million employees. Huge % of produce produced locally. Retailers cannot 'delocalize'... NB: The services sector represents 70% of GDP of the EU and over 50% of its labour force.

Facing a very interesting environment at present, 'interesting' in a Chinese way...

The Internal Market is one of the greatest achievements of the EU. It is probably also one of the most invisible! Everyone benefits from it, but – in part because it has been so

successful – no one really notices its existence all around us. It's there, it works, someone, somewhere probably looks after it in some way...

A truly single, internal market that promotes robust and fair competition between business operators will have a positive effect not only for the development of employment and growth within the retail sector, but also for consumers in terms of lower prices, wider range of choice and better quality services.

Companies which offer their products on the internal market should have an unlimited access to over 450 million consumers. Businesses should be free to benefit from economies of scale and gains in productivity that can be translated into lower prices.

Worth noting... ERRT members are not only beneficiaries / depend on the IM to grow, to expand, to employ – but they are also prime facilitators of the IM, offering outlets to manufacturers across EU (the world even!) who previously found it difficult to break out of their domestic markets. Neelie Kroes acknowledged this in Feb 08, replying to a question from the EP when she stated: "The retail sector plays an essential role in the internal market by allowing suppliers to access non-domestic markets and therefore benefit from the internal market."

In part, the IM has happened. It has worked. See ERRT map for evidence. Would such a spread have been possible before?

Significant challenges remain. I will group these challenges under 4 main headings:

1. Access to Markets

Several Member States (or regions within MS) still use local planning laws to deter inward investment by large retailers. Examples:

- In the Austrian province of Vorarlberg, planning laws prohibit building large stores outside of a city centre. The obvious difficulty – for larger retailers whose models require much more than 10,000sq.m.– is to find such locations in the city centre...
- In Denmark, it is only possible to apply for planning larger (non-food) retail stores above 2,000 sq.m. in communes or cities above 40,000 inhabitants. And each commune / city can only plan 3 such stores every 4 years...
- Restrictions in Stuttgart (and NRWestphalia) limit larger retailers to be situated in particular "central supply areas", limits the assortments they can offer (whether city-centre relevant or not), limits the sales space of the retailer - and permission is only given if the expected turnover does not exceed the purchase power of the citizens in the immediate area.

- In Spain, there exist 17 different sets of retail trade legislation – one for each region. Each has specific peculiarities, including: which establishments must have a business license; the concept of the ‘sales floor’; processing time of the planning procedure; different criteria for authorizing a ‘large retail establishment’ ...

2. Constraints on trading / price control / interference in legitimate negotiations

Sadly, many examples including ...

...discrimination based on size:

- The lower house of the Czech Parliament passed an ‘Act on Significant Market Force’ in May 2009. Retailers with sales volume of more than CZK 5 billion (basically all foreign retailers) are deemed to be able to exercise “significant market force”.
- In Hungary, the Trade Act was introduced in 2006 with the aim of controlling and limiting later income of - mostly foreign - retailers. It states that any retailer with a turnover of more than HUF 100 billion (basically all foreign retailers realize a turnover that is beyond this threshold) shall be deemed to be able to exercise “significant market power” and, thus, are subject to the restrictions under the law. Thankfully, the effect has been somewhat limited due to the apparent reluctance of the Hungarian Competition Commission to enforce the Act.

...protection of local suppliers:

- The Hungarian Parliament adopted two important new pieces of legislation in June 2009 significantly affecting the conditions applicable to the Hungarian retail sector. In essence, the *amendment to the Act of Agricultural Market Organisation* may help create a national cartel scheme of – predominantly local - suppliers of agricultural products. We believe it fosters horizontal cooperation among competing producers of agricultural products and supports the creation of price-fixing, information exchange and market sharing mechanisms amongst these producers.

By the very nature of the products and their transportability, agricultural and food products are more likely to be produced locally. Thus the protected suppliers will, to a large extent, be Hungarian.

- The second bill adopted by the Hungarian Parliament in June 2009 relates to the *prohibition of unfair conduct by retailers*. This bill is somewhat ambiguous. It can be interpreted as covering only Hungarian suppliers, and would therefore

contain direct and open discrimination against other EU suppliers of similar goods.

Alternatively, if the bill extends to foreign producers, the bill contains covert (indirect) discrimination against foreign (EU-based) suppliers of similar goods, since they would not be able to compete with Hungarian companies by offering better terms to their customers (the retail industry), such as longer payment terms, fees for listing, contributions to develop the 'sales channel', etc. The foreclosing effect of the bill is reinforced by the provision that a supplier may not even expressly agree to the various conducts specified in the bill.

- Similarly, the rules make it less attractive for retailers from other countries to establish themselves in Hungary, given that it is excluded that their existing supplier partners may choose to support their market entry (with a view for the creation of new sales channel) by e.g. contributing to the costs of the market entry of a new store chain. The rules, reinforced by the fact that suppliers are not allowed to agree on conditions different from those contained in the bill, are effectively capable of creating a condition-cartel: suppliers will not compete anymore on conditions such as payment deadline, listing fees, repurchase obligations etc.

...limiting the competition retailers can offer through own label products:

- In Poland, the *Act on Suppression of Unfair Competition* limits the sale of retailers' own brands, if such sales exceed 20% of total sales. There is also a lack of definition of what is meant by own brand products and no clear method of calculation.
- By the way, also in Poland, the Ministry for Agriculture and Rural Development is currently consulting with a view to placing an obligation on retailers to sell at prices suggested by agro-food manufacturers...!

...through limiting the legitimate bargaining power of the retail sector:

- In Romania, in Slovakia, in Latvia, there are many recent initiatives that limit the possibilities of retailers and suppliers to agree on jointly acceptable later income conditions.

...sometimes through the imposition of 'Codes of conduct'...

- The Hungarian Ministry of Agriculture has been insistent on the development of a Food Chain Code of Ethics - subsequently signed between farmers, food distributors and the trade associations and formally came into force on 1 July 2009. The Code introduces the term of 'Domestic Product' and 'Significant Hungarian Products' aiming to protect Hungarian-made and originated

products. It restricts the ability of retailers to import products in categories where Hungarian products make up less than 80% of the range and it regulates the price differential between imported products and Hungarian products and between own-brand products and branded.

While seeking to protect the margins of local producers and manufacturers against negotiations that are a key element of market economies, **these actions lead to clear negative effects for many:**

- Customers pay higher prices for products
- Customers have less choice in terms of stores / products.
- These actions reduce levels of competition, productivity and competitiveness throughout the entire supply chain.
- They strengthen the position of incumbent suppliers and make new entry more difficult.
- Own brand opportunities become less attractive for suppliers, thereby denying smaller / newer suppliers the opportunity to compete with established brands.
- By reducing price competition, there is a risk of food price inflation.

3. Constraints on free movement of goods

The still existing lengthy, complex and indeed costly administrative procedures in Europe represent fierce non-tariff barriers to the free movement of goods. Member states still appear to be reticent in accepting the norms and standards of other states. This prevents retail companies from aggregating their products and offering lower prices through economies of scale. Being competitive on price takes top priority in the current economic climate. Some examples:

- **Emmental**, legally produced in the Netherlands, but not allowed to be sold in France – because the French law does not allow blocks of less than 40kg minimum... Our retailer member is precluded from using blocks of 15kg...
- **White cheese 'fondu'** whose nutritional information on the pack is based on 15% per 100g/ml – unable to be sold on the Italian market: they demand the information per portion...
- The necessity to register three different sets of technical dossiers to the French, Belgian and Italian authorities to use **'7 vitamin' chocolate powder** in the same recipes / products... None should be required!
- **Special beer**, produced in Germany in conformity with the law, not allowed to be sold in Spain because to be 'special' in Spain means an alcohol % of 13,

while in France or German requires only 12.5%... Extra costs, re-name, re-package..?

- **Energy drinks** – whose effects have been certified already by a competent body, but which have to be re-controlled in France once imported. Higher costs, delays, bureaucracy... should be no further controls necessary!

A different type of constraint: suppliers of branded goods have largely managed to prevent the creation of an EU wide internal market for their products. Suppliers generally arrange for national distribution organisations and strongly resist efforts by retailers to negotiate on identical products on a cross-border basis rather than on a national basis. As a consequence, purchase prices applied by manufacturers of

4. X-Border Interchange fees

Other hidden costs artificially increase the prices of consumer goods. Interchange fees are card network charges collected from merchants every time a customer pays with a plastic card. These fees are non transparent and non-negotiable, and can amount to an average of 1 - 2% of the total transaction. The Single European Payment Area that shall be established by the end of 2010 provides a unique opportunity to see the most efficient and low cost payment systems become available to retailers and consumers across the EU. An efficient payments system infrastructure is a prerequisite to a successful retail sector.

Retailers would like to centralize their card acquiring with the most efficient acquirer in the EU. In a free IM, this should be possible. However, card schemes (MC and VISA) only allow their members to acquire payments cross border if they apply the domestic interchange fee of the point of sale, thereby frustrating real cross-border price competition. As a result, there is no business case to do cross border acquiring today. IKEA: +/- €90m per year, Carrefour +/- €240m... Saving = +/- 80% of fees...

Conclusion. The IM rules exist to create a legal framework in which businesses, including retailers, can serve a wider customer base with a wider range of products and services. Competition rules exist to make sure that retailers (and others) abide by the rules of play. These are the cornerstones of a market economy that places the consumer as the driver, towards whom all supply chains must face. And satisfy.

That is as it should be, and we all must be wary of attempts to warp this focus, or to place the customer as, in some way, subservient to the supply chain that serves him or her.

The value of the Kangaroo Group is as great or greater now, than it has been before. The fight for free movement is as vital as it has ever been. Perhaps even more now with such blatantly protectionist tendencies in evidence.

The spotlight that this group - and that you, as individual MEPs - can turn on these problems is a powerful pressure point. Please continue to use it!

- Please demand the rapid and cohesive implementation of the Services Directive.
- Please hold a mirror up to those Member States who do not respect the spirit – and sometimes even - the letter of the IM rules.
- Please consider creating a specific sub-group of the Kangaroo Group to focus exclusively on consumer goods. This will be a direct and welcome impact on the millions of customers entering ERRT member stores each day!
- Finally, please – once the new Commission has been approved by you – encourage the Commission to be robust and assertive in defending the IM rules. The long term benefits that an effective IM can bring to citizens is well worth defending over short-term political gain.

Thank you.