The impact of private labels on the competitiveness of the European food supply chain

European Commission
Enterprise and Industry

Disclaimer

Neither the European Commission nor any person acting on its behalf may be held responsible for the use to which information contained in this publication may be put, nor for any errors which may appear despite careful preparation and checking. This publication does not necessarily reflect the view or the position of the European Commission.

Luxembourg: Publications Office of the European Union, 2011

ISBN 978-92-79-19149-7
catalogue number: NB-31-11-016-EN-N
doi : 10.2769/11911

This report is financed under the Competitiveness and Innovation Framework Programme which aims to encourage the competitiveness of European enterprises.

ENTERPRISE & INDUSTRY MAGAZINE

The Enterprise & Industry online magazine (http://ec.europa.eu/enterprise/e_i/index_en.htm) covers issues related to SMEs, innovation, entrepreneurship, the single market for goods, competitiveness and environmental protection, industrial policies across a wide range of sectors, and more. The printed edition of the magazine is published three times a year. You can subscribe online (http://ec.europa.eu/enterprise/e_i/subscription_en.htm) to receive it – in English, French, German or Italian - free of charge by post.

This study was carried out by

LEI, part of Wageningen University & Research center
Alexanderveld 5,
NL-2502 DB The Hague
The Netherlands

Frank Bunte
Michiel van Galen
Mariet de Winter
Paul Dobson
Fabian Bergès-Sennou
Sylvette Monier-Dilhan
Anikó Juhász
Daniele Moro
Paolo Sckokai
Claudio Soregaroli
Bernd van der Meulen
Anna Szajkowska

Reference no. ENTR/2009/031
Service contract SI2.549448

The Hague
January 2011

The impact of private labels on the competitiveness of the European food supply chain

The report studies the impact of private labels on the competitiveness of the European food processing industry and investigates whether a system of producer indication may improve the functioning of the food supply chain. The impact is studied using economic theory and empirical and legal analysis. The study is completed with an impact assessment.

Contents

Summary

S.1 Key results

Innovation in the European food supply chain is not under pressure. The number of product introduction still increases. This holds both for industrial brands and private labels. Moreover, the profitability of the European food processing industry remains constant and the number of SMEs declines, but at a normal pace.

The study does not provide a clear answer to the question whether product quality is under pressure. Most innovations in food processing are incremental. The food industry remains an important driver for more radical innovations in terms of food quality, while food retail invests in convenience and sustainability.

S.2 Complementary findings

- There is one major exception to the main conclusion. The number of product introduction goes down in Spain. This is due to two factors: the rapid increase of private-label market share and the reduction of the number of stock keeping units in many supermarket formulas.
- The share of private label in new product introductions is growing with the exception of the UK where the share of private label in new product introductions remains high.
- In Italy, the number of brands is increasing for many dairy and cereal products. Private labels gain market share, but do not have a negative impact on innovation.
- French evidence points out that SMEs are less likely to produce private labels. At the same time, their share in private label turnover is larger than their share in overall turnover.
- In terms of economic performance, as measured by profitability and innovation, the study does not observe a problem with respect to supplier-retailer relations or private labels.
- A system of producer indications is not likely to have a substantial impact on innovation at the industry level.

- However, the study does not exclude that bargaining relations between retailers and suppliers are uneven and that some commercial practices - for instance copycatting or delays in payment - distort competition and/or the viability of specific firms.
- The study provides a roadmap for governments to address any problem with respect to supply chain competition.

S.3 Methodology

The European Commission, DG Enterprise, wants to know whether private labels have a negative impact on value creation and innovation in the food supply chain and on the viability of SMEs in the food processing industry.

The study uses economic theory to derive hypotheses on the relation between private labels on the one hand and the viability of SMEs and innovation on the other hand. These hypotheses have been tested using data analysis and by interviewing around 40 producers and retailers in the EU. The study also provides a legal analysis of policies dealing with supplier-retailer relations and an impact assessment of a system of producer indications.

Acronyms

AGCM	Italian antitrust authority
CC	UK Competition Commission
CMO	Common Market Organisation
DCFR	Draft Common Frame of Reference
EC	European Commission
EU	European Union
IPR	Intellectual property rights
GSCOP	Groceries Supply Code of Practice
HUF	Hungarian currency (Forint)
INSEE	French statistics office
IT	Information technology
N	Number of observations
NACE	European classification of economic activities
PL	Private label
R&D	Research and development
SMEs	Small and medium-sized enterprises
SKU	Stock-keeping unit
TFEU	Treaty on the Functioning of the European Union
UHT	Ultra-high temperature
UK	United Kingdom

Part I Introduction

1 Introduction

Private label products are products that are sold under retailers' brands but are produced by firms further up the supply chain. The market share of private labels has grown steadily in recent decades. In the EU, private labels have a share of 23% of the groceries market (Poppe et al., 2008). Private label sales are growing on average by 4% a year, especially in the new Member States and in the hard discounter sector.

Private labels influence both the competition within food supply chains and the range of food products that are available to consumers. Private labels increase the range of available products and thus increase inter-brand (price) competition. On the other hand, private labels change the relation between retailers and their suppliers. Suppliers of branded products face not only vertical competition from retailers but also horizontal competition, since retailers start 'producing' their own products. Retailers may replace industrial brands by private labels. When retailers do so, they reduce consumer choice. Suppliers of private labels may benefit from this development, but they may also lose. They get access to the customer base of the large retailers, but they may also become more dependent on specific retailers. Therefore, suppliers of private labels become more dependent on retailers, and independent suppliers of branded and non-branded products face more intensive competition. Both developments may enable retailers to exploit possible buyer power and to squeeze suppliers' profits. In the end, this may hurt consumers if consumer prices rise, consumer choice is limited and the innovation rate falls.

We therefore analysed retailers' and processors' strategies with respect to private labels as well as the impact of private labels on the competitiveness of retailers, suppliers of private labels and suppliers of branded products. The study focused on the impacts on small and medium-sized food processors.

We concentrated on three mechanisms that influence retailer-supplier competition, namely:

1. The impact of possible differences in the application of listing fees for private labels versus industrial brand products.
2. The impact of private labels on the value of industrial brands and the repercussions for innovation.
3. The possible impact of a policy measure to be determined on private labels on competitive relations between retailers and processors. Possible policy measures include producer indicators, dependency law, trademark law and codes of conduct.

The study had two purposes. (1) To understand the strategies of both retailers and processors with respect to private labels, and the effects that private labels have on the competitiveness of retailers, suppliers of private labels and suppliers of branded products, with a focus on small and medium-sized enterprises (SMEs). We explored the extent to which the competitiveness depends on the nature of the players (processor or retailer), their size and the contractual relations they have with other players. (2) To identify possible imbalances in supply chain relations and to analyse the effects of these imbalances on the players' competitiveness and to provide possible solutions to the imbalances found.

The study was carried out in three stages. In the first stage, we established the state of the art with respect to the economic and policy literature, the structure of the European food supply chain and the legal framework. This stage was used to construct hypotheses assessing the pros and cons of private labels. These hypotheses were tested in the second stage of the study using data analysis and interviews among suppliers and retailers. In the last stage, the results of the previous stages were synthesized and complemented with an impact assessment of a voluntary or an obligatory system of producer indications. A system of producer indications refers to the inclusion of the producer's name, address or logo on the packaging of private label products.

This report is made up of:

Part I: This introduction.

Part II: A literature review.

Part III: An empirical analysis of the pros and cons of private labels, comprising three sections: methodology, data analysis, and a summary of the interviews carried out. The data analysis describes and analyses the European food supply chain. The competitiveness of the food supply chain is assessed by analysing developments in the number of firms (in particular SMEs), profitability and innovation. Where possible, we distinguish between brands and private labels.

Part IV: A legal analysis. This part describes legislation with respect to trademarks, industrial design, copyright and unfair competition, and assesses the enforcement of three laws.

Part V: A synthesis, which includes an impact assessment of a system of producer indications and a final conclusion.

2 Terms of reference

The following is a brief summary of the description of tasks in the tender document.

1. Description of the state of play comprising:
   - Overview and analysis of the relevant literature and studies at the EU and the national level
   - Economic study of the supply chain structure and the relationship between retailers and processors
   - Relevant EU and national law

2. Analysis of the following pros and cons:

   Pros
   - Private labels offer an opportunity for suppliers to grow and to benefit from the resources of retailers, allowing them to innovate and to improve their quality standards.
   - Consumers have more choice because a new range of products is offered.

   Cons
   - Consumers may be deceived by the fact that the retailers' rather than the processors' names are on the products.
   - There may be less choice for consumers if private label products replace branded and non-branded products.
   - Competition may be distorted if listing fees are applied differently to private labels than to processor brands.
   - Retailer buyer power might increase if suppliers become substitutable. Retailers might replace suppliers overnight.
   - The ability of suppliers to provide their own brand and to innovate is likely to diminish.

3. Impact assessment of three policy options:

   - Introduction of a voluntary system of producer indications on private labels.
   - Introduction of a compulsory system of producer indications on private labels.
   - No policy change.

   The impact assessment is based on the following criteria:
   - The impact on competition between retailers and processors and between processors.
   - The impact on the value of private labels and industrial brands.
   - The growing market share of private label products.
   - Differences in the application of listing fees between private labels and industrial brands.
   - Article 173 of the Treaty on the Functioning of the EU (TFEU) provides for the taking of measures to remedy the deterioration of the European food industry.
   - The indication to be used: the producer's name, the producer's trademark or possibly another indicator.
   - Relevant EU and national laws, in particular competition law (Article 101 and 102 TFEU and their national equivalents, dependency laws) and trademark law.

PART II Literature review

3 Literature review

Food retailers allegedly have market (buyer) power in relation to suppliers. On the other hand, suppliers of branded products may very well have market (seller) power in relation to retailers. Bargaining relations between food processors and retailers have changed over the last decade due to the concentration in food processing and, in particular, food retail, and factors such as the rise of the private-label market share. The steady rise in private-label market share in recent decades has made supplier-retailer competition more intricate and has probably shifted bargaining power from food processors to food retailers.

The bargaining power of suppliers in relation to retailers determines transaction terms. Bargaining power is reflected in both price terms and non-price terms. Non-price terms - notably lump sum payments - have received considerable attention in the last two decades. Non-price terms including lump-sum payments may very well be more important tools for generating retailer profits than per unit prices. An imbalance in the bargaining positions of suppliers in relation to retailers may distort competition. Consumer prices may become too high, supplier prices may become too low and innovation may be adversely effected. However, market power may also generate positive effects; for instance, retail buyer power may lead to lower consumer prices and spur processor innovation.

This section provides a state-of-the-art review of the academic and policy literature on supplier-retailer competition and the role that private labels play in this respect. Although this section focuses on retail buyer power, it also addresses the possibility of manufacturer seller power. Section 3.1 elaborates such key concepts as buyer power and economic dependency. Section 3.2 describes positive and negative effects of retail buyer power for price and non-price contract from a theoretical perspective. Section 3.3 elaborates the exercise of retail buyer power on price and non-price terms in practice. Section 3.4 analyses the role private labels play in supplier-retailer relations and the impact this may have on innovation and prices.

3.1 Key concepts

Buyer power is essentially the ability of particular buyers to obtain from suppliers more favourable terms than those available to other buyers or that can be expected under normal competitive conditions. Similarly, seller power is the ability to obtain more favourable terms from customers. Market power may arise as a consequence of size differences among buyers (or sellers) or if there are a limited number of buyers (or sellers) of a certain scale. Yet, market power represents more than just the ability to extract discounts and premiums and obtain low prices from suppliers or high prices from customers. Market power also manifests itself in the contractual obligations that firms are able to impose on their partners. For instance, powerful business customers may use their buyer power to negotiate or impose restrictions and particular conditions of trade beyond price on suppliers of goods and services, amounting to buyer-driven vertical restraints.

The extent to which a retailer has buyer power depends on the nature of its relationship with the supplier in question. In respect of economic analysis, it is usual to make the distinction between market relationships - whereby prices are established through a market mechanism - and bilateral relationships, which entail negotiation between trading parties. Relationships of the first type tend to be characterised by situations in which there are numerous suppliers, but all retailers pay their suppliers a single 'market price' for the product in question (this is referred to as a 'market framework'). Relationships of the second type arise in situations in which suppliers are relatively concentrated and prices and other terms are negotiated bilaterally with retailers (a 'bargaining framework'). The former situations may, for instance, be applicable to certain agricultural or commodity markets. However, it is the latter situations that usually characterise retailer-supplier relations in grocery goods markets, where bilateral bargaining takes place between suppliers and retailers, or groups thereof.

Both market and bargaining frameworks are relevant to food products. In the Netherlands, fresh produce is contracted on a weekly basis, while a product like bread is contracted for a period of between 6 and 12 months. Bread prices are laid down for this period. Supermarkets let a number of suppliers submit offers with respect to

price and possibly other characteristics. Based on such offers, suppliers are selected for one week, six months, one year or a season. This is also the case for private label products in Hungary. However, even if there are long-term contracts, supermarkets may continue to renegotiate the contract terms. Supermarket chains regularly lengthen the payment term, unilaterally or otherwise. Discounts are negotiated while contracts are in force. But the extent to which this occurs differs from case to case.

Suppliers that are economically dependent on major buyers are under considerable pressure to agree to price discounts or non-price requirements. Suppliers are economically dependent if they depend on a specific customer for a substantial part of their sales. In this situation, failure to concede to the buyer's demands may result in a significant loss of trade for the supplier that cannot easily be made up through other contracts. This would undermine the economic viability of the supplier. Moreover, the share of purchases made by the buyer may not necessarily have to be very high for the buyer to exercise substantial bargaining leverage, since even a small loss of sales for the supplier can affect its viability, especially when economies of scale are vital to the profitable functioning of the business. Similarly, retailers may be dependent on suppliers of must-stock items. For example, because consumers expect Coca-Cola to be on the shelves, retailers have a relatively weak bargaining position in relation to the Coca-Cola Company.

Within a market framework, an important factor in determining both market power and economic dependency is the size of the supplier's and retailer's sales of a product relative to the supplying industry's total sales of that product. A further relevant factor is the degree of concentration in food retail and food processing in relation to the sales of the product. In a bargaining framework, the factors that may confer buyer power are essentially those that affect the extent of a retailer's reliance on its supplier in respect of the availability of outside options (such as alternative sources of supply or backwards integration). These factors include the size of the retailer relative to the size of the supplier, the absolute size of the retailer and of the supplier, and the supply of competing products (including private label and branded items) that compete with the supplier's product.

Suppliers in the Netherlands and the UK consider their bargaining power in relation to large grocery retailers to be small. This holds in particular for small suppliers, suppliers of fresh produce and suppliers of private label products. This is due to, for example, excess supply at the wholesale level. Small suppliers face barriers to entry in terms of quality standards, IT investments and distribution capacity. However, they do play a role in supplying new and niche products to large retailers. Food retailers assist some small suppliers in order to able to retail the niche products.

3.2 Effects of buyer power

3.2.1 Potential beneficial effects of buyer power

Market power, notably buyer power, is not necessarily detrimental to overall economic welfare. Indeed, it might be usual to consider an increase in retailer buyer power good for consumers. In particular, the exercise of buyer power may allow a retailer to obtain discounts, but competition at the retail level could then oblige it to put these benefits back into the market through lower prices or an improved retail offer (such as a better retail service and/or improved store amenities). Furthermore, this may benefit not only the retailer's own customers but also its rivals' customers, since the competitive response by retail rivals may be to lower their prices and otherwise improve their retail offer. In other words, buyer power may act as a benign countervailing force that spurs on supplier competition and encourages greater supplier efficiency, with the retailers' buying muscle used to negotiate discounts from suppliers, which are then either partially or fully passed on to improve consumer welfare.[1]

This benign view of buyer power clearly applies if suppliers can afford to make these discounts without damaging their own welfare to such a degree that it undermines their competitive position, efficiency and/or incentives to invest and innovate; that is, if they can afford to lower consumer prices at no real economic cost. Indeed, it may be possible that a squeeze on supplier profits, rather

[1] For a formal model, see Dobson and Waterson (1997). For related work, see Chen (2003), Erutku (2005), Inderst and Shaffer (2007) or Inderst and Wey (2007). For a concise survey, see Snyder (2005).

than discouraging investment actually serves to encourage it, whereby suppliers are induced to fight to attain a competitive advantage over their rivals through innovative effort and thereby ensure their own survival and perhaps future prosperity through product differentiation or superior efficiency. This holds not only for the food processing industry, but also for agriculture, which faces increasing demands and pressure from the food processing industry to meet requirements with respect to economies of scale and product quality.

Moreover, retailer-led vertical restraints that arise through the exercise of buyer power may deliberately restrict supplier behaviour, but do so in a way that allows for closer alignment of the incentives of the trading parties, perhaps serving to enhance efficiency through overcoming free-rider and hold-up problems, encouraging greater product quality control and uniformity of standards, and gaining economies of scale in distribution with more efficient supply arrangements.

H1A *Retail bargaining power lowers consumer prices.*
H2A *Retail bargaining power spurs innovation.*
H3A *Vertical constraints improve supply chain efficiency.*

Food retailers enhance supply chain efficiency by, for example, reducing the number of suppliers to a limited number per product category (UK Competition Commission 2008; LEI 2009). For instance, UK's Waitrose reduced the number of its food suppliers from 100 to 15 in the early 2000s. For specific items, supermarket chains have between one and five suppliers; however, they typically have more than one supplier in order guarantee supply, quality and competition. This implies that both small and large suppliers sell a substantial proportion of their products to a limited number of supermarket chains. The UK Competition Commission (2000) found that, on average, British grocery suppliers sold one third of their UK sales to the biggest British customer and nearly 70% to their top five customers. Numbers for the Netherlands are comparable (LEI 2009). Although the dependence of grocery suppliers on food retailers is substantial, this also holds vice versa.

Table 3.1	Market share of the top UK grocery retailers in UK suppliers' UK sales	
	Minimum	**Average**
Top 1	8.1	32.2
Top 2	14.4	46.8
Top 3	19.1	56.4
Top 4	21.9	63.3
Top 5	23.7	68.5
Source: UK Competition Commission 2000, p. 232.		

Moreover, suppliers and supermarkets increasingly make arrangements about a wide range of issues, such as logistics and planning, traceability, product specifications and packaging. The purpose of these arrangements is to guarantee and improve food safety and quality, supply and transparency. By doing so, supermarket chains differentiate themselves from other chains. The arrangements are made not only with the direct suppliers, but also with the suppliers of suppliers. Some supermarket chains also contract farmers. The arrangements are made under framework contracts, as well as in detailed written contracts. These arrangements are made by all types of supermarket chains, that is, discounters, convenience and value for money supermarkets. Large supermarket chains make arrangements throughout the chain, while small supermarket chains confine themselves to arrangements with relatively large players. Retailers' ability to integrate backwards is limited, because wholesaling is not part of the core competence of chain stores. Because suppliers and retailers make agreements with respect to an increasing number of issues, the interdependence between suppliers and supermarket chains is continually increasing. This increases the switching costs for both suppliers and supermarket chains.

3.2.2 Potential harmful effects of buyer power

Despite the potential benefits of buyer power, there are three ways in which retailers' buyer power might adversely affect competition and ultimately harm consumers: (i) demand withholding; (ii) suppression of

supplier investment; and (iii) 'waterbed effects', which distort retail competition.[1]

(i) Demand withholding
In a market framework, if suppliers display unit production costs that increase with the volume produced, powerful buyers might withhold demand so as to reduce the purchase price and generate a better margin on the sales of these goods. If these buyers also have some selling power in relation to the final consumers they serve, they can sell the reduced quantity purchased at higher prices to consumers in the downstream market. In this case, consumers pay higher prices and purchase a smaller volume of these goods.

(ii) Suppression of supplier investment
Buyer power might suppress investment by suppliers in process and product innovation as well as in maintenance and upkeep if it reduces suppliers' expected returns from such investment. Consumers are harmed by a lower rate of innovation and product quality. If the exercise of buyer power results in fewer new products coming to market, a reduced variety of products and/or a reduction in product quality, consumer welfare could be harmed. This is likely to hinge on the existing profitability of suppliers: the more profitable they are, the less likely that such effects will materialise. However, if suppliers are currently struggling to earn sufficient profits to permit them to make the necessary investments or even stay in business, then increased buyer power could have these detrimental welfare effects.

(iii) Waterbed effects
Within a bargaining framework, if the terms of trade to retailers with less buyer power worsen when retailers with stronger buyer power obtain better terms - the so-called 'waterbed effect' - then the offer to final consumers by retailers with less buyer power may also worsen. For instance, the price charged by these retailers to final consumers may increase. Depending on the way in which retailers with stronger buyer power set their retail offer, the net effect in the short term on downstream prices or quality might be negative. Furthermore, any differences between the offerings of retailers may lead to some retailers exiting the market or reducing their offer, thus progressively

[1] See Competition Commission, Working Paper on Buyer Power (Jan. 2007).

increasing concentration and leading to an increase in prices or a reduction in quality in the medium to long term.

H1B *Retail buyer power leads to lower supplier prices and higher consumer prices.*

H2B *Retail buyer power reduces investment and innovation in food processing.*

H4 *Retail competition is weakened due to the fact that the improvement of contract terms gained by the largest retailers is paid for by small and medium-sized retailers.*

3.3 Exercise of buyer power in practice

While retailer buying power can be exercised in various ways, it can be considered as broadly serving two purposes: (i) obtaining the lowest possible prices from suppliers for their goods, and (ii) controlling the non-price terms and conditions of trade in such a way as to benefit the buyer at the expense of suppliers and possibly rival retailers as well.

3.3.1 Price terms

It might be expected that the greater the market share of the retailer, the greater its ability to obtain lower prices from its suppliers both in terms of bulk buying economies and in terms of negotiating discounts because of the volume of sales that it can offer suppliers. The clearest evidence of this is the empirical analysis conducted by the UK Competition Commission (CC) in three separate enquiries conducted over an eight-year period, with the consistent finding that larger firms tend to obtain larger discounts from suppliers (UK Competition Commission 2000, 2003 and 2008).

In the CC's supermarkets inquiry, which was concluded in 2000, the retailer with the largest market share - Tesco - was generally found to secure the lowest prices, followed by the other major supermarket chains. All other retailers paid above average prices. For example, compared to the price paid by Tesco, a number of smaller chains paid around 10% more - a level that potentially placed them at a serious competitive disadvantage relative to Tesco and other major

multiple operators. More generally, the CC's findings pointed to a close relationship between market share and buying effectiveness, in terms of obtaining relatively low prices. Furthermore, the extent of the price differentials points to these being down to differences in retailers' buying muscle rather than simply being cost-justified.

In the CC's groceries market inquiry, which was completed in 2008, the evidence again pointed to a statistically significant relationship between price and volume. The CC found that retailers and wholesalers with high market shares often, but certainly not always obtained more favourable trade terms than smaller players. Using econometric analysis, the CC estimated that the difference between the volume purchased by a very small customer and that purchased by a very large customer would result in a price differential net of variable (i.e. per unit) discounts of approximately 13% and a price differential net of both variable and fixed (i.e. lump sum payments) discounts of approximately 11%.

This result supports a part of hypothesis H4: large retailers, wholesalers and buying organisation are able to get better terms than their small and medium-sized counterparts. Some of the advantage the larger buyers enjoy is due to their bargaining power rather their cost efficiencies.

3.3.2 Non-price terms

In addition to securing direct price concessions, retail buyer power can also be used to obtain other favourable non-price terms of dealing. These additional terms and conditions of trade beyond the unit price may be aimed at providing the buyer with a direct financial benefit, such as requiring suppliers to pay lump sum payments to initiate or continue trading with the buyer. Alternatively, they could be used as a means of securing more indirect financial benefits. For example, most-favoured-customer clauses - which oblige the supplier not to sell to another retailer at a lower price - ensure that the buyer will not be placed at a cost disadvantage relative to another buyer. Similarly, exclusive supply arrangements deny other buyers access to the supplier's product, which may allow the buyer to gain a product differentiation advantage over its rivals in downstream markets. Furthermore, the terms and conditions of trade

applied by a powerful buyer may also be about shifting the burden of any financial risk squarely on to suppliers. For instance, the buyer may require the supplier to accept the return of unused or unsold supplies, or impose long delays in payment (to protect its own cash flows - at the supplier's expense). In a similar vein, if there is the prospect of a supply disruption or delay, a powerful buyer may insist that it receives supplies ahead of other buyers, thereby shifting the risk of non-availability on to its rivals.

However, while a position of control by a buyer over its suppliers may greatly assist in the imposition of vertical restraints, this is not a prerequisite for buyer-led restraints to arise. First, they may arise through mutual consent between broadly matched trading parties, for example as part of the bargaining process, whereby in agreeing to a restraint a supplier gains something in return, such as financial recompense (for any foregone income) or perhaps a reciprocal restraint placed on the buyer. Second, these restraints may be in the context of standard 'custom and practice' arrangements that might have emerged in the industry over time and are respected by most or all buyers, perhaps to ensure an even playing field and that there is no discrimination between buyers. Third, the restraints may arise in the context of a buyer facilitating a suppliers' cartel, for example supporting a conspiracy of producers to prevent a price collapse through, say, agreements on resale price maintenance or exclusive supply. Fourth, such restraints may be associated with a group of buyers acting in unison, for example seeking to prevent a more efficient retail operation from capturing their customers. For the most part, though, the kind of buyer-led vertical restraints that might be expected to occur most commonly are those in which the buyer holds some bargaining advantage over suppliers that ensures their compliance or consent.

These practices can be wide ranging and quite diverse in nature. One way of viewing them is to consider how they affect the behaviour of trading parties and their impact on competitors. With this perspective in mind, table 3.1 provides a simple classification of types of buyer-driven restraints, providing examples for each of the six categories mentioned.

Table 3.1	Buyer-driven vertical restraints	
Category	**Nature**	**Examples**
1. Conditional purchase requirements	Supplier required to provide significant concessions concerning the other parties it may trade with or what it uniquely will provide the buyer as a condition of purchase	- Insistence on exclusive supply - Minimum supply obligations - Exclusive distribution - Reciprocal dealing - Tying purchases
2. Additional payment requirements	Supplier required to provide lump sum payment or special discounts to gain/retain access to a key distribution system or to ensure that the buyer is rewarded for its efforts and compensated for any failings on the part of the supplier	- Listing fees - Slotting allowances - Retroactive (overriding) discounts - Joint marketing contributions - Special payments (e.g. buyer merger 'wedding gift')
3. Non-discrimination clauses	Requirements placed on a supplier either to ensure that it does not offer significantly better terms or products to other purchasers or to help the purchaser compete on effective terms against other purchasers (e.g. in its downstream markets)	- Most favoured customer clause - Requirement to provide best or matching product/service quality - Margin support guarantee - Open book accounting requirement
4. Refusal to buy	Purchaser boycotts a supplier or limits its purchases in such a way as to weaken the supplier's competitive position or put	- Refusal to initiate trading - Terminating long-standing trading relationship at short notice - Delisting certain products

	it out of business (potentially distorting supplier competition and perhaps raising other purchasers' costs)	
5. Deliberate risk shifting	Purchaser pushes on to its supplier the financial risk that it faces from uncertainty over its own performance and realised demand in its downstream markets	- Delayed payments - Enforced sale-or-return - Payments to cover product wastage on unused/unsold items - No written contracts
6. Service or input requirements	As part of the terms and conditions of supply, the purchaser requires a supplier to provide particular services or to use particular inputs (beyond those normally offered) to suit its own specific needs	- Tailored delivery terms - Customized product presentation - Obligations to use third-party contractors - Category management services

H3B *Vertical constraints distort retailer competition because large retailers use these constraints to reduce horizontal competition from their small and medium counterparts.*

H3C *Vertical constraints are used by retailers to extract profits from suppliers and to shift risks to suppliers.*

H3D *Vertical constraints are used by suppliers to extract profits from retailers and to shift risks to retailers.*

The United Kingdom

A good illustration of the complexity of buyer-driven arrangements in practice, and the wide range of competitive issues that they throw up, is provided by the CC's detailed investigations of buyer power practices in the UK grocery sector over the last decade. In its supermarkets inquiry, the CC identified 52 practices associated with retailer buyer power that when practised by the major multiple grocery retailers could have potentially distorting effects on supplier and/or retailer competition. It found evidence that 42 of these practices had been used by the major retailers. The CC grouped these 42 practices into 8 categories in considering their effects on supplier competition and retailer competition, and whether they operated or could be expected to operate against the public interest.

As summarised in table 3.2, the CC found that 30 of these practices distorted supplier competition, of which 18 also distorted retailer competition, and overall (after taking into consideration any possible offsetting benefits) deemed 27 practices as operating against the public interest.

Table 3.2	UK Competition Commission assessment of supermarket supplier practices (2000)			
Category of practice	**No. of practices**	**No. of practices distorting supplier competition**	**No. of practices distorting retailer competition**	**No. of practices against the public interest**
Payments for access to shelf space	8	6	0	4
Imposing conditions on suppliers' trade with other	2	0	0	0
Applying different standards to different	1	1	1	1
Imposing an unfair imbalance of risk	12	10	10	10
Imposing retrospective changes to contractual	8	6	6	6
Restricting suppliers' access to the market	1	0	0	0
Imposing charges and transferring costs to	8	6	1	5
Requiring suppliers to use third party suppliers	2	1	0	1

In its 2008 research, the CC concluded that lump sum payments and practices that create uncertainty for suppliers in terms of revenues and costs are among the most prevalent practices. One fifth of the complaints collected by the CC in its 2008 research refer to lump sum payments; nearly half of the complaints create uncertainty for suppliers or shift risks to suppliers. A substantial proportion of the latter practices (15% of all complaints) concern retrospective payments. According to the CC, lump sum payments do not distort competition, at least not necessarily. For example, slotting allowances reduce retailer risks with respect to product introductions. However, buying practices that create uncertainty for suppliers influence the financial viability of suppliers and their ability to invest and to innovate. This holds in particular for the following two practices. First, retrospective and late payments create uncertainty and constitute unexpected risks and costs.

Second, payments for alleged bad performance are not only a risk, but also involve a moral hazard problem: the payments are enforced without suppliers having the possibility to review the alleged bad performance.

Table 3.3 Complaints gathered by UK Competition Commission in its 2008 research

Categorization of complaint	Number of complaints	In %
Product mislabelling	5	1
Influencing rivals' costs	4	1
Lump sum payments	62	18
Transfer of risks and unexpected costs	180	45
Of which retrospective changes of contract terms	59	15
Other	129	35
Total	380	100

Source: UK Competition Commission (2008).

Hungary

According to a study conducted in Hungary (Dobos 2007), 64% of the interviewed suppliers mentioned that their trading partners wish to have some forms of refunds, and suppliers on average paid five types of refunds to one retail partner. The average refund rate is 16% of the price. Popp et al., (2008) provide a list of more than 80 possible payments required by retailers. The 'conditions' are most heavily used by the buyer groups. Suppliers are usually not dependent on one retailer, but the larger the retailer's market presence (often foreign-owned companies), the more affected suppliers are. Czibik and Mako (2008) also found that larger retailers demand larger refunds. Company size is related to the exertion of buyer power.

Czibik and Mako (2008) found that 67% of the responding suppliers were required to meet one of the following three business practices: the most favourable conditions clause, third party use and delisting without reason. Dobos (2007) came to the conclusion that the business practices prohibited by the Trade Act (the most favourable conditions clause and third party service specification) hit medium-sized and large companies harder than small companies. In addition, large firms are most affected by delisting without reason and other refund requests.

Here, we need to note that some of the refunds are not necessarily detrimental, since in some cases, the companies receive real services (e.g. product handling, stocking fees). Both studies also indicate that late payments are an issue: 20-25% of all buyers frequently or always pay late.

The Netherlands

In the Netherlands, slotting and listing fees are not common for fresh produce (LEI 2009). Bargaining concentrates on prices (including discounts). Supermarkets carry out pilots if they foresee risks in introducing new product varieties. Product and sales risks attached to fresh produce generally shift at the time of sale of the product from the supplier to the customer. The risks attached to perishable and unsold products therefore shift to supermarket chains after delivery (LEI 2009). Because stocks at the supermarket level are ever smaller, risks are not excessive. The risks associated with perishability are relatively large for small supermarket chains. Buy-back arrangements and product recall are not common in the Netherlands (except in the case of buy-back arrangements for bread).

Italy

A similar situation exists in Italy in the fruits and vegetables vertical chain. According to the Italian antitrust authority (AGCM), Italian retailers usually sign annual or seasonal contracts with large producers in order to guarantee the quantity and quality of the produce. Contract negotiations cover product standards, approximate volumes over the season and the discounts to be applied. However, prices are defined under a market framework on a daily or weekly basis, with the local wholesale price used as a reference. AGCM (2007) considers large retailers unable to exert forms of buying power in this sector, especially for vegetables. Several reasons can be argued:

- The number of large producers in Italy is very limited. This creates high switching costs, since the alternative to a large producer is, at least in the short term, a large number of small producers, which would inevitably increase transaction costs and produce inefficiencies.

- Retailers have to guarantee to their customers a complete set of must-stock items that have a constant quality. This way, they are not sufficiently flexible to capture market opportunities.
- Only half of all sales of fruits and vegetables are made through the modern retail channel.

Therefore, AGCM stresses more the potential role of retailers in inducing a structural change and improving the efficiency of the fruits and vegetable vertical chain, rather than their exercise of buying power.

Evidence for the UK and Hungary shows that retailers use several business practices to reduce supplier competition (hypothesis 3C) as well as retailer competition (hypothesis 3B). The UK Competition Commission argues that suppliers are particularly affected by retailer-created uncertainty. This may have a negative effect on supplier investments (hypothesis 2B). Lump sum payments may be expected to increase supply chain efficiency (hypothesis 3A). Evidence for Italy (and the Netherlands) shows that concentration in supply and retail fosters supply chain efficiency and leads to mutual interdependence of suppliers and retailers.

3.3.3 Economic effects of listing fees and slotting allowances

Listing fees, slotting allowances (i.e. shelf space charges) and other off-invoice fees commanded by retailers from their suppliers have attracted considerable attention in legal and policy circles in both Europe and North America.[1] A large academic and practitioner literature considers the reasons for the phenomenon and the ultimate effects on competition and consumers. Theories from what might be termed the 'efficiency school' explain listing and slotting fees as arising from the efficient operation of a free market for new products. In contrast, the 'market power school' maintains that these payments are the product of a non-competitive market or serve to sustain the monopoly power of those involved.

As Sexton et al. (2002) summarise, on the efficiency side, six arguments are often used to explain why listing and slotting fees are

[1] For summary views on the legality of slotting fees, see Cannon and Bloom (1991) and Valentine (2000). For policy analysis see FTC (2001, 2003).

levied in the context of a highly competitive, risky environment: (i) as an efficient signal of those products that are most likely to be successful, (ii) as a screening device used by retailers, (iii) as a price that is necessary to equilibrate the number of new products suppliers bring to market with the number that consumers demand, (iv) as a means by which retailers allocate shelf space among competing uses, (v) as a means of sharing the risks of failed products between supplier and retailer, and (vi) as a way for retailers to legitimately cover the costs of removing failed products, thereby charging lower retail prices.[1]

In contrast, Sexton et al. (2002) summarise the opposing school of thought as using five key arguments in respect of anti-competitive effects arising from listing and slotting fees: (i) that these fees represent a means by which retailers signal to other retailers that they will not compete aggressively on the retail price as they have taken their profits upfront;[2] (ii) that listing and slotting allowances act as barriers to entry by small independent suppliers, sustaining the monopoly power of larger players; (iii) that off-invoice fees are merely creative ways of implementing two-part, discriminatory pricing schemes among cartels of retail buyers and are rarely uniform among suppliers; (iv) that, by monopolising a distribution channel, suppliers who pay slotting fees significantly raise costs for their rivals, thereby harming the rivals' ability to compete; and (v) that listing and slotting fees increase the total cost of bringing new products to market and thus reduce the rate of innovation.

Given that there may be both efficiency and market power explanations for listing fees and slotting allowances, antitrust and academic attention has increasingly focused on more specifically identifying, distinguishing and elaborating upon those circumstances in which competition is most likely to be adversely affected, resulting in harm to consumers. In particular, and as extensively detailed by Gundlach (2005), much of this attention has focused on the exclusionary role that slotting allowances may serve. Dominant suppliers may condition their payments to retailers on requirements that disadvantage their rivals, leading to anti-competitive exclusion.

[1] For elaboration of the efficiency arguments, see Kelly, (1991), Sullivan (1997) and Lariviere and Padmanabhan (1997). For some empirical evidence on efficiency benefits based on a specific retailer, see Wright (2007).

[2] For a formal treatment of slotting fees as a buyer-led strategic means of reducing competition, see Shaffer (1991).

Other attention, particularly in the European context, has centred on how dominant retailers may be able to use slotting allowances and off-invoice fees by exploiting suppliers' dependency to shift risk, undermine supplier investment and distort supplier competition.[1]

In addition, a concern has arisen, notably in situations where below-cost selling is prohibited, that off-invoice payments may be used as a facilitating device to effect price coordination at the retail level. Here, artificially high invoiced supply prices can act as a base from which to set high retail prices, with retailers compensated through off-invoice lump sum payments.[2]

This section repeats for listing fees and slotting allowances that they may both improve supply chain efficiency (hypothesis 3A), but also distort competition (hypotheses 3B and 3C).

3.4 Private labels

3.4.1 Consumer choice

Private label penetration is steadily increasing in the EU. Private labels are products that are developed, branded and marketed by retailers rather than food manufacturers. Retailers develop and sell private label products in order to make their retail proposition more attractive to consumers by enhancing product choice and value for money. In this regard, private labels can serve three roles.[3]

1. *To fill gaps in product categories that are not served by brand producers* - for example as 'generic' or 'budget' brands providing low-price/low-quality alternatives to existing brands, as 'alternative flavour' brands providing different flavours/recipes/looks to existing brands, or as 'premium' brands serving to provide high-quality products at brand or better-than-brand level.

[1] For Hungary, see Juhasz and Kozak (2009).
[2] For a theoretical analysis, see Miklos-Thal et al. (2008). For empirical evidence see Biscourp et al. (2008).
[3] For a range of examples for each of these cases, see Kumar and Steenkamp (2007), Lincoln and Thomassen (2008), Dobson and Chakraborty (2009), Bauer and Agárdi (2000) and Rekettye (2009).

2. *To provide direct alternatives to brands* - for example 'me too' or 'copycat' alternatives to brands with a same-quality-but-lower-price proposition offering value for money to consumers.

3. *To pioneer new products and new categories* - for example as 'value innovators', delivering new, healthier or more ethically sourced products or opening up whole new product categories to satisfy latent demand (e.g. chilled ready meals). Retail labels function as an umbrella brand. They generate value for consumers and a rent for retailers by signalling the same information over various product categories (e.g. the Dutch retail giant Albert Heijn's 'Pure and Honest' corporate brand).

Private labels under 1 and 3 are complementary to industrial brands; private labels under 2 are substitutes for industrial brands. In as far as private labels are a complement, they increase consumer choice. This holds for 'budget' brands, 'alternative flavour' brands, 'premium' brands and 'value innovators'. Private labels are simply brands in their own right (Kumar and Steenkamp 2007). Of course, these brands may crowd out industrial brands, but if they do, they are probably a better offer than existing brands. Copycat alternatives are intended to crowd out specific industrial brands. They are marketed as a lower price alternative to an existing product. Copycats are beneficial for consumers in the short term, because they are a better offer than existing brands. In Central Europe, price competition is still the main argument in private label development. Quality and price differences are substantial in such countries as Hungary, the Czech Republic, the Slovak Republic and Poland (Nevihosténvi 2008). However, if copycats' free-rider behaviour on existing brands has a negative impact on the incentive to innovate, consumers may be worse off in the long run.

H5 Private labels complement and substitute industrial brands. We expect the number and market share of private labels to increase, the number and market share of industrial brands to decrease, and the total number of brands to increase. The shift in market shares affects the variety and quality of the product offer, but in what way is not a priori clear.

There are two major strategies food retailers can follow to create value added for consumers beyond copycatting: by creating value innovators or premium quality products (Kumar and Steenkamp 2007). Value innovators provide high-value private labels at a low price. A good example of value innovators are the Aldi and Lidl private labels. Aldi and Lidl market products that have a high physical product quality at a low price, while neglecting such quality aspects as packaging and brand image. The fact that one should not underestimate Aldi's product quality is illustrated by the fact that it performs well in independent quality and taste tests. Schwarz group Lidl was the second largest global trademark filer in 2009 after Novartis (Planet Retail 2010).

Premium private labels compete with industrial brands on quality and may actually be more expensive than industrial brands. Tesco, for instance, sells premium products at prices that exceed those of at least some must-stock items. Tesco Finest chocolate is more expensive than Cadbury's, and its orange juice is more expensive than Tropicana's and Minute Maid's. Like manufacturers' premium products, retailers' premium products are unique in terms of flavour and packaging and are supported by the development of premium product lines (Tesco Finest or Metro's Fine Food).

3.4.2 Supplier-retailer competition

Private labels are developed in order to improve the retailer's position not only towards consumers, but also towards suppliers and other retailers (Bontems et al., 1999; Bergès-Sennou, Bontems and Réquillart 2004).

As a result of the success of private label, retailers have moved on from being merely intermediaries in distributing manufacturer-branded items to consumers, to the situation where they taking centre stage in the supply chain, controlling to a large degree the product development and marketing process. In contrast, private labels serve to make manufacturers anonymous to consumers, placing them in a more subordinate role and leaving them to serve as mere agents, producing to order for the retailer. Private labels break the direct link between manufacturer and consumer (i.e. the bond posted by the brand and reinforced by advertising), and instead allows the retailer to dictate product specification (possibly

even determining the nature of production) and to take over the role of marketing products, and thereby promote its own retail brand image through the private labels stocked (not least by promoting its own name on product labels).

This control within a principal-agent relationship means that retailers can generally exercise very significant buying power over private-label producers because they can easily substitute one producer for another with minimal switching costs while ensuring that producers compete vigorously for contracts (such as through an auction system where lowest unit price offers determine the award of private label supply contracts). With private-label producers economically dependent on critical retailers for their survival (if they have no viable alternative routes to market), it is possible for retailers to extract all the available surplus (profits) from their economic relationship. In the extreme, private-label producers may find it difficult to cover their fixed costs if competition for private label supply contracts is so intense that supply prices are driven down to variable cost levels. This would affect their ability to make future investments (such as in new machinery and technology to increase productivity and efficiency) and affect their long-term economic viability. In such circumstances, only those private-label producers with a significant cost advantage (e.g. through economies of scale or scope) or a differentiation advantage (e.g. through superior research and development facilities or proprietary technology) over rivals may prosper.

The development of private labels may affect not just private-label producers, but also suppliers more generally. Specifically, the development of private label goods and the increasing amount of shelf space that they command means that there is potentially less shelf space available to branded goods. With increased shelf space allocated to private label, this may have the effect of forcing brand producers to compete more aggressively for the remaining space. Small brand producers may be particularly vulnerable to increased competition for this remaining shelf space, as they do not have the resources to support continuous brand building and struggle to match the ability of major brand producers to pay high access fees to guarantee shelf space (such as shelf-space payments, slotting allowances and special display fees). These requirements can potentially serve as a significant entry barrier to the branded goods

sector and may also lead to the exit of existing small brand producers and other producers of non-primary brands.

H6A *The bargaining power of retailers relative to private label suppliers is increasing. Sales, profitability and the number of private label suppliers are decreasing, as are their investments.*

H6B *The bargaining power of retailers relative to industrial suppliers is increasing. Sales, profitability and the number of industrial brand suppliers are decreasing, as are their investments. This holds in particular for SMEs.*

Beyond the desire to enhance choice for consumers by adding private labels to the existing range of brands on offer, retailers may have strategic reasons for favouring private labels at the expense of brands if it offers other business advantages. In particular, brand producers may be concerned about the 'double agent' role that retailers serve in acting as both their customers (in buying and then reselling brands) and their competitors (in developing private label as direct substitutes for brands) (Bell et al., 1996; Dobson 1998, 2005). In this situation, retailers might be able to exploit their double-agent position to their advantage through their control of how products are marketed and sold in their stores, potentially using the retail marketing mix to undermine brands while advancing their own private label offering. To the extent that the use of such a practice were to prove successful, it would make it harder for brand producers to compete on effective terms with private labels. This could be expected to have a disproportionate effect on smaller and secondary brands, especially those made by small brand producers, that do not have the mass consumer appeal and consumer loyalty exhibited towards primary brands and/or a broad-based portfolio of brands supported by well-resourced major brand producers.

But why should a retailer deliberately favour private label? There are a number of possible business advantages for the retailer in favouring private label over brands. The main advantages commonly cited fall under the following six headings.[1]

[1] This is not an exhaustive list but these are the main arguments that emerge from several surveys of the academic literature in the field, including Berges-Sennou et al.

1. Higher margins - by saving on brand marketing costs and free-riding on brand investments, private labels can be supplied to retailers at significantly lower cost than brands, allowing the retailer to earn higher margins when pricing private labels just below brands.[1]

2. Facilitating consumer segmentation - by using the brand as a reference point, the retailer may promote private label as a means to better target price-conscious consumers while developing multiple price-quality tiers to increase category sales.

3. Promoting retailer's own name and status and building consumer loyalty - with the private label bearing the retailer's name, the retailer may be able to draw quality inferences from the leading brands while appearing to offer increased choice and value and so enhance its consumers' champion image and build loyalty with its customers.[2]

4. Enhancing retailer differentiation and reducing price comparability - as private labels are unique to the retailer, they offer a point of differentiation from other retailers and make it more difficult for consumers to make like-for-like price comparisons, thereby easing the intensity of price competition with rival retailers.[3]

5. Creating revenue synergies across categories - by successfully promoting private label in one category, consumers may be encouraged to experiment with private label in other categories and

(2004), Mészáros (2007), Sayman and Raju (2007), Pauwels and Srinivasan (2009) and Sethuraman (2009).

[1] A large number of studies shows that percentage margins tend to be higher on private label goods, e.g. Hoch and Banerji (1993), Narasimhan and Wilcox (1998), Raju et al. (1995), Barsky et al. (2001), Sayman, Hoch and Raju (2002), Pauwel and Srinivasan (2004) and Steiner (2004, 2009). However, the absolute margins can be lower, e.g. Corstjens and Lal (2000) and Ailawadi and Harlam (2004).

[2] See Corstjen and Lal (2000), Sudhir and Talukdar (2004) and Ailawadi, Pauwels and Steenkamp (2008).

[3] See Dobson (2003) for further discussion and Ailawadi, Pauwels and Steenkamp (2008) and Walters and Rinne (1986) for supporting empirical evidence.

so become more accustomed to buying private label for a wider range of products.[1]

6. *Weakening brand producer's bargaining position* - by having a credible alternative in place, retailers are less susceptible to withholding threats from brand suppliers, and in turn can extract more favourable terms in the form of increased discounts, funded price promotion support, and incentive payments from brand producers ('pay to stay' fees, slotting allowances, etc.).[2]

The last of these motives points to retailers using private label as a means to enhance their bargaining power over brand suppliers. With high retail concentration, major retail customers act as key gatekeepers that brand producers have to use if they are to obtain mass distribution of their products in order to reach a broad consumer base. This gatekeeper role is becoming increasingly important as a source of retail buyer power as shelf space becomes more limited and brands have to compete harder to gain access to the available space. With private label taking an increasing share of shelf space, there is less space available to brand producers. This provides retailers with increased bargaining power as it enhances their ability to play off brand suppliers against each other in allocating the remaining space. This increased bargaining power can allow retailers to gain bargaining concessions in the form of increased unit discounts and/or other favourable terms, such as increased promotion support payments, shelf space fees and volume-related discounts.

Furthermore, where private label products act as direct and effective substitutes for branded products, retailers are less dependent on those brands for generating sales if consumers are willing to switch to buying private label equivalents instead. This

---

[1] Sayman and Raju (2004a) find support for the 'umbrella' effect. Chintagunta (2002) finds private label prices to be set lower than category profit-maximising prices. Similarly, Sudhir and Talukdar (2004) suggest that loyalty and differentiation benefits for the retailer arising from private label are linked to the breadth of the private label range.

[2] Scott-Morton and Zettelmeyer (2004) present an analytical model of the retailer/brand-producer bargaining process showing how the retailer's development of private label as a direct substitute weakens the brand producer's bargaining position as the brand is no longer indispensable. Empirical evidence can be found in Narasimhan and Wilcox (1998), Sayman et al. (2002), Ailawadi and Harlam (2004) and Lal (1990).

reduces retailers' reliance on stocking these brands, which in turn provides a further source of bargaining power for retailers over the producers of these brands. In essence, the brand producers have greater need of the retailers' service as a provider of shelf space than vice versa; thus, in a relative sense, bargaining power shifts towards retailers and away from brand producers. The key exceptions are cases in which the brand is a 'must-have' or 'must-stock' item, such that consumers are not willing to buy another brand or private label equivalent, and so failing to stock the item means that the retailer may forego sales. However, as shown by the strong share of sales held by private label in most product categories, such instances are likely to be quite rare. In practice, any shift in bargaining power in favour of retailers comes from consumers' willingness to buy another product if the preferred brand is not stocked relative to consumers' willingness to shop elsewhere to buy that brand.[1] The strength of private labels is illustrated by the fact that the market share of must-stock items in Spain has remained constant over the last decade. It is secondary industrial brands that are crowded out by private labels.

The number of and shelf space for industrial brands also play a key role in the way retailers position themselves towards their competitors and consumers.

H6C *Retailers have a relatively weak bargaining position relative to suppliers of must-stock items. Sales, profitability and the number of industrial brands are not decreasing, or at least not as much as for other suppliers of industrial brands.*

H7 *Retailers favour private labels over industrial brands.*

Given that retailers could have strong profit or strategic advantages to favour private label over brands, it is important to consider how this favouritism may be exercised in practice. As a stream of academic studies suggest, it is the retailers' power to set the retail marketing mix for the in-store treatment of brands and private label in regard to how they are priced, positioned and promoted relative to each other that can allow retailers to advance private label at the expense of brands (Hoch and Banerji, 1993; Raju et al., 1995; Hoch,

[1] See Thomassen et al. (2006, pp. 22-42) for comparisons of different brands and for different countries. See also Corstjens and Corstjens (1999, pp. 196-218).

1996; Narasimhan and Wilcox, 1998; Dhar and Hoch, 1997; Kumar and Steenkamp, 2007; Dobson and Chakraborty, 2009).

Box 3.1 Ways to promote private labels

Retailers may use the following tactics to promote private labels' sales to the detriment of industrial brands.

- Retailers may use high-profile delisting trials, whereby individual brands are removed from shelves and reintroduced only if there is a clear drop in category sales because consumers do not shift to private label or alternative brands (see Leyland 2006 and Smith 2009).
- A more common form of favouritism towards private label comes from advertising and promotional campaigns that specifically encourage consumers to switch from buying brands to buying private label, for example through 'compare and save' in-store signage or through advertising leaflets (see Olbrich et al., 2009 for some examples for Germany).
- A further aspect that continues to be a source of friction between brand producers and retailers is the development of copycat private label, where the store brand very closely imitates the manufacturer's brand in respect of its formulation, packaging and appeal (Dobson 1998; Dobson and Chakraborty 2009). Copycat products free-ride on the image and goodwill that brands have built up through careful and continual product and marketing investment.
- Another ploy that retailers can use to steer consumers away from buying brands towards private label is through shelf space allocation and positioning, for example by awarding private label with a greater number of facings and eye-level placement as well as special product displays (Györe et al., 2009).
- Another tactic that might be selectively used is deliberate stocking out of brands to give shoppers the stark choice of buying the private label or shopping elsewhere to obtain 'temporarily unavailable' brands. This becomes feasible when the retailer is confident that shoppers' loyalty to the retailer is stronger than their loyalty to individual brands.
- While retailers may seek to favour private label through product selection, placement and promotion, there is also the option to adopt strategic pricing as a perhaps more subtle form of private label favouritism. There are at least four pricing tactics that retailers could employ provided they are able to determine the in-store prices of individual items in a product category while maintaining the desired price image for the product category:

(i) raise brand prices to choke off demand, thus encouraging consumers to switch to the less costly, better value private label, while capturing increased surplus from those consumers who remain loyal to the brand (e.g. Kim and Parker 1999; Soberman and Parker 2006; Meza and Sudhir 2005, 2009);

(ii) lower private label prices to enhance their perceived value for money and make brands look over-priced and poor value, thus more effectively targeting value-conscious consumers (Chintagunta 2002);

(iii) price the private label close to the brand to encourage consumers to think they are of equal quality but with the private label offering slightly better value through its slightly lower price (e.g. Competition Commission (2000) on 'umbrella pricing');

(iv) frequently raise and lower brand prices to confuse the consumer about their real value and encourage trial of more consistently priced private label (e.g. 'yo-yo pricing' with frequent temporary price reductions on the same brand item but 'every day low price' (EDLP) pricing applied to the equivalent private label).

3.4.3 Effect on innovation

In the introduction to this section, we referred to the impact of private labels on consumer choice. As such, private labels increase product choice, but they may also exert a negative influence on the ability of brand suppliers to develop and market new brands. For example, in as far as private label development involves free-riding on brand R&D efforts, as is the case for copycats, it may have a negative effect on brand R&D efforts. Private labels have an impact not only on the number, quality and variety of products in the markets, but also on branding. Private labels are simply retail brands. Retailers use their resources and reputation to challenge industrial brands by developing their own brands (i.e. private labels). This gives rise to the question whether food processors or retailers are most likely to develop and market new products and brands in the future.

Private label development may have significant cost advantages over the expensive, time-consuming and risky activity of brand development, in that a ready-made channel for marketing and distributing the goods is available through the retailer. In this way, many of the marketing costs incurred by brand producers can be avoided. Crucially, with retailers' support and sponsorship, private label offers non-branded goods manufacturers a straightforward and

inexpensive means of entering markets, as they can supply retailers without having to go through the lengthy and expensive process of developing branded goods of their own.

With the scale efficiencies offered by supplying large retailers and without the need for brand marketing support, private-label producers can operate at lower costs than brand producers and provide their retail customers with a basis on which they can afford to offer good value for money to consumers and undercut the prices of the leading brands.

According to food suppliers interviewed by Dobos (2007), in Hungary almost 40% of new product introductions in the previous three years (2004-2006) had been initiated by the retail partner. Foreign-owned large grocery retailers took such initiatives almost one and a half times more often than the average. Foreign-owned large grocery retailers and discounters are more likely to be related to product development and product line extension. The share of medium-sized and large enterprises in new product introductions is significantly higher than the share of small companies. Czibik and Makó's (2008) multivariate analysis shows that large foreign retail chains are more often associated with innovation than other companies. Market share has a positive relation with product introductions and product line extensions. The buyer also had a significant effect on the type of product development.

According to Popp et al. (2009), the neglect of innovation in the Hungarian food industry is due to several factors. On the one hand, technology is often in the hand of foreign investors. New products are developed and manufactured by the parent company, while subsidiaries take charge of the marketing. However, direct import by the retailers is more common. Medium-sized enterprises are usually deficient in funds; they have few resources for R&D. Moreover, because they usually have a broad product range, product development is even more expensive.

On the other hand, retail strategies to favour private label may reduce consumer choice. This holds in particular for outright brand foreclosure and for the disincentives for brand investment by brand owners due to the 'hold-up' and related problems. Because of uncertainty with respect to orders, payments, etc., suppliers face uncertainty with respect to the payoffs from the investments.

This makes them reluctant to make such investments in the first place, potentially leading to under-investment, and more generally to distorted investment patterns amongst suppliers.
This under-investment problem is likely to be most acute for small suppliers, which are least able to resist the buyer power of large retailers and are likely to be the most vulnerable to changes in contract terms (e.g. due to financial constraints, tight cash flow and economic dependence on a limited number of key retail customers). Thus, not only can retrospective changes cause considerable uncertainty for suppliers and act as a disincentive to investment and innovation, but they may also increase barriers to entry for small suppliers and make it harder for them to compete on effective terms with larger suppliers (with consequent impacts on innovation and product choice for consumers).

Hungarian evidence from three surveys shows that private-label producers tend to have large market shares and high turnovers, and to be medium sized or large (more than 50 employees).[1] Moreover, they tend to be foreign owned rather than Hungarian. Czibik and Mako (2008) also point out that small firms that produce private labels tend to take the initiative to do so, while large companies that produce private labels tend to be asked to do so by retailers. Retailers apparently contact large companies when they are looking for a private label producer, but the efforts made by small companies to become private-label producers may very well pay off (tables 2.4 and 2.5).

Table 3.4 **Production of private label according to enterprise characteristics in Hungary, per cent (N = 392)**

Foreign property	**No**	**Yes**	
	38.9	45.5	
Market share	below 5%	5-49%	over 50%
	23.3	54.3	62.9
Turnover	<HUF 200 million	HUF 200-1,000 million	>HUF 1,000 million
	25.0	44.6	57.6
Number categories (31.12.2006)	Small enterprises (1-49 people)	Medium enterprises (50-249 people)	Large corporations (over 250 people)
	27.3	65.9	65.8

Source: Czibik and Makó (2008).

[1] Dobos (2007), Kapronczai et al. (2009), Juhász at al. (2010).

Table 3.5	Initiator of the production of private label products according the company sales turnover in Hungary, per cent (N = 142)		
	Turnover		
	<HUF 200 million	HUF 200-1,000 million	>HIF 1,000 million
Supplier	63.3	40.0	20.9
Buyer	30.0	33.3	52.2
Both	(6.7)	26.7	26.9
Cases	30	45	67

Source: Czibik and Makó (2008).

As retailers consolidate their positions and increase their power as both sellers and buyers over time, the likelihood of economic harm arising from retailer practices to exploit their double-agent position increases.[1] Consumers may now have plenty of choice and benefit from the continuing widespread presence of brands, offering the benefits of brand reassurance through consistent quality, value and innovation, together with an increasing number of private label options. However, as the challenge from private label grows further, backed by retailer power, there is the increased danger that a greater number of brands will disappear from supermarket shelves, and ultimately consumers will face less choice.

H6B *Private label development - in particular of copycats - and retail buying behaviour have a negative impact on brand suppliers' product development. Sales, profitability and the number of industrial brands suppliers are decreasing, as are their investments. This holds in particular for SMEs.*

H6D *Due to the growth of private labels and retailer investments, the number of private label product introductions is increasing, as are the sales, profitability and number of private label suppliers.*

[1] On the why retailer buyer power and seller power may go hand in hand and serve to reinforce each other, see Dobson and Inderst (2007; 2008) and Dobson (2009).

The reformulation of Hypothesis 6B includes the effects of copycatting. Hypothesis 6D gives a counter argument of the alleged negative effect of private label growth on innovation in the food supply chain. Private labels are an innovation as such. Moreover, retailer resources may foster innovation.

3.4.4 Effect on prices

As mentioned in section 3.2, the potential effect of retailers' power on consumer prices is ambiguous. On the one hand, competition among retailers has the result that discounts obtained from producers, as well as efficiency gains, are passed on to consumers. On the other hand, distorted competition may lead to increased consumer prices with withholding of demand.[1] But what is the specific impact of private label development on food prices?

The price competition between private label and brands plays a central role. According to what may be labelled 'conventional wisdom' about the effect of private label development, brand suppliers should respond in three ways: lower brands' average prices, engage in more promotional activities focused on their products and further differentiate branded products from private label.

Focusing on the first type of response, the stylised fact that private label development should cause a decrease in brand prices is well established among both economists and industry representatives (see e.g. Mills 1995; Bontems et al., 1999). However, a number of authors have claimed that there are important reasons that may lead to an increase in brand prices as a response to private label development, mainly as a result of increased product differentiation (Soberman and Parker 2004; Gabrielsen and Sorgard 2007).

The empirical evidence is also ambiguous and has produced conflicting results. Some studies seem to support the view that brand prices may increase as a result of private label development (Ward et al., 2002; Bontemps et al., 2005, 2008; Gabrielsen et al., 2002; Bonanno and Lopez 2004), while others have come up with the opposite result (Putsis 1997; Chintagunta et al., 2002; Bonfrer and Chintagunta 2004; Sckokai and Soregaroli 2008).

[1] For example, evidence of a positive correlation between local retail concentration and consumer prices is found in Barros et al. (2006) and Smith (2004).

Part III Empirical analysis

4 Research methodology

The key aim of this study was to establish the impact of private labels on the competitiveness of the European food processing industry. The focus was on the impact on the innovativeness of the food processing industry and considered suppliers of private labels and industrial brands, as well as retailers. Hypotheses 1, 3 and 4 developed above defined the research context, but were not explicitly part of the terms of reference. We therefore focused on hypotheses 5, 6 and 7, also given the time and resources available. Because hypothesis 5 covers hypothesis 2 as well, we dropped hypothesis 2.

Hypotheses tested

H5 *Private labels complement and substitute industrial brands. We expect the number and market share of private labels to increase; the number and market share of industrial brands to decrease; and the total number of brands to increase. The shift in market shares affects the variety and quality of the product offer, but in what way is not a priori clear.*

H6A *Due to retail buyer power, the sales, profitability and number of private label suppliers is decreasing, as are their investments.*

H6B *Due to retail buyer power and copycatting, the sales, profitability and number of industrial brands suppliers are decreasing, as are their investments. This holds in particular for SMEs.*

H6C *Sales, profitability and the number of industrial brand suppliers of must-stock items are not decreasing, or at least not as much as for other suppliers of industrial brands.*

H6D *Due to the growth of private labels and retailer investments, the sales, profitability and number of private label suppliers are increasing.*

H7 *Retailers favour private labels over industrial brands.*

Hypotheses 5, 6 and 7 refer to two issues: (1) the competitive position of food processors; and (2) innovation efforts, the development of

new brands, and the development of the number and market share of private labels versus national brands.

Hypotheses on food processor competitiveness

H6A *Due to retail buyer power, the sales, profitability and number of private label suppliers are decreasing, as are their investments.*

H6B *Due to retail buyer power, the sales, profitability and number of industrial brands suppliers are decreasing, as are their investments. This holds in particular for SMEs.*

H6C *The sales, profitability and number of industrial brand suppliers of must-stock items are not decreasing, or at least not as much as for other suppliers of industrial brands.*

H6D *Due to the growth of private labels and retailer investments, the sales, profitability and number of private label suppliers are increasing.*

We tested the hypotheses as follows. First, we explored developments in the number, sales and profit rates of food suppliers based on both European and national statistics (INSEE etc.) with a focus on the development of SMEs versus large enterprises. The national focus was on France, Germany, Hungary, Italy, the Netherlands and the UK. Second, we used the interviews to uncover developments in the sales of suppliers of private labels versus other suppliers.

For France, we had access to a very comprehensive dataset. The INSEE database on the agrofood sector contains around 2,000 SMEs that were followed for, on average, 7-8 years in the period 1997-2006. The dataset contains a variable indicating the share of private labels in turnover as well as other economic variables, such as investments in advertising, revenues, etc. It would be interesting to test whether private label production has an impact on firms' revenues. One should take into account that food processors may sell both private labels and industrial brands. In fact, probably only a limited number of firms sell only private labels or only industrial brands.

Hypotheses on the number, sales and development of private labels, industrial brands and non-branded products

H5 *We expect the number and market share of private labels to increase; the number and market share of industrial brands to decrease; and the total number of brands to increase. The shift in market shares will affect the variety and quality of the product offer, but in what way is not a priori clear.*

H7 *Retailers favour private labels over industrial brands.*

We used scanner data to test hypothesis 5 for France and Italy. We investigated the development of the number, sales and market share of private labels, industrial brands and non-branded products with a focus on the introduction of new products, whether private labels or industrial brands. The scanner data also allowed us to investigate the role of prices of private labels, industrial brands and non-branded products on these developments.

We used the in-depth interviews conducted in six European countries to find out whether retailer purchasing and marketing policies have led to the deliberate replacement of industrial brands by private labels (hypothesis 7) and to establish the impact of this on the development of new products and brands, whether private labels or industrial brands (hypothesis 5).

We used data from a marketing bureau to investigate developments in the number of new product introductions in seven European countries and made a distinction between private labels and industrial brands.

This part of the analysis was carried out for three product categories: preserved and processed fruits and vegetables; dairy (milk, yogurt and cheese); and breakfast products (cereals and muesli, as well as bread and rolls). These products were selected for the following reasons:

1. Private-label market shares are relatively high for these product categories.

2. The market share of alternative distribution channels other than supermarkets is low for breakfast cereals, for cheese, milk and yogurt, and for canned and tinned food. This is not the case for bread.
3. SMEs are relatively abundant in bread production as well as in fruit and vegetable processing. Dairy processing is more concentrated.
4. We already had data for selected dairy and breakfast products for France and Italy and for preserved fruits and vegetables for France. For fruits and vegetables we depended on external sources.
5. Finally, R&D intensity is relatively high in dairy and to a lesser extent in fruit and vegetable processing, and in other food (including bread production).

Table 4.1	Concentration and R&D intensity in the European food industry (2005)			
	Firms <20 employees as % of total number	**Market share of firms >250 employees**	**R&D expenditure as % of turnover**	**R&D personnel as % of all personnel**
Meat	84.5	44.5	0.46	0.25
Fish	70.7	39.2	0.40	0.39
Fruits and vegetables	80.3	48.5	0.91	0.70
Oils and fats	96.4	34.6	0.30	0.35
Dairy	83.8	59.3	1.25	0.54
Grain and starch	88.0	50.0	0.45	0.40
Animal feed	76.0	34.2	1.38	0.88
Other food	93.0	40.7	0.83	0.39
Beverages	86.7	60.2	0.63	0.45
Source: Eurostat				

5 Data analysis

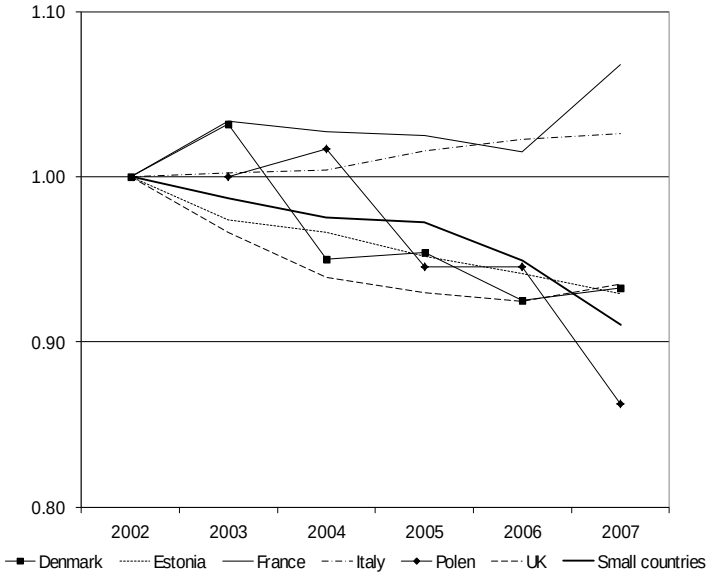
This section presents a description and an analysis of the European food supply chain, with the focus on France, Germany, Hungary, Italy, the Netherlands and the UK. Sections 5.1 and 5.2 present an analysis of developments in supply chain structure, more in particular the number of firms, industry concentration, profitability and prices (hypotheses 1, 5 and 6). Section 5.1 gives a general description. Section 5.2 comprises an analysis of the extent to which private label production influences supply chain structure. Section 5.3 focuses on innovation (hypothesis 5), while Section 5.4 concludes.

5.1 Supply chain structure

5.1.1 The number of firms

The total number of firms in the food industry decreased in the UK, Germany, Spain and Poland, as well as in many small and medium-sized EU countries (Austria, Baltic States, Denmark, Finland, the Netherlands and Romania) between 2002 and 2007 (figure 5.1). The total number of firms in the food industry increased in France (2%), Italy (8%), Portugal (+28%) and Norway (+45%).

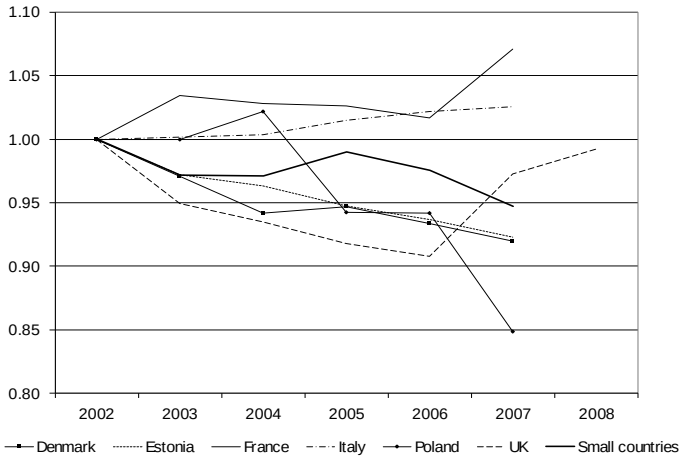
Figure 5.1 **Total number of firms in the food and beverage industry (2002-2007; index: 2002 = 1).**



Source: own elaboration based on Eurostat.

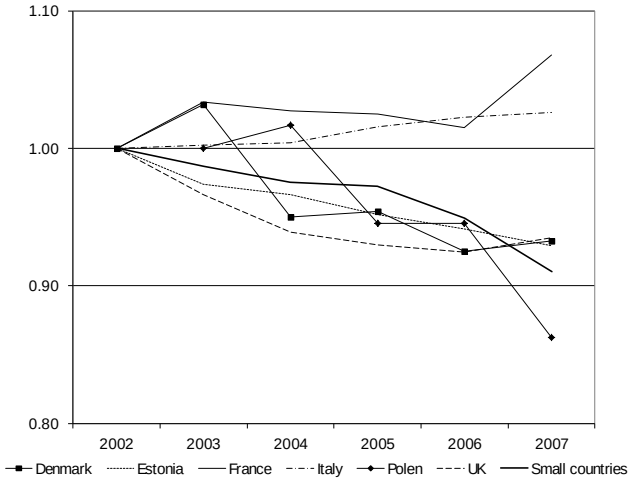
Because most food processors are small, the development of the total number of small firms was similar to the development of the total number of firms (figure 5.2). There is one exception: the number of small food processors decreased in the UK but rose again, while the total number of food processors decreased. In general, the number of medium-sized firms rose more rapidly or fell less sharply than the number of small firms (Italy, Poland and small EU countries). France and the UK are exceptions: the number of medium-sized firms fell while the number of small firms rose (figure 5.3). The fall in the number of firms and in particular the number of SMEs reflects, for example, increases in the efficient scale of production and distribution.

Figure 5.2 **Total number of small firms (1 to 49 employees) in the food and beverage industry (2002-2007; index: 2 = 1).**



Source: own elaboration based on Eurostat and UK National Statistics.

Figure 5.3 **Total number of medium-sized firms (50 to 249 employees) in the food and beverage industry (2002-2007; index: 2 = 1).**



Source: own elaboration based on Eurostat and UK National Statistics.

The development of the number of food processors differs from one food category to another (table 5.1). The number of firms fell in meat processing, oils and fats, milling and sugar, but grew in fruits and vegetables, margarines, ice cream, pet food and such specialised food products as condiments and seasonings, food preparations and other food. The industries in which the number of firms fell are probably characterised by economies of scale and product homogeneity, and produce ingredients for consumer products (milling, sugar, oils and fats).

The number of firms in the food processing industry has decreased. This holds in particular for small companies. However, the number of firms increased in some countries, including France and Italy, as well as in some sub-sectors of the food processing industry, in particular those making consumer products. The fall in the number of firms was due to, for example, increases in the efficient scale of production and of distribution and marketing, also further downstream (supermarket chains).

Table 5.1	Change in the total number of firms in the food industry (2000-2007, 19 European countries a)	
1511	Meat slaughtering	-10.9%
1512	Poultry slaughtering	-16.4%
1513	Meat and poultry meat products	-24.3%
1531	Potato processing	10.2%
1532	Fruit and vegetable juices	24.2%
1533	Fruits and vegetables - NES	13.3%
1541	Crude oil and fats	-8.1%
1542	Refined oils and fats	-10.2%
1543	Margarine	25.0%
1551	Cheese	-2.8%
1552	Ice cream	14.4%
1561	Cereals milling	-24.7%
1562	Starch processing	-2.1%
1571	Farm animal feed	-9.5%
1572	Pet food	28.2%
1581	Bread and fresh pastry	-3.9%
1582	Biscuits etc.	10.8%
1583	Sugar	-19.8%
1584	Confectionery	-3.5%
1585	Pasta etc.	7.0%
1586	Tea and coffee	-3.3%
1587	Condiments and seasonings	27.1%
1588	Food preparations	48.5%
1589	Other food - NES	24.7%

Source: Eurostat.

a) Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden and the UK.

5.1.2 Industry concentration

Food processing

Because there are many small and medium-sized firms in the EU food and beverage industry, concentration is moderate in many industries in many EU countries. This holds notably for Germany, Italy and to a lesser extent France. There are only a few food industries in Germany and Italy in which the market share of the four largest firms is 60% or higher (margarine and ice cream). However, retail scanner data for Italy show that industry concentration for more specific products is substantially higher. For products like pasteurised milk, UHT milk, pasta, tuna in oil, breakfast cereals and yogurt the market share of the four largest suppliers is around 60% or higher (AC Nielsen data). For cheese, industry concentration varies from one type of cheese to another. The French food and beverage industry is more concentrated than the German and the Italian food industry. In 16 of the 26 sectors on which we have data, the top-four food companies have a market share of 60% or higher. French beverage production is highly concentrated: the market share of the four largest firms is 70% or more, except for wine.

Table 5.2	Industry concentration in five EU countries				
	France (C_4, 2006)	**Germany (C_4, 2008)**	**Hungary (C_4, 2008)**	**Italy (C_4, 2006)**	**NL (C_5, 2008)**
Meat slaughtering	24	30-35	35	30	65
Poultryslaughtering	29	30	44	72	85
Meat processing	16	5-10	81	30	30
Fish	26	45	98	>40	45
Potato products	90	25-40	98	n/a	90
Fruit and vegetable juices	62	30	89	45	100
Fruits and vegetables - NES	40	25	31	>40	20
Other oils and fats	92	20	92	>40	85
Margarine	100	>65	100	n/a	100
Dairy	n/a	35-40	55	n/a	80
Milk	50	n/a	n/a	60	n/a
Butter	56	n/a	n/a	30	n/a
Cheese	31	n/a	56	2-64	n/a
Ilce cream	70	65	93	60	20

Table 5.2	Industry concentration in five EU countries (continue)				
	France (C_4, 2006)	**Germany (C_4, 2008)**	**Hungary (C_4, 2008)**	**Italy (C_4, 2006)**	**NL (C_5, 2008)**
Milling	42	15	59	n/a	40
Flour	62	n/a	42	n/a	70
Starch	94	n/a	100	n/a	90
Bakery products	n/a	5	n/a	n/a	5
Fresh bread and pastry	n/a	10	11	n/a	5
Other bread and pastry	n/a	40-45	72	n/a	20
Pasta	n/a	n/a	67	60	n/a
Sugar	79	20	100	n/a	100
Confectionery	60	25	82	54	40
Coffee and tea	68	30	63	n/a	90
Condiments and seasonings	72	35	84	n/a	35
Spirits	75	n/a	46	n/a	20
Wine	22	40	32	7	n/a
Beer	94	30	99	>60	95
Malt	91	10	100	n/a	n/a
Mineral water and soft drinks	n/a	35	76	n/a	100
Mineral water	73	n/a	n/a	n/a	n/a
Soft drinks	79	n/a	n/a	n/a	n/a

C_4 = Market share of the sector's 4 largest companies. C_5 = market share of the sector's 5 largest companies. Source: Dutch, French and German Statistics. Nielsen, IRI, and Databank for Italy and Tax Office Data for Hungary.

Industry concentration is high in the Netherlands. The market share of the four largest firms is typically well above 60%.[1] Moreover, many Dutch industries are dominated by one or two firms that have a market share of 50% or higher. In the Netherlands, this holds for VION for pork, Plukon and Storteboom for poultry, Van Drie for veal, CampinaFriesland for dairy, Unilever for margarines and other oils and

[1] For the Netherlands, we have numbers on the market share of the five largest companies.

fats, Heineken for beer, Sara Lee for coffee and tea, CSM for sugar and Avebe for starch (Bijman et al., 2003). Even when industry concentration seems low, for instance for bread, industrial bread production for food retail is again dominated by two firms (Bakkersland and Bake Five) (NMa 2008). In Hungary, industry concentration is high in sectors with a small aggregate turnover (oils and fats and confectionery), but less so in sectors with a high turnover.

Food retail

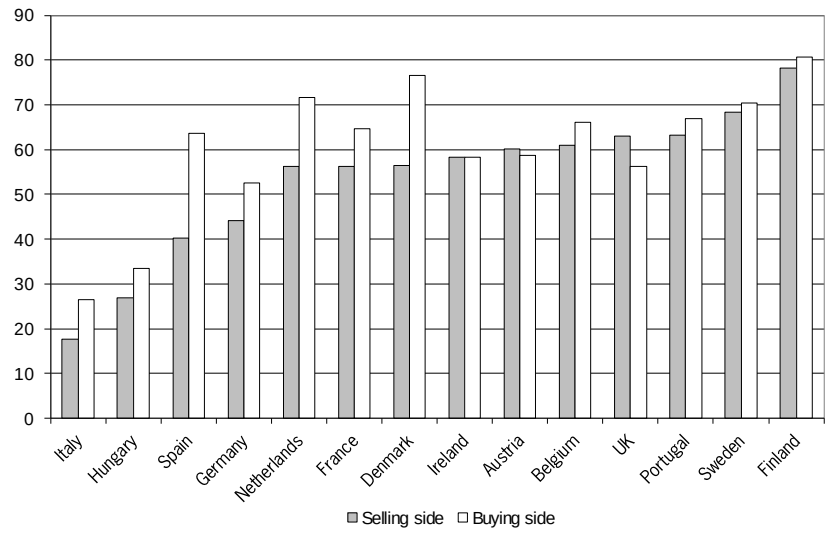
Food retail is concentrated throughout the EU, with the exception of some regions of Italy[1] and some Central European countries. Food retailers have become large as a result of merger and acquisition activities in the 1990s and 2000s. In the same period, buying associations arose in many European countries and have since grown in size. Concentration on the buying (retailer-supplier) side tends to be higher than concentration on the selling (retailer-consumer) side (figure 5.4).

Note that not all supermarket chains are centrally organised. Many are made up of franchisees and independent entrepreneurs who decide on the products to list and where to source. For example, the independent entrepreneurs of a retail chain in the Netherlands are obliged to buy 90% of their purchases from the parent organisation, and are free to purchase the other 10% elsewhere. The entrepreneurs buy elsewhere if supplies are cheaper (or better) elsewhere. Central buying organisations thus face competition from representatives at the outlet level who are in charge of buying. This limits the possibilities for central buying organisations to act, as is illustrated by the delisting of Gillette by IKA. IKA's central buying organisation decided to delist Gillette in a commercial conflict over the terms of delivery. However, local

[1] The density of hypermarkets and supermarkets varies across regions of Italy. Considering the square metres per thousand inhabitants, in 2006 values ranged from 223 sq. m (Friuli V.G.) to 92 sq. m (Campania) (CERMES - Bocconi, 2008). These differences depend not only on the different economic development of the regions, but also on a different implementation by the regional governments of the national law regulating the opening of new supermarkets. This issue has been frequently raised by the antitrust authority as an impediment to the modernisation and improved efficiency of the Italian food chain (see e.g. AGCM, 2008).

entrepreneurs refused to delist Gillette and bought Gillette products directly.

Figure 5.4 **Concentration in European food retail (Top 5, 2006)**



Source: OECD (2006).

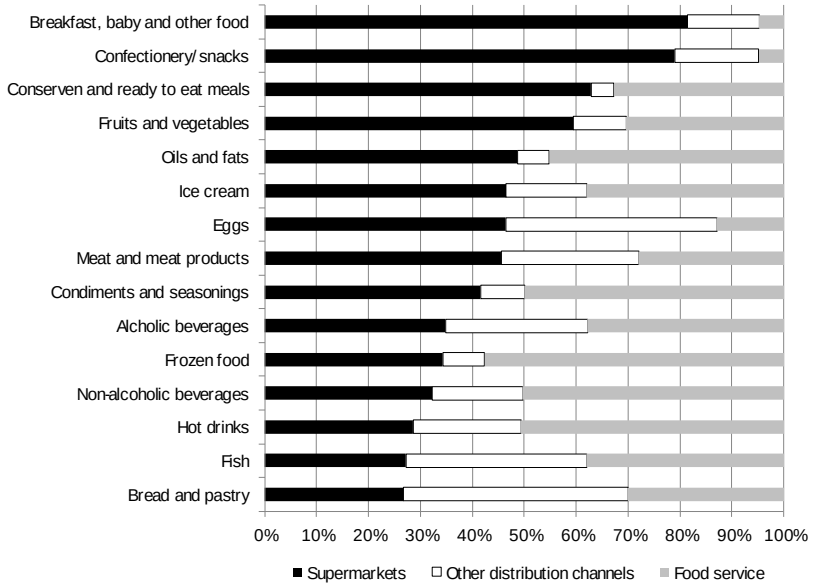
Many sources argue that European wholesale markets are not well integrated and that retail selling and buying are still primarily national activities (European Commission 1997; UK Competition Commission 2000; Grievink et al., 2002; NMa, 2009; this report). Even the few global retailers one might have been able to identify in the 2000s organised most of their buying and selling activities at national levels. In recent years, multinational retailers have started sourcing across national borders. Global retailers have set up their own international buying divisions. Moreover, there are also several European buying organisations. Even so, a substantial part of retailers' purchases still take place nationally. This is due to national differences in preferences and consumption, and a certain preference for national products. Dutch supermarkets, for instance, source fresh food nationally unless it is unavailable due to climatic reasons (LEI, 2009).

Both food retail and food processing are concentrated in many European countries. Large retailers and large food processors are mutually dependent. Choice is limited on both sides. However, there is some choice beyond each other. Food processors may export, and

food retailers may import. Moreover, there are distribution channels other than supermarket chains.

A study by IfH and BBE for the German food supply chain shows, for example, that food service and SME food retail have a major share in food distribution (figure 5.5). For many products, supermarket chains command less than 50% of the consumer euro.[1] Supermarkets have a relatively low market share in bread, fish, beverages and frozen food. Supermarket chains have a major share in the distribution of breakfast cereals, baby food, confectionery, snacks, canned food and ready-to-eat meals.

Figure 5.5 **Market share of supermarket chains in overall distribution (Germany; consumer prices)**



Source: IfH/BBE.

[1] It is not completely fair to compare the consumer euro spent on food service with the consumer euro spent on food retail. Service and gross margins are much higher in food service. Nevertheless, figure 5.5 clearly shows that there is more than supermarket chains.

A study conducted in Italy by ISMEA (2007) shows that small and family-owned grocery shops (defined as traditional retail) sell half of all fresh food products and thus compete with larger supermarkets. In particular, bread and fish are still sold in small and often specialised groceries, and a significant proportion of fruits and vegetables are sold in specialised shops and street markets.

Table 5.3	Market shares of retail channels for home food consumption (euros, 2006)		
	Modern retail	Traditional retail	Others
Total food	77.0	14.8	8.2
Non-fresh food	88.0	5.8	6.2
Fresh food	61.8	27.1	11.1
Meat	66.1	29.7	4.2
Eggs	79.7	8.8	11.5
Milk	82.0	17.4	0.6
Fish	51.6	36.7	11.7
Bread	55.2	40.9	3.9
Vegetables	51.5	19.5	29.0
Fruit	55.4	21.5	23.1
Source: ISMEA (2007).			

Food processing is concentrated in many Member States. This holds for small Member States, but also for countries like France and the UK. Concentration is moderate in German and Italian food processing, but is high for specific products. Food retail is highly concentrated throughout the EU with the exception of southern Italy and some East European countries. When assessing supply concentration, one should note that there are alternative distribution channels for the food processing industry (food service and SMEs in food retail) and that not all food retailers are monolithic buying blocks.

5.1.3 Profitability

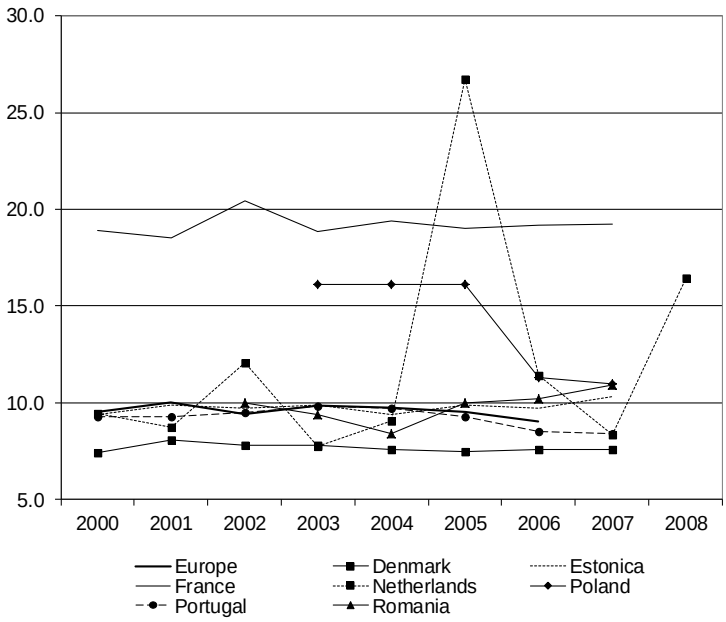
Food processing

Average profitability[1] in the European food and beverage industry remained constant in 2000-2007. Profitability declined sharply in Poland and fluctuated wildly in the Netherlands (possibly due to incidental profits of the large multinationals). The Dutch food and beverage industry had two profitable years, namely 2005 and 2008.

[1] For the purpose of this study, profitability is measured as gross operating surplus as a percentage of turnover.

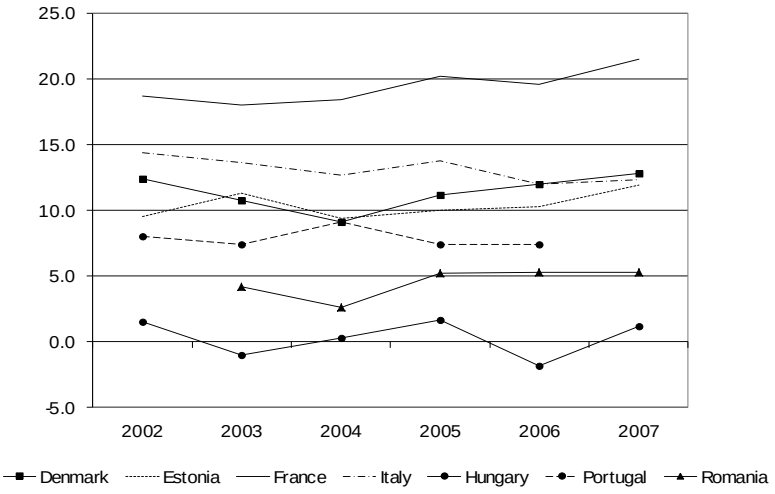
Profitability also remained more or less constant for small firms (figure 5.7), as far as we have information in this respect. Small firm profitability decreased in Italy, increased in Spain and remained constant in Germany, Portugal and Hungary.

Figure 5.6 **Gross operating surplus in the European food and beverage industry (as a % of turnover).**



Source: Own elaboration based on Eurostat and Dutch Statistics.

Figure 5.7 **Gross operating surplus in the European food and beverage industry (as a % of turnover) (small firms: 1-19 employees)**



Source: Own elaboration based on Eurostat and Hungarian Statistics. Data for Hungary refer to profits before taxes and firms with 1-10 employees.

Tables 5.4A to 5.4C break down average profitability of the European food processing industry for the period 2005-2007 for 9 sub-sectors[1] and for 3 size classes, namely 1-19 employees, 20-49 employees and 50-249 employees. These tables show that on average profitability was positive for small and medium-sized enterprises.

[1] The sub-sectors identified in tables 5.4A to 5.4C refer to the 3 digit level in the NACE classification rev. 1.1.

Table 5.4A	Gross operating profits as percentage of turnover (2005-2007; 1-19 employees)								
	Meat	**Fish**	**Fruit & vegetables**	**Oils & Fats**	**Dairy**	**Cereals**	**Animal feed**	**Other food**	**Beverages**
Belgium	6.27	8.30	8.90	5.27	6.77	6.23	4.13	18.80	10.57
Bulgaria	0.40	6.30	11.30	7.00	2.30	1.80	4.00	4.60	13.00
Czech Rep.	8.80		10.60	2.90	0.07	9.17	4.07	12.67	10.45
Denmark	4.33	4.97	6.87	3.20		13.45	6.50	13.67	8.83
Germany	10.83	6.83	12.60	5.40	5.63	12.97	8.57	16.13	7.27
Estonia	4.73	5.10	9.27		7.33	14.40	13.40	6.37	6.67
Ireland	15.40	18.60	14.17	4.10	14.13	17.40	8.90	15.90	26.10
Greece	13.73	14.43	11.00	15.33	13.47	11.83	10.47	15.50	15.30
Spain	10.23	8.87	19.97	7.63	9.33	5.67	4.67	14.20	15.23
France	6.40	3.57	5.77		3.33	5.87	4.00	13.87	8.90
Italy	10.80	7.30	8.50	8.17	11.03	9.53	10.15	18.03	10.97
Cyprus	9.00		12.47		16.33	16.80	4.93	12.37	
Latvia	10.80	16.10	40.70		31.47	12.50	13.60	17.90	11.30
Lithuania	2.13	6.97	8.10		-0.57	6.93	12.60	3.63	5.00
Hungary	3.70		5.57		2.40	14.07	5.87	5.90	11.10
Netherlands	8.70	15.20	1.00	4.40	6.33	8.40	3.00	13.80	8.95
Austria	14.70		31.65		38.17	20.93	30.10	20.47	26.30
Poland	7.30	6.60	10.55	5.90	7.00	8.05	6.80	8.95	14.30
Portugal	5.00	4.70	7.30	9.27	4.20	9.20		7.87	9.60
Romania	4.33	2.73	5.83	-2.73	4.37	2.23	3.10	6.07	5.80
Slovenia	3.97	6.00	13.40		6.07	10.40	11.60	12.07	-2.17
Slovakia	4.23	3.70		4.50	7.10		12.50	10.43	11.27
Finland	26.03	9.85	8.63		2.80	11.83	7.57	17.20	4.55
Sweden	8.70	17.10	11.77	8.25	10.00	8.13	5.30	18.97	7.67
UK	16.87	4.60	13.30		11.17	14.50	10.10	23.37	13.27

Source: Own elaboration based on Eurostat.

Table 5.4B	Gross operating profits as percentage of turnover (2005-2007; 20-49 employees)								
	Meat	**Fish**	**Fruit & vegetables**	**Oils & Fats**	**Dairy**	**Cereals**	**Animal feed**	**Other food**	**Beverages**
Belgium	5.37		9.30		2.93	9.73	2.97	10.67	9.30
Bulgaria	7.10	14.70	4.10	6.70	9.50	3.40	8.80	7.00	19.70
Czech Rep.	5.13		2.75		3.30	9.90	11.30	7.80	7.10
Denmark	3.50	5.80	7.55		2.85		8.30	10.37	7.63
Germany	8.60		6.53		2.60	8.67	6.10	11.40	8.30
Estonia	5.17	6.15	8.70		3.63			4.80	3.75
Ireland	6.63	4.73	13.10	10.40	8.30	8.30	0.10	4.80	9.15
Greece	4.13	-1.90	7.47	7.50	0.70	6.75	11.90	11.83	2.07
Spain	7.47	10.50	8.40	12.33	5.80	6.80	5.40	9.97	17.83
France	2.93	4.87	5.40		3.40	6.00	2.60	7.40	8.40
Italy	4.93	5.47	8.67	4.77	5.77	5.15	5.40	11.20	9.47
Cyprus	2.80						7.87	14.20	
Latvia	16.10	6.10	27.50		9.90			17.27	7.35
Lithuania	3.50	4.10	5.95		7.93	10.40	3.70	9.93	10.77
Hungary	6.87		7.80		3.10	6.37	21.60	7.87	10.07
Netherlands	6.60	18.90	7.80		6.17		4.87	10.80	11.45
Austria	5.23		11.20		8.80		10.25	13.63	
Poland	4.30	6.30	12.75		5.70	8.35	9.90	12.95	10.80
Portugal	6.00	5.70	8.50	4.53	8.60	9.43	5.00	10.53	14.00
Romania	5.30	8.57	13.30	13.80	6.17	3.37	7.35	7.17	7.50
Slovenia	6.43							6.27	0.90
Slovakia	-10.17		6.90		12.80	7.70	9.50	6.07	6.00
Finland	6.27	8.10	9.40			15.60	8.80	8.47	
Sweden	7.93				6.03			16.60	11.20
UK	11.87	20.80	16.93	7.80	10.83	15.00	5.17	21.53	10.65

Source: Own elaboration based on Eurostat.

Table 5.4C	Gross operating profits as percentage of turnover (2005-2007; 50-249 employees)								
	Meat	**Fish**	**Fruit & vegetables**	**Oils & Fats**	**Dairy**	**Cereals**	**Animal feed**	**Other food**	**Beverages**
Belgium	4.63		9.20		2.27			9.20	8.33
Bulgaria	10.40	12.00	7.00	3.80	11.60	13.30	4.00	8.70	10.10
Czech Rep.	5.30	1.70	8.70		2.70	7.50	6.00	8.87	12.95
Denmark		3.10	7.15		8.63	6.10	5.05	7.53	
Germany	4.80	2.70	4.23	0.30	3.63	7.97	6.30	11.80	11.20
Estonia		3.67	10.20		5.23			5.83	10.05
Ireland	5.80	8.53	3.55		6.40	10.90	13.05	18.37	4.20
Greece	9.83	8.50	8.65	6.50	8.83	10.40	6.05	8.10	23.00
Spain	5.80	6.20	8.20	4.77	6.20	7.10	5.10	11.47	15.53
France	2.50	4.40	4.60		3.10	4.13	2.87	6.17	10.20
Italy	4.60	6.90	6.60	3.63	6.73	5.95	1.90	9.47	9.67
Cyprus	6.83		14.65		7.70			9.90	
Latvia	10.63	9.20	15.50		10.50			14.80	13.43
Lithuania	2.73	4.37	12.63		6.30		4.40	9.50	12.63
Hungary	4.97		9.27		6.65	22.37	4.85	10.80	10.40
Netherlands	4.03	4.37	8.67		6.93	9.30	5.00	10.63	10.43
Austria	7.13		13.30	1.50	5.60		10.95	11.10	12.65
Poland	-0.10	8.60	12.05		5.65	11.35	9.60	14.75	10.90
Portugal	4.90	6.23	7.65	4.33	7.07	9.10	6.20	9.80	13.85
Romania	6.80	4.00	12.55	6.73	8.87	2.33	10.70	10.95	12.07
Slovenia	2.53							5.60	1.85
Slovakia	-1.17	6.45	6.37		3.65		2.70	15.10	9.07
Finland	3.90	0.15	12.10		4.90	5.30	6.00	12.60	
Sweden	8.67	5.90	17.20		9.40	19.95		12.37	8.87
UK	10.50	17.65	7.50		7.77	15.20	6.43	17.23	15.70

Source: Own elaboration based on Eurostat.

A comparison of the data in tables 5.4A-5.4C with the period 2002-2004 shows that profits increased in most food processing sub-sectors in the 2000s for all three size classes (table 5.5). Profitability decreased in the fruits and vegetables industries for firms with 20 employees or more. It also decreased for two of the three size classes in the beverage industry. There are also countries in which profit developed less favourably. In Hungary, profits before taxes decreased between 2002 and 2008 (Appendix 1A). This held in particular for medium-sized firms (50-249 employees).

Table 5.5	**Change in gross operating surplus between 2002-2004 and 2005-2007 for three size classes**								
Size classes (Employees)	**Meat**	**Fish**	**Fruit & vegetables**	**Oils & Fats**	**Dairy**	**Cereals**	**Animal feed**	**Other food**	**Beverages**
1-19	1.11	-0.04	3.77	3.25	2.12	1.80	0.22	1.04	-0.85
20-49	-0.48	1.65	-0.53	3.03	1.57	0.50	0.18	0.40	0.61
50-249	0.83	1.59	-0.34	-1.56	1.90	2.05	0.14	-0.50	-0.65
Source: Own elaboration based on Eurostat.									

Food retail

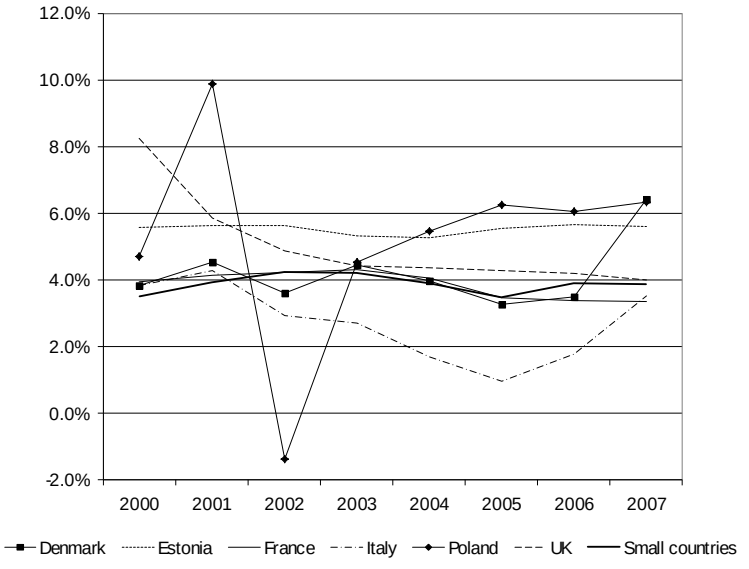
Profitability varied between 3% and 6% in European food retail. It remained constant from 2000 in France and Spain as well as, on average, in the smaller European countries. This also holds for Germany, with the exception of 2007, when profits doubled relative to 2006. In the UK, profitability declined in 2001 from its very high level in 2000 (8%), and continued to fall. In Italy, profitability declined from 4% in 2000 to 1% in 2005, and then recovered. In Poland, profitability fluctuated wildly between 2000 and 2005, then stabilized at 6%. There is no evidence of a structural improvement in food retail profits. In this respect, it is noteworthy that the Dutch and Belgian competition authorities both concluded that food retail transmits changes in supply prices into consumer prices (SPF Economie 2008; NMa 2009).

Two qualifications can be made. First, note that profitability measured by gross operating surplus as a percentage of turnover is higher in food processing than in food retail (compare figures 4.6 and 4.8). However, one should take into account that food processing and food distribution are different activities.

One cannot directly compare their 'profitability numbers'. In the end, the relevant criteria is return on investment and return on equity. Profitability in terms of turnover is higher in food processing than in food retail, because investment is higher. The main conclusion of this section is that there was no overall deterioration in profitability in either food processing or food retail.

Second, there may be large differences in the profitability of individual firms. This holds for agriculture, food processing and food retail. Differences in profitability tend to be higher within agricultural sectors than among sectors (see e.g. ABN 2003). In Dutch retail, Ahold's Albert Heijn has a market share of 31% but gains 57% of industry profits (Rabobank 2010). This implies that Albert Heijn has a much deeper purse than its competitors. The same is likely to hold for the dominant retailer in the UK (Tesco), which obtains substantial cost advantages over its rivals on its purchases.

Figure 5.8 **Gross operating surplus in European food retail (supermarkets selling predominantly food, beverages and tobacco; % of turnover)**



Retailers make larger gross profits on private label than on industrial brands. However, industrial brands may very well remain more profitable per square foot, because their turnover rate is still higher. Ailawadi and Harlam (2004) illustrate this for the US grocery retail chain (see table 5.8). There are major differences between product categories in this respect.

Table 5.6	Differences in retailer profitability between private labels and industrial brands	
	Private labels	**Industrial brands**
Net margin	23.2%	15.9%
Price a)	$1.00	$1.45
Dollar contribution	$0.23	$0.23
Turnover rate b)	90	100
Direct product profitability	21	23

a) Normalized to $1.00; b) Index.
Source: Allawadi and Harlam (2004) as cited by Kumar and Steenkamp (2007).

At the aggregate level, there were no major developments in profitability in either food processing or food retail. This also holds for SME food processors. Profitability in food processing was positive for most sub-sectors and most countries. Profitability increased in most sub-sectors during the 2000s, although there were exceptions.

5.2 Impact of private labels on industry structure

5.2.1 Introduction

The market share of private labels differs throughout Europe. Private labels have a market share of 17 to 54% for groceries. The market share is particularly high in Switzerland, the UK, Germany, Belgium and Spain, and low in the Netherlands, Poland, Greece and Italy. There is no obvious geographical pattern to the penetration rate. The market share of private labels is relatively high in most Western European countries and low in Southern and Central Europe, but there are exceptions. Between 2003 and 2009, the market share of private labels increased by 2-7% in Western and Southern Europe (with the exception of Spain), and by 10-26% in Spain and Central Europe.

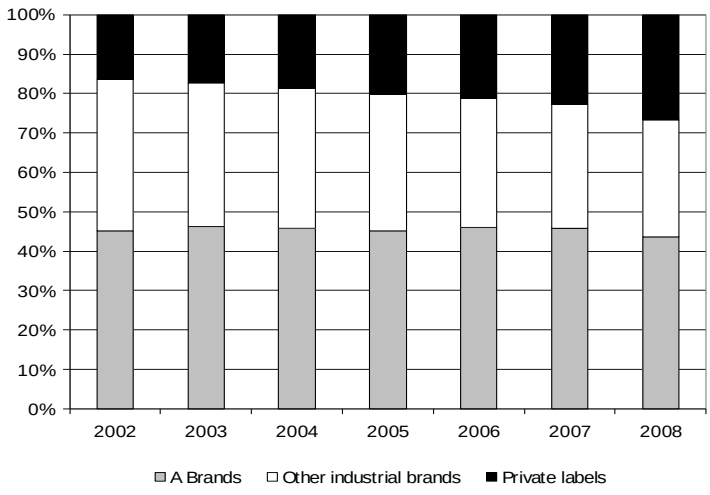
Table 5.7	Market share of private labels based on volumes, %		
	2003	2009	Change
Switzerland	n/a	54	n/a
United Kingdom	41	48	7
Germany	35	40	5
Belgium	38	40	2
Spain	29	39	10
Austria	n/a	37	n/a
Slovakia	11	37	26
France	28	34	6
Portugal	n/a	34	n/a
Denmark	25	28	3
Hungary	17	28	11
Finland	24	28	4
Czech Rep	13	28	15
Sweden	22	27	5
Netherlands	22	25	3
Poland	7	21	14
Greece	n/a	18	n/a
Italy	14	17	3

Source: PLMA.

The market share of private labels differs from one product category to another. Private-label market share is high for frozen products and delicatessen, followed by dairy and dry groceries. Market share is low for fresh produce, confectionery and beverages. Private-label market share of specific product categories amounts to 100% for the UK. It is indeed higher than 98% for the top 5 (the product categories with the highest private-label market share) in the UK. The market share of the top 5 is above 80% in Germany, above 70% in France and Spain, above 60% in Italy, above 50% in Hungary and the Netherlands, and above 40% in Poland (PLMA Yearbook 2009). Private label is particularly high for specific preserved fruits and vegetables, dairy, bread, rolls and pastry, and oils, seasonings and condiments (see Appendix 1B).

On the other hand, must-stock items still command large market shares for many products (IfH/BBE 2009).[1] Figure 5.9 illustrates that private labels gained market share in Spain at the cost of secondary brands. National brands hardly lost market share.

Figure 5.9 **Market share of industrial brands versus private labels in Spain**



5.2.2 Private labels in France

This section describes the development of private labels for milk, breakfast cereals, and processed fruits and vegetables in France. The data used were drawn from the TNS Worldpanel database, which stores data obtained from a panel of approximately 10,000 French households.

[1] The exact level depends on the definition chosen. IfH/BBE (2009) comes to shares for Germany ranging from 23% for yoghurt and fresh cheese, to 40% for sekt (a German champagne-like beverage) and chocolate, and to as much as 50% for certain condiments and seasonings.

Each consumer scans his/her purchases from food retailers (mass retailing and hard discount), thus providing information on value and quantity of food products bought as well as other information (where the products were purchased, their brands, their prices, their characteristics, possible promotional offers, etc.).
In the analysis, we identify the four largest suppliers of industrial brands as well as all private labels.

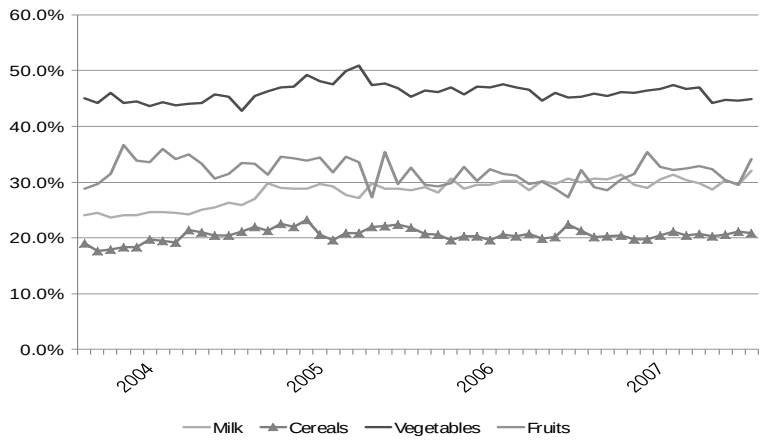
Table 5.8	Market shares and average prices for private labels and brands in France (2004-2007)							
	Market share				Prices a)			
	C_4		PL		C_4		PL	
	2004	2007	2004	2007	2004	2007	2004	2007
Milk	22.4	24.8	26.6	31.0	0.80	0.82	0.66	0.67
Breakfast cereals	67.6	66.9	19.0	20.5	6.13	6.02	4.34	4.28
Processed fruits	37.8	37.8	31.7	30.6	3.09	3.44	1.66	1.72
Canned vegetables	22.4	23.7	44.0	45.4	3.60	3.66	2.17	2.33

a) Euro per litre for milk and euro per kilo for the other products.
Source: TNS Worldpanel.

The market shares of private labels are around 25%, whereas the market share of the industrial brands suppliers ranges from 24% to 64%. Indeed, for milk, there are numerous small firms selling mostly first price (generics) goods that are not store brands. On the other hand, the breakfast cereals sector is quite concentrated, leaving secondary brands a limited outlet: 85% of the market is shared by industrial brand manufacturers and private labels. Regarding the processed fruits industry, the performance of private labels (32%) is strong compared to the concentration index of the sector (37%). The market share of the top-4 suppliers and private labels did not really change during the period 2004-2007 (figure 5.10). The increase in market share of PL brands for milk was to the detriment of hard-discount and/or generic goods.

Although this is not always the case, prices are usually higher for branded products than for private labels. For homogeneous product categories - such as milk and, to a lesser degree, breakfast cereals - private labels have the classic price differential of around 25%. In contrast, regarding fruits and vegetables, where product offer differs greatly across manufacturers (numerous varieties with disparate prices), private labels are more present in low-value goods, leading to a greater average price difference from the national brands (more than 43%).

Figure 5.10 PL market shares 2004-2007 (4-week periods, France)



Source: TNS Worldpanel

Between 1999 and 2009, private-label market share increased from 22.3 to 32.3% in France. However, for the four products investigated (milk, breakfast cereals, processed fruits, canned vegetables), the increase in private-label market share did not entail leading national brand market shares. For milk, both private label and the market shares of the four leading national brands increased. Private label expansion seems to have been to the detriment of secondary brands.

Private label production by SMEs versus big firms in France

Private labels are an important outlet for SMEs, most of which do not have well-known national brands. This is illustrated by the fact that in France the share of SMEs in private label production exceeds their share in aggregate industry turnover (table 5.9). While the share of SMEs in private label production remained constant over the years, their share in aggregate industry turnover fell. This implies that SMEs have become more dependent on private labels, but also that their survival may be enhanced by private label growth.

Table 5.9	Market share of SMEs in PL production in France (1999-2006)				
Year	**PL penetration rate**	**Market share of SMEs (<100 employees)**	**Market share of SMEs (<250 employees)**	**Market share of SMEs in PL production (<100 employees)**	**Market share of SMEs in PL production (<250 employees)**
1999	22.3	24.8	28.2	19.6	30.8
2000	23.3	24.3	27.2	23.2	29.8
2001	24.6	23.5	26.7	24.1	30.3
2002	25.0	23.0	26.0	21.7	27.2
2003	26.3	22.5	26.5	23.6	31.1
2004	27.2	22.7	26.0	29.0	28.1
2005	28.6	22.7	26.0	22.0	26.8
2006	29.1	22.4	25.1	21.6	31.5

In terms of percentage, there are fewer SMEs than large firms producing private labels. Just over twenty per cent (21.1%) of all SMEs produce private labels, while just over thirty per cent (31.1%) of large companies do so. This result is driven by firms in the meat, fish, dairy and other food products sectors (column 1 in table 5.10). In the other sectors, there is no statistical difference in this respect.

When a firm produces private label goods, the share of private label production in total production does not differ between small and large firms, except for the sub-sector 'Other food products' (bread, biscuits, chocolate) (column 2 in table 5.10). In this sub-sector, the share of private label in company turnover is larger for SMEs than for big firms. SMEs that manufacture private label goods have a higher aggregate turnover than SMEs that do not manufacture private label goods. For large firms, there is no such difference between firms that produce private label and those that do not.

Finally, firms' investment rate does not differ across firms' size (column 3 in table 5.10).[1] This suggests that private label production could be motivated by production capacity use. Appendix 1C provides an in-depth analysis.

[1] Investment rate is defined as the ratio between the investment and the added value of the firm at the market price (INSEE definition).

Table 5.10	Differences between SMEs and large companies		
	PL production	**PL rate in case of PL production**	**Investment**
151 Meat	<	=	=
152 Fish	<	=	>
153 Fruits and vegetables	=	=	=
154 Oils and fats	=	*	*
155 Dairy	<	=	=
156 Cereals and starch	=	=	=
157 Animal feed	=	=	=
158 Other food	<	>	=
159 Beverages	=	=	=
Total	<	>	=

Source: Own elaboration on the basis of INSEE.
<SMEs are less likely to produce private label, >The PL or investment rate is higher for SMEs than for large firms, = no statistical difference between small and large firms, * = no data.

In France, SMEs are less likely to produce private labels than large companies. However, SMEs' share in private label production is higher than their share in total turnover. From 1999 to 2006, private-label market shares increased from 22.3 to 29.1%. The market share of SMEs in food production decreased from 28 to 25%, while their market share in private label food production remained more or less constant (increased from 30.8 to 31.5%). PL expansion leads SMEs to specialise in private label production. In terms of investment, there is no significant difference between SMEs that produce private label and those that do not.

5.2.3 Private labels in Italy

Developments in number of brands and suppliers

Scanner data available for selected dairy and cereals products in Italy for the period 2004-2008 allowed us to analyse the development of the number of brands being sold and the number of companies supplying Italian supermarkets (table 5.11). The number of brands increased in most sectors (with the exception of butter), as did the number of companies (with the exception of butter and whole yogurt). It is worth noting that the number of brands also proliferated in markets that had growing private-label market shares.

Private labels play a role not only in mature markets where the number of brands concentrates, but also in growing markets where brand proliferation is still present.

Without going into causes and effects, one may observe that growth in the number of brands is correlated with growth in total sales. For UHT milk, niche markets for enriched UHT milk show bigger changes in sales, brands and companies than more traditional milk segments do.

Functional yogurt is another interesting case. This segment is certainly the most innovative of dairy product categories. The market potential is high, with great opportunities for innovative products that exploit consumers' increasing health concerns and their preference shift towards functional foods. This is illustrated by the change in the number of brands and companies between 2004 and 2008. For regularity-promoting active yogurt and cholesterol-lowering active yogurt, only one company was operating in the market in 2004; in 2008, 11 companies were producing regularity-promoting active yogurt under 15 brands, and 8 companies were producing cholesterol-lowering active yogurt under 9 brands. The fact that in the most innovative segments the number of brands is not much higher than the number of companies can be taken as a further indication of the innovativeness of the category, with each company entering the market with only one product. With the exception of the other functional yogurt segment, the C_4 ratio is very high. Private labels have a role only in the most mature segment of this category, where their share is low (6%) but increasing sharply.

The situation is different in the more mature segments. Butter shows virtually no change in the number of brands and companies on the market. Whole yogurt registered a small increase in the number of companies, but a reduction in the number of brands on the market for all segments.

Developments in market shares and concentration

The market share of private labels increased for many product categories, in particular butter and whole yogurt; it decreased only for muesli. However, the pattern differed. For example, figure 5.11 shows that in the refrigerated milk category, the market share of private label increased suddenly for a specific segment (micro-

filtered milk), probably due to the introduction of new private label products.

The C_4 increased mainly in the more innovative segments and/or niche segments, where total sales are growing and private labels are less present. In fact, at the segment level, the C_4 was higher, and conversely the private label share was lower, in the most innovative (new products in the first phases of their life-cycle) and/or niche segments.

Table 5.11 **Development of number of brands and suppliers in the Italian modern retail channels**

	Brands (units)			Companies (units)			Market share			
							C4		PL	
	2004	2008		2004	2008		2004	2008	2004	2008
Refrigerated milk	*368*	*413*	+	*148*	*182*	+	*0.68*	*0.60*	*0.02*	*0.09*
Whole milk	117	115	-	29	25	-	0.49	0.36	0.01	0.03
Semi-skimmed	110	126	+	29	28	-	0.63	0.59	0.01	0.05
Skimmed	32	34	+	18	18	=	0.60	0.69	0.00	0.00
High quality	87	99	+	25	26	+	0.77	0.69	0.00	0.06
Micro-filtered	15	28	+	7	10	+	0.86	0.65	0.14	0.32
Enriched	5	7	+	4	6	+	0.96	0.97	0.00	0.00
Lactose-free	2	5	+	2	4	+	0.46	0.86	0.00	0.00
UHT Milk	*398*	*433*	+	*181*	*211*	+	*0.59*	*0.58*	*0.15*	*0.15*
Whole milk	135	145	+	79	90	+	0.48	0.43	0.18	0.19
Semi-skimmed	165	182	+	99	112	+	0.61	0.61	0.14	0.14
Skimmed	62	63	+	35	37	+	0.63	0.61	0.26	0.28
Enriched with vitamins	15	20	+	7	9	+	0.99	0.98	0.00	0.00
Enriched with flavours	21	24	+	15	20	+	0.81	0.82	0.01	0.02
Butter	*333*	*314*	-	*50*	*46*	-	*0.67*	*0.55*	*0.11*	*0.17*
Natural	129	117	-	44	42	-	0.30	0.29	0.24	0.27
Salty	8	8	=	8	8	=	0.96	0.88	0.03	0.08
Other special types	197	189	-	19	20	+	0.75	0.50	0.05	0.16
Whole yogurt	*366*	*345*	-	*187*	*197*	+	*0.65*	*0.64*	*0.10*	*0.13*
White whole yogurt	93	91	-	55	59	+	0.68	0.58	0.12	0.16
Whole yogurt with fresh fruit	119	112	-	78	82	+	0.57	0.58	0.10	0.12
Whole yogurt with fruit pieces	60	52	-	42	39	-	0.76	0.73	0.11	0.13
Flavoured whole yogurt	94	90	-	65	65	=	0.61	0.67	0.07	0.09
Functional yogurt	*44*	*102*	+	*30*	*66*	+	*0.62*	*0.59*	*0.01*	*0.01*
Natural defence active	31	53	+	21	39	+	0.87	0.82	0.02	0.06
Regularity-promoting active	3	15	+	1	11	+	1.00	0.97	0.00	0.00

Table 5.11	Development of number of brands and suppliers in the Italian modern retail channels (continue)									
	Brands (units)			Companies (units)			Market share			
							C4		PL	
	2004	2008		2004	2008		2004	2008	2004	2008
Cholesterol-lowering active	1	9	+	1	8	+	n/a	n/a	0.00	0.00
Other functional yogurts	9	26	+	9	21	+	0.61	0.57	0.00	0.00
Breakfast cereals	*215*	*244*	+	*130*	*178*	+	*0.87*	*0.86*	*0.09*	*0.09*
Standard	88	98	+	62	68	+	0.87	0.83	0.09	0.11
Enriched	85	105	+	53	62	+	0.92	0.91	0.06	0.06
Muesli	42	42	=	36	39	+	0.83	0.83	0.13	0.10

Source: own elaboration based on IRI Infoscan data. Data refer only to sales in the modern retail sector.

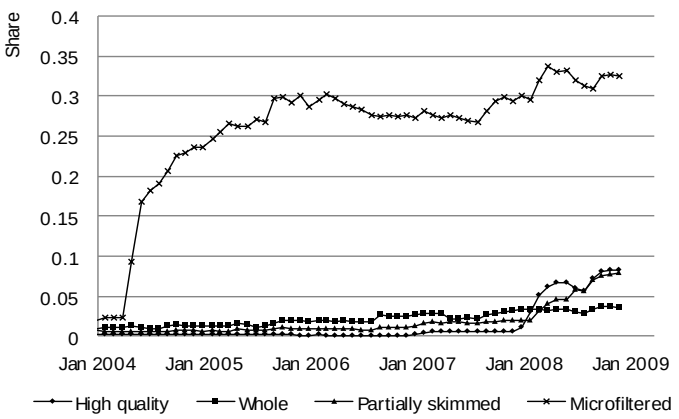
Development of prices

Prices of private labels decreased relative to market prices from 2004 to 2008 (table 5.12). This probably explains part of the growth of the private-label market share for dairy and cereals in Italy. Private label does not have a profound impact on the consumer prices of either the top-4 firms or the market. Leading firms are able to raise prices and to compete by stressing innovation, product differentiation, reputation and product quality. Further indications can be obtained by comparing different category/segments. For butter, for example - where private labels hold the largest market share and the top-4 firms the lowest market share - the price premium of the top-4 firms is the highest.

Table 5.12	Development of the sales, shares and prices of private labels and industrial brands for different food categories in the Italian modern retail channels							
	Year	Total sales ('000 euros)	Total sales a)	Share		Price b)		
				C4	PL	C4	PL	Total
Refrigerated milk	2004	753,259	581,386	0.68	0.02	1.45	1.09	1.30
	2008	924,932	642,020	0.60	0.09	1.57	1.13	1.44
UHT milk	2004	898,452	1,041,024	0.59	0.15	1.65	0.95	0.86
	2008	1,103,231	1,140,416	0.58	0.15	2.05	1.14	0.97
Butter	2004	242,575	39,619	0.67	0.11	16.15	5.92	7.15
	2008	278,904	39,333	0.55	0.17	21.41	6.29	8.86
Whole yogurt	2004	463,223	138,747	0.65	0.10	5.34	2.64	3.33
	2008	519,854	150,846	0.64	0.13	5.35	2.61	3.44
Functional yogurt	2004	262,422	49,729	0.62	0.01	4.12	4.28	4.55
	2008	575,567	102,347	0.59	0.01	4.85	4.22	5.01
Breakfast cereals	2004	276,138	43,022	0.87	0.09	8.84	4.57	6.47
	2008	374,327	54,533	0.86	0.09	9.55	4.53	6.80

a) '000 litres for milk and tons for the other products; b) euro/l for milk and euro/kg for the other products.
Source: own elaboration based on IRI Infoscan data. Data refer only to sales in the modern retail sector.

Figure **PL shares in the Italian refrigerated milk market**



Source: own elaboration based on IRI Infoscan data. Data refer only to sales in the modern retail sector.

In Italy, the number of brands increased for most product categories analysed, especially in the most innovative segments. The C_4 ratio also increased, mainly in the more innovative segments and/or niche segments, where total sales are growing and private labels are less present. Private-label market share increased steadily due to the extension of private label product lines and the decrease in relative prices. The number of suppliers also tended to grow.

Private labels provide products at lower prices. They have a limited impact on the prices of branded products.

5.3 Innovation

The impact of private labels on innovation was inferred by analysing the development of the number of new product introductions. We conjectured that this number had decreased. The number of new product introductions was derived from the INNOVA database (www.innovadatabase.com). INNOVA has a panel of 700 professionals in 74 countries collecting data on innovations in a selected number of industries, including food and beverages.

INNOVA covers on average 90% of all innovations in the market. Although the database is not complete, one may uncover trends with respect to product introductions.

The analysis was carried out for bakery and cereal products, dairy, and processed fruits and vegetables, including fruit juices. The number of products introduced is related to the size of the national market (table 5.13). Most products are introduced in France, Germany, Italy and the UK. The number of products introduced in Italy is high due to the fragmentation of the market and the associated high level of product differentiation. The number of products introduced in Hungary is lower, probably because of differences in economic development and lower per capita income. The number of new product introductions has become very low in Spain due to the fall in the number of new product introductions from 2005 till 2009. This is probably due to the growing market share of discounters and other retail formulas with a limited product assortment (see section 6).

Figures 5.12 to 5.19 show that the number of new product introductions increased. In absolute numbers, this holds for both private labels and industrial brands. There is, however, one major exception: in Spain, the number of new product introductions dropped dramatically. This holds in particular for industrial brands. The number of new private label product introductions was more or less constant in Spain. The number of new product introductions in the UK decreased for fruits, potatoes and vegetables, but was stable or increased for the other product categories. The share of private label in the total number of new product introductions increased, except in the UK. Private label was dominant in new product introductions in the UK in 2005, but since then the share of private labels in product introductions has fallen. Industrial brands had a comeback in new product introductions. In the other countries investigated, the number of new product introductions increased. This corresponds with the results of the previous section, in which we showed that the number of brands increased in Italy for selected dairy and breakfast cereals products.

There are differences in new product development in the respective product categories.

The results of this and the previous section illustrate that the variety of products being offered has been extended. There are more

brands on the market and there are more new product introductions. This holds for both private labels and industrial brands.
The analysis does not allow us to say anything about the quality of the new product introductions. However, the number of industrial brands being introduced increased in all countries except Spain. In Spain, retail chains that offer a small number of SKUs - including but not exclusively discounters - gained market share at the cost of hypermarkets. In Spain, price and product quality gained importance over product variety.

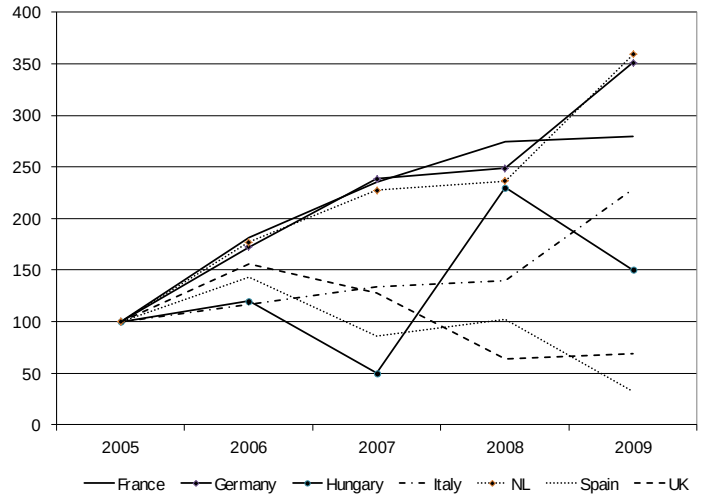
Appendix 1D shows that R&D expenditures in the European food and beverage industry are still rising. They grew spectacularly in Germany between 2002 and 2007. This corroborates the data analysis in the section. They also grew by almost 20% in France and the UK, and on average by 40% in eight small countries for which there are publicly available data. R&D expenditures in Spain were stable between 2005 and 2007.

In terms of product introductions, there has been no slowdown in the food industry's innovation rate. The number of product introductions grew between 2005 and 2009. There is one major exception: the number of product introductions in Spain fell dramatically. The share of private label in product introductions grew, except in the UK.

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

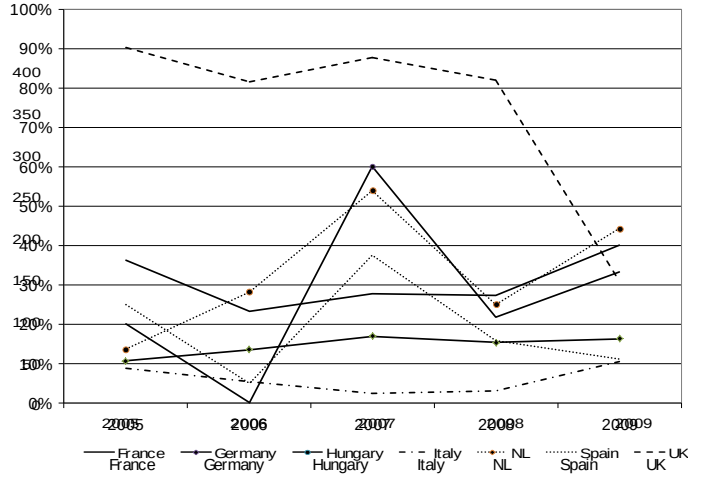
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.12 **Number of new product introductions: fruits, potatoes and vegetables**



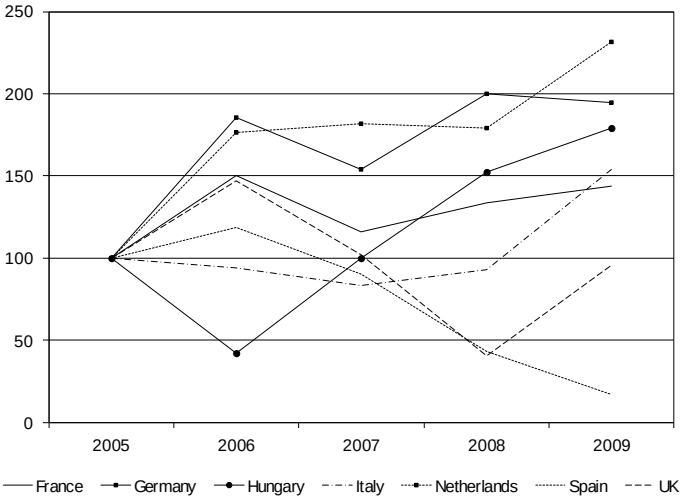
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.13 **Private label share in the number of product introductions: fruits, potatoes and vegetables**



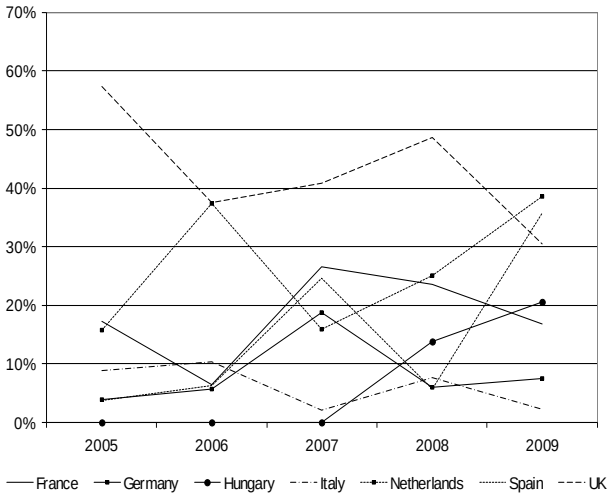
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.14 **Number of new product introductions: juices**



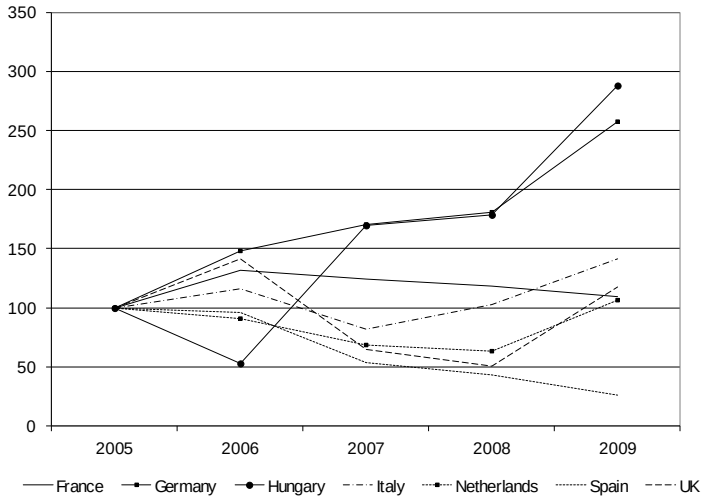
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.15 **Private label share in the number of product introductions: juices**



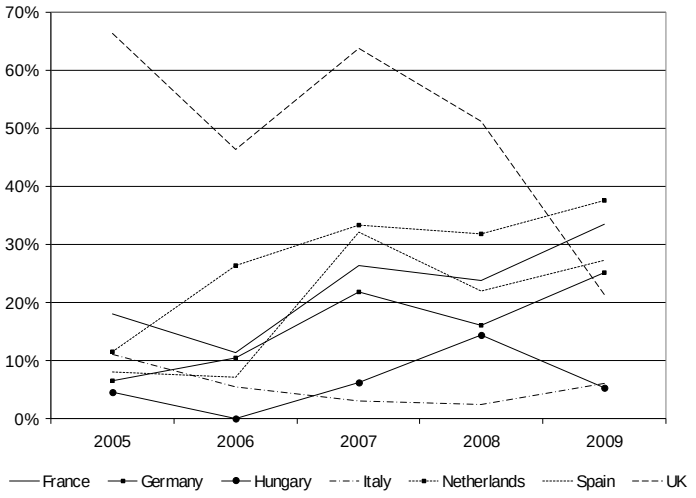
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.16 **Number of new product introductions: dairy**



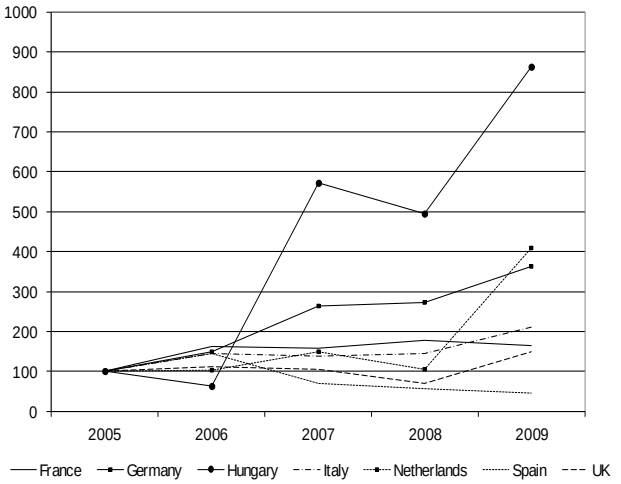
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.17 **Private label share in the number of product introductions: dairy**



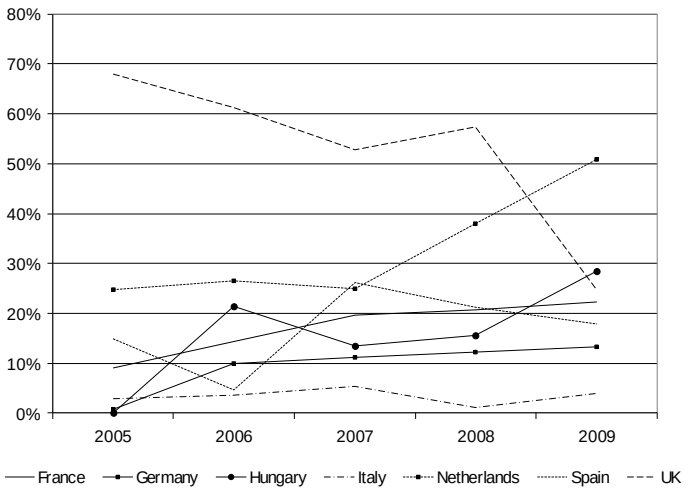
Source: Own elaboration on the basis of the INNOVA database.

Figure 5.18 **Number of new product introductions: bakery & bread & biscuits**



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

Figure 5.19 **Private label share in number of new product introductions: bakery & bread & biscuits**



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

5.4 Conclusions

This section provided a quantitative analysis of the possible impact of private labels on the competitiveness of SMEs and innovation in the food and beverage industry.

The number of firms in the food and beverage industry has decreased. This holds in particular for small companies. However, there are exceptions. The number of firms including SMEs has grown in some countries and in some sectors, notably those producing consumer products. It is not likely that the decline in the number of firms is due to a decline in profitability. Gross operating surplus is positive throughout the food and beverage industry, and improved in the 2000s.

The market share of private labels has grown, particularly in Spain and Eastern Europe. French evidence indicates that SMEs are less likely than large firms to produce private labels. This holds in particular for meat, fish, dairy and other food. On the other hand, for the production of bread, biscuits and chocolate ('other food'), the share of SMEs in private label turnover is larger than their share in total turnover.[1] For this sub-sector, the share of private label production in total turnover is higher for SMEs that produce private label than it is for large firms that produce private label.

In Italy, the number of brands increased for most product categories analysed. Private labels gained market share by extending product lines and by lowering prices relative to the market level. The most innovative segments show higher brand proliferation, increasing concentration and low private label share. Private labels provide products with lower prices. However, there is no clear evidence of their effect on the price of branded products.

The number of new products introduced grew between 2005 and 2009 for fruits and vegetables, and dairy and cereals products, except in Spain. The share of private labels in product introduction grew, except in the UK. The share of private labels in product introduction was very high in the UK in the mid-2000s (90%).

[1] Because of the size of the 'other food' sub-sector, this also holds for France as a whole, but it does not hold for the other subsectors of the food and beverage industry when analysed on a subsector basis.

Industrial brands made a comeback in terms of product introductions. Product variety increased and both private labels and industrial brands contributed in this respect.

6 Interview results

In order to assess the hypotheses formulated in Section 3, we conducted 44 interviews in 6 EU Member States: Germany, Hungary, Italy, the Netherlands, Spain and the UK. We interviewed 17 retailers and 27 suppliers. In section 6.1 we discuss the questionnaires and outline the selection of the firms interviewed. In section 6.2 we present the (anonymised) results of the interviews.

6.1 Interview set-up

The aim of this study was to assess the impact of private labels on the competitiveness of the European food processing industry, in particular with respect to the position of SMEs and the innovativeness of the food processing industry. Questionnaires were used to test the hypotheses formulated in Sections 3 and 4, with a focus on the more qualitative part of the hypotheses.

We drew up two questionnaires, one for retailers and one for suppliers (Appendices 2A and 2B, respectively). The questionnaires comprised three parts: (1) a general introduction; (2) innovation in private labels and industrial brands; and (3) bargaining relations and the implications for profitability and innovations. According to economic theory, the ability and willingness to innovate depends on the ability to appropriate profits from innovations. For this reason, the questionnaires addressed developments in bargaining relations and the possible impact on innovation.

The interviews were confined as much as possible to the cereals, dairy, and fruits and vegetables industries (see Section 3). We wanted to restrict the interviews with suppliers to a limited number of industries in order to be able to generalise the results as far as possible. At the same time, this allowed us to make the interviews with retailers concrete and to let the interviews with suppliers and retailers be complementary to the data analysis in Section 5.

We selected both suppliers and retailers in such a way that we ended up with a sample of SMEs, large suppliers and retailers, covering both private labels and industrial brands (table 6.1). Some firms supply both private labels and industrial brands.

The main advantage of stratification is that the sample represented the entire spectrum of stakeholders on the side both of food processors and of food retailers. The companies in Hungary, Italy, the Netherlands and the UK were selected by research institutes on the basis of their knowledge of the national supply chain in such a way that they met the stratification requirements. For Spain and Germany, research institutes received help from national supplier and retailer associations in selecting the companies.

The sample was not based on a random selection method (i.e. drawing ad random from the yellow pages) for two reasons. First, the lead time and resources did not allow it. Second, the politicisation of the study and the opposition of food retailers and their associations did not facilitate the search for companies willing to cooperate; this holds in particular for retailers. Given the sensitivity of the study, any sample is bound to be biased towards firms that are willing to cooperate. The interviews were used to come up with qualitative arguments to be used in the impact assessment of the possible introduction of a system of producer indications (Section 8) without assessing the empirical importance of all these arguments.

Table 6.1 The interviewees

	Suppliers									Retailers	
	SMEs	Large	Cereals	Dairy	Fruits & Vegetables	Others	PL	PL and Brand	Brand	SMEs	Large
Germany*		1	1		2			2	1	-	2
Hungary	6		2	2	2			6		-	4
Italy	3	3	1	3	2		1	3	2	2	2
Netherlands	2			2			1		1	1	1
Spain	2	4		6			1	2	3	-	2
UK	1	3				4		3	1	1	2
Total	14	10	4	13	6	4	3	16	8	4	13
	27*		27				27			17	

* We do not have information about the size of two of the German suppliers.

6.2 Results

The role of private labels

There are differences in the development of private labels throughout the EU. In the UK, private label is advanced and is recognised by consumers as offering high quality, matching (and in many instances exceeding) the quality offered by industrial brands. Moreover, the innovation rate in private label is high in the UK, driven by retailer competition in striving to meet or beat competitors' offers. At the same time, brands - faced with competition from other brands as well as private label - are driven to keep innovating and improving their offer, either by changes in products and packaging, new recipes and formulations, genuinely new products or greater emphasis on promotional offers to drive sales.

In the Netherlands, private labels are as well developed as they are in the UK, but their market share is substantially lower. Premium industrial brands still play a key role in most product categories in Dutch food retail. Some of the smaller retail chains lag behind in private label development compared to their big counterparts, for example because industrial brands play a more important role in their category management. Because of this lag, the market share of private label will rise in the Netherlands in the years to come. According to the retailers interviewed in the Netherlands, private label constitutes countervailing power relative to the dominant firms in Dutch food processing.

Even though private labels are well developed in Germany, some retailers lag behind in their private label development. Moreover, private label policies differ from one retailer to another. While for some discounters private label constitutes the core of their business, for others private label is an important part of a much wider product category. Full-service supermarkets have a complete assortment of private label as well as A, B and C brands, which they continuously scrutinize. Full-service supermarkets have a wide range of products, because their consumers expect everything. The number of private label SKUs is limited (10-20%) in full-service supermarkets. There are also major differences in the private label products offered. Part of the private label supply is aimed at the discount segment. This also holds for full-service supermarkets, which have to follow the supply of the leading discounters.

The other part of private label supply aims at the quality of industrial brands or even the premium segment. Some retailers choose to offer private label products in all product ranges; others offer private label products only in those ranges where private label adds value to the category. They may not even want to offer private label in some product categories.

In Italy, the private-label market is evolving rapidly. The economic crisis seems to have favoured the rise of the private label, as a way to offer consumers 'everyday low-price' products. However, private labels are also evolving in their segmentation and targeting, with a quality that is vertically differentiated. What is common to all retailers interviewed in Italy is the importance of regional and traditional products as a differentiating tool. Beside the fact that some regional brands are 'must-stock' in given areas, retailers stated that they specifically look for local producers that offer high-quality and traditional niche products. Their products can be placed on the shelf with the producer's brand or under the private label umbrella.

In Spain, the market share of private labels rose in the 2000s, and particularly in the last years of the decade. Retail chains actively increased the market share of private label in the last decade. They reduced the number of SKUs and increased private-label market share in order to achieve a new balance between price and variety. The growth of private label was due to the large price differences between private label and industrial brands as well as to retailer investments in supplier-retailer relationships and the subsequent rise in the product quality of private label products. These developments took place against the background of an increase in the market share of supermarkets and discounters at the cost of hypermarkets. The growth of hypermarkets came to an end due to planning policies and the prohibition on selling below purchase price. Contrary to hypermarkets, supermarkets and discounters have a limited number of products on their shelves.

In Hungary, retail competition focuses on prices. There is little differentiation between branded and private label products: brands and private label are close substitutes. This implies that the growth of private label products 'cannibalises' brand sales.

There are differences in the private label policies of food retailers:

- Large multinationals present a highly segmented portfolio with products that range from basic grocery products to premium quality items. Moreover, they cover specific segments with products targeted at children or at consumers who are looking for health claims, biological products, traditional products, fair trade or eco-sustainability. The share of private labels depends on the store format.
- Smaller chains have a lower private label share and present a much less segmented portfolio, which they are trying to increase in response to their customers' search for cheaper products.

The declared strategic role of private labels is that of creating store loyalty through differentiation and a good quality/price ratio. Private labels enable retailers to differentiate themselves from each other, while industrial brands do not (a bottle of Coca-Cola is the same in any retail outlet). Investing in differentiation is especially important because consumer loyalty to retail chains is decreasing: consumers shop in more retail chains than they did in the past. The private labels of leading international retail chains also compete directly with leading industrial brands suppliers in terms of product quality. Private label products typically generate higher margins for the retailer than national brands, but this does not hold for all of them. Some private label products are listed not because they add margins, but because they make the category complete, especially the low-quality segment.

The role of private labels, and that of the various kinds of private label suppliers, differs considerably according to the product category. For very basic products, the private label is a homogeneous commodity and the price element is dominant. This is reflected in the type of contracts, which in some cases are based on tendering. However, in general the selection of the private label producer is an important element for the retailer, and the bargaining process is less problematic than with industrial brands.

Supplier-customer relations

Retailers depend on a limited number of suppliers for large parts of their turnover and *vice versa*. Retailers source food primarily nationally. Exceptions to this are, for example, food products that are not available nationally (during some parts of the year), for instance due to climatic reasons. Food tastes differ throughout the EU. In Germany, for instance, there are large regional differences with respect to products like sausages and beer. There are also institutional barriers. According to some of the retailers interviewed, European wholesale markets are not well integrated. Manufacturers are able to segment national markets. Segmentation is further enhanced by national legislation.

In the UK, there are no formal contracts between suppliers and retailers in the sense of the fixed contracts that are common in Continental Europe (e.g. in Germany); they are looser, ongoing agreements that can be subject to regular price adjustments or other changes in the nature of supply. For suppliers seeking to raise supply prices, a case has to be made with retailers, which can be very difficult and will generally only be granted if there is a proven case of bona fide cost increases (which may necessitate the supplier providing essentially open-book accounting to prove its case). In contrast, retailers make regular and in some instances continuous demands for lower prices and improved terms of supply, often driven by one retailer seeking to improve its own position in the market relative to other retailers. Agreements to supply are often awarded for private label products on the basis of competitive tendering, but there may be a preference given to existing suppliers if they have good relations and work well with the retailer. Termination of supply agreements, both for brands and private labels, can be as short as giving 12 weeks' notice.

In Hungary, retailers allocate the supply of private label products through online tendering procedures. For branded products, negotiations are carried out by the head offices of the various retail chains. The first negotiation with a retail chain is considerably longer (2-5 rounds) and tougher than the annual renewal of the contracts, although that is also becoming more and more difficult. Suppliers characterised negotiations as tough. Contract terms are always written and are rarely changed during the 12-month term of an average contract. Contracts can be between 2 and 50 pages long.

Retailers may require as many as 70 commitments and contributions. The main elements of a contract are the detailed obligations of the suppliers. Suppliers' prices can be fixed for a half or a whole year, especially for private label products. Contracts rarely specify volumes. Volume specifications are more common for private label products than for industrial brands. Termination of supply is dealt with in the contracts and the notice period is usually 30 to 90 days. Suppliers are frequently threatened with delisting during the annual negotiations, but delisting actually occurs in only a few cases. It is more common to delist a few SKUs of a company either for a short period in the case of ad hoc better deals or permanently in the case of decreasing the number of SKUs ('portfolio cleaning').

In the Netherlands and Germany, food processors tender or bargain for private label supply and bargain over industrial brand supply. A retailer may change from one private label supplier to another, but cannot change from a supplier of premium industrial brands. Full-service supermarkets have a relatively weak bargaining position relative to suppliers of A brands, because they have to stock premium and even secondary brands. The way retailers bargain with suppliers depends on, for example, the type of product, the category policy and the strength of the industrial brand. Commodities are tendered. The supply of products with a complex content and/or a variable quality may involve careful and lengthy selection and bargaining processes. Retailers may also source PL from more than supplier. Continuity in the supplier-customer relation pays off, because suppliers may invest in the relation: they come up with suggestions.

For the products considered in the analysis (dairy, fruits and vegetables, and cereals), contracts for industrial brands are concluded for a period of up to 12 months, and for private label for 6 to 24 months depending on fluctuations in the prices of raw materials. Contract specifications and general conditions for brands may be determined by both retailers and/or suppliers. Retailers determine both in the case of private labels. Contracts with private label suppliers include product specifications, brand protection measures and minimum volumes. Because of liability, private label contracts include such elements as recall. Contracts with brand suppliers include promotion, financial charges and brand support.

Suppliers indicated that retailers dominate the bargaining process and determine contractual conditions. If the conditions are not met, brands are delisted or retailers switch from one private label producer to another. Emphasis is put on prices. Retailers stressed that they develop long-term relationships with suppliers, with the exception of suppliers of commodities. Long-term relationships are especially important for products of which the quality may vary. Retailers agreed that suppliers may indeed face retailers' increasing bargaining power, but this is the result of overcapacity in the food processing industry. Moreover, retailers had found in the previous decades that it is necessary to tie suppliers down. Suppliers may promise private label supply on the basis of projections with respect to excess capacity, but do not meet this supply when sales of their own brands soar. For retailers, not only quality and innovation but also dedication, speed, flexibility and reliability are important selection criteria.

Supplier-retailer relations in Spain differ from supplier to supplier, from retailer to retailer, and from product to product. Major retail chains engage in exclusive long-term relationships with their private label suppliers. They build relationships for life. Retailers carefully select suppliers with which they want to develop long-term relationships. Product specifications are defined jointly by both parties or unilaterally by retailers. Long-term relationships are meant to encourage suppliers to actively think for the joint supply chain. Retailers may carry the name of the producer on the private label or stick to the retailer's name. Retailers have a limited number of suppliers for private label. However, other retail chains tender their private label supplies for short periods of time (a couple of months) to a larger number of SMEs.

For branded goods, and also many private label products, in Spain framework contracts are concluded for a year, a season or sometimes a couple of years. The most important negotiation item is the number of SKUs to be listed. This is particularly important because of the reduction in the number of SKUs in Spain by some of the largest retail chains. Some of the suppliers of branded products indicated that it is increasingly difficult to get products listed. Retailers have a stronger bargaining position because they control shelf space and the stakes for retailers are smaller than they are for suppliers, even

large suppliers. Another supplier said this is very easy: one simply has to pay.
Many issues - prices, discounts, volumes, promotional activities - are negotiated on a weekly basis. Negotiations are never finished. Retailers and suppliers keep wheeling and dealing until, and sometimes even after supplies are shipped.

In Italy, the switch of private label supplier is more frequent in commodity type products (such as ready-to-eat salads), but in general switching is not very frequent. The notice period for ending the contract is important and it is usually based on the clearing up of packaging stocks by the processors. However, switching has costs and both retailers and processors stated that they have the incentive to develop relationships that could evolve into partnerships. In this way, a retailer can have a supplier it can trust and with which it is possible to jointly develop products. In the same way, producers, if sufficiently guaranteed by the retailer in terms of future volumes, can have the resources to make new investments in plants and technology. It is also difficult for retailers to find processors that have sufficient capacity to serve the whole Italian market. Therefore, processors of the right size that can guarantee timing and volumes are not easily substitutable.

Retailers usually do not ask for the exclusive supply of private label products: one retailer reported having an ethical code that states that it cannot purchase more than 20% of a supplier firm's turnover. On the other side, processors stated that they are very careful not to let a single retailer have a large share in their turnover. To avoid this dependency, most of the processors interviewed serve a variety of channels besides modern retail. Traditional and specialised shops, food service and the B2B channels are important alternatives. Some of the private-label producers were also producing for leading brands, as co-packers or as key input suppliers.

The main elements of the private label contract are a very accurate definition of the product characteristics, the logistic of the product and an indication of volumes. The price is defined as a net-net price, with usually no other discounts (in some cases, retailers ask an end of the year premium to private label processors with a percentage value that is lower compared to brands). The price of private label supply might be linked and indexed to the market price

of key inputs or renegotiated in the event of important changes in the market.

The contract for brands is very different and conflicts during bargaining are more common. Elements of the contract are the invoice price, invoice discounts (%) that might be linked to volumes, and out of invoice discounts, mainly represented by the end of the year premium, which might range from 1 to 4%. Fixed contributions are then related to co-marketing activities, shelf space and promotions. The planning of promotions in the contract varies a lot: leader brands normally have the number and level of promotions stated in the annual contract. However, many promotions are agreed upon during the year.

Business practices

The business practices relevant to the retailer-processor relationship are mainly those mentioned in the contract terms. Other practices - such as the buy-back of perishable products or the adjustments of the contract terms - seem to have a limited role. Retailers consider buy-back, rightly or wrongly, as a sign of goodwill. Buy-backs are more frequent for small independent retailers, whose turnover is low.

According to most of the retailers we interviewed, the delisting threat plays a marginal role in bargaining relations: if a brand has value to consumers, both parties have an incentive to have it on the shelf. Delisting occurs in a limited number of cases as a result of the 'deterioration' of the relationships between suppliers and retailers. Retailers and some suppliers stated that it is usually a matter of revising and optimizing the product portfolio of the brand; some retailers give notice to producers when they do not plan further orders of some items, while other retailers simply stop ordering. Processors also stated that they might stop supplies of their branded products; however, this rarely happens, and usually only when they fear the failure of the retailer or when the chain is selling the product at a price that is definitely not in line with the brand positioning. According to other brands suppliers, though, the delisting threat is one of the crucial mechanisms in bargaining between suppliers and retailers. There have been instances in the last decade in which both retailers and processors gave notice to either their suppliers or their customers more or less overnight (1 week).

Payment periods are not always respected, mainly for brand supply. According to processors, this is a common practice for some retail chains. However, they seem to fear the failure of a small retailer more than a large retailer not respecting the payment terms. Payments may take more time than legally allowed.

Promotions are widely used across product categories and brands, while having basically no role for private labels. Retailers have an incentive to make promotions since they can attract new customers to their stores and they can offer price benefits to the existing ones. Brands, especially for the more homogeneous products, are almost obliged to participate in promotions since it is the only way to increase volume sales. Opinions about the overall effect of promotions differ and are uncertain: for some actors, if promotions are well planned they can increase sales with little effect on the vertical chain; for others, it is a perverse game that makes everyone lose and that stresses the productive capacity of the vertical chain, creating inefficiencies. Several interviewees indicated that price promotions of industrial brands are effective in boosting the sales growth of industrial brands and stopping private label growth.

In the UK, the practices that retailers use in their dealings with suppliers are now governed by the Groceries Supply Code of Practice (GSCOP), following an investigation concluded by the UK Competition Commission in 2008. This code appears to offer benefits to both suppliers - by protecting them against certain abuses of retail buyer power - and retailers, by clarifying the legal basis for the use of practices and ensuring a level playing field amongst retailers in respect of their treatment of suppliers.

Even with GSCOP in place, it appears that brand suppliers are expected to provide extensive in-store promotional support for their products, through promotion support payments and by covering the cost of price promotions (e.g. special offers in the form of multi-buys or discounted prices). Retailers can also demand large sums as financial contributions, presented as 'pay to stay' fees ('*Nichtauslistungsrabatte*'), backed by a threat of delisting products or offering reduced shelf space.

Private label performance

The impact of private labels on retailers' performance is obviously seen by retailers as positive, even if the private label share is low. Private labels are the tool to reach the strategic objectives of increasing product differentiation, raising store loyalty and generating higher margins. For this reason they have the best shelf position in many supermarket chains. However, some of the interviewees stated that branded products get better facings because of the financial contributions charged by retailers as well as the price promotions offered by brand suppliers. Small retail chains in fact lean on leading brands and even followers. Only some retailers said that private labels are also a way to gain bargaining strength over brands. Other retailers consider the private labels as a shelf 'cleaning' tool: only those brands that mean something to consumers (in terms of distinguished benefits, values, innovation, etc.) remain on the shelf; the rest is private label domain. The value added created by private labels is reflected in the employment in the marketing, R&D and quality control departments in supermarket chains.

For suppliers, private label production generates positive effects due to stable and large volumes. Production capacity is better utilized, productivity increases and logistic costs decrease. The downside of private label production is its low margins and its impact on innovation and branding. Even though private-label producers may incur few marketing costs, some of the suppliers interviewed indicated that although they cover their production costs, they barely cover the innovation and design costs. Private label production typically involves a cost strategy. Price competition is fierce, but may be softened by product specialisation in the private-label market, that is, by serving different segments of the market. One of the interviewees indicated that he followed this strategy with success. The interviewee develops a few products each year. The innovations are incremental and have high volume prospects. Industrial brands lead innovation (innovative recipes) and are able to deal with smaller batches.

For retailers, the risks associated with product introductions are smaller for industrial brands than for private labels. Industrial brands

receive promotional support from the suppliers, while private labels do not. Moreover, industrial brands generate fees. Private label production involves risks for the retailers with respect to unsold volumes and packages. Part of this risk is shifted to suppliers, who have to bear Copycatting successful products does not involve major risks, but cannibalises premium brands in the category, also for the retailer. The costs and risks of introducing premium private labels are as high as they are for brands suppliers. Because private label involves umbrella branding, retailers are eager to guard the reputation of their retailer brand.

Innovation

Private labels can play many roles in the market, but not that of product innovation. This is the opinion of most of the firms we interviewed. Retailers' direct contribution to innovation is low, except for some of the multinationals. They take little risk in introducing new private labels, they do not appear to promote innovative product concepts on their private label suppliers, they partially or fully cover the risk and the information asymmetry of new product introduction by brands using listing fees. Private labels enter the market at a later stage, usually copycatting a successful product of the leader. However, this delay is shorter (the retailers take more risk) if the new product fits the retailer's position in the market particularly well. Innovation is still left to brand leaders, which have the technological know-how and the resources to sustain both R&D and the introduction of the new product onto the market. Many of the specialised small and large brands' suppliers interviewed indicated that they were able to continue innovating and marketing their products. It is a major challenge to gain shelf space for new products. Success is dependent on obtaining listing from as many retailers as possible, especially the largest ones. Brand producers will typically be forced to cannibalize the space allocated to existing products in order to make space for new ones.

On the other hand, as some of the retailers interviewed indicated, the food industry has not taken up consumer demand with respect to convenience and social concerns. Private label products play a role in meeting these aspects of demand. The private label share in such convenience products as fresh ready-to-eat meals is usually well above 90% (PLMA, 2009). This is also a consequence of freshness

requirements and the complexity of logistics. Retailers have a comparative advantage over processors in logistics. The food industry has also not responded to consumer demand for social concerns - fair trade, organics, environmental and animal welfare, and so on.

Retailers stressed that their proximity to consumers helps them to develop new product categories that have been neglected by food processors. Although the innovations may not be radical, they definitely generate value. One should not overlook the fact that retailers have large product development and marketing departments. Retailers integrated backward into the supply chain and now perform activities that were previously carried out almost exclusively by food processors.

The number of new products introduced into the market varies depending on the sector and the country. In Spain, Italy and Hungary, the perception is that the recent economic crisis reduced the number of new product introductions, since both retailers and processors are less willing to take risks. Suppliers mentioned three reasons: 1) profitability is low, which leaves little financial scope for innovation; 2) large retail chains have reduced the number of stock keeping units (SKUs) in order to survive the crisis;[1] and 3) there are no groundbreaking innovation ideas around in the food industry, apart from functional food and packaging, design, use and taste. Because of the reduction in product introductions, the selection of new products is more accurate and this might have increased the success rate of new introductions. In Germany, on the other hand, the number of product introductions and the number of products on the shelves are increasing, also in discounters.

Because the number of new branded product introductions is growing and branded products obtain less distribution, at least in some countries, revenues and profits on specific brands (SKUs) tend

[1] Apart from this reduction, there is large discrepancy between the number of products available and the number of products on the shelves. The number of products on the market (1,000,000 SKUs) and the number of products introduced annually (120,000 SKUs) far exceed the number of products on the shelves of an average full-service supermarket (20,000 SKUs) or even a hypermarket (60,000 SKUs). Many products developed flop, and are bound to flop given the abundance of products available. According to some retailers, these numbers also illustrate that the food industry pursues a push strategy with respect to innovation and tends to develop products for which there is no consumer demand.

to fall. Some of the suppliers interviewed indicated that they had curtailed production and closed down factories in the previous decade. New product introductions receive less promotional support. Some suppliers feel obliged to reduce spending on R&D and innovation efforts. As a result, suppliers enter a vicious circle whereby sales drop further, they reduce R&D and advertising further, etc. Other suppliers indicated that they intend to speed up innovation in the decade to come.

The effect of private labels on processors differs according to whether they are brand leaders or private-label producers, or both:

- The brand leader finds a new competitor. This may either foster or curtail innovation efforts. One brand leader explicitly stated that the company was forced to increase investments in R&D in order to be more innovative and, therefore, maintain its market share and margins. In the past, its rival processors were not sufficiently strong to be a threat, while private labels are now effectively reducing the shares of the company's brands and squeezing the corresponding margins. Other interviewees stated that the following practices are contributing to a decline in innovation:
- The delisting of a large number of SKUs at short notice affects sales, profitability and investments.
- A brands' supplier indicated that during a meeting with a retailer about a product introduction, the retailer said that his company would use the idea to make a private label product out of it (with the help of another private label supplier).
- Another brands' supplier presented Nielsen data indicating that private label products have more shelf space and more SKUs than is warranted on basis of their turnover.[1]
- Suppliers share information with retailers about their strategic plans, including product introductions. The information shared may be used by retailers to promote their private label policies. While competition law does not allow the sharing of information between horizontal competitors, it does allow information sharing between retailers and suppliers, even though they compete both vertically and horizontally. This information is abused, according to suppliers, in order to copycat. Of course, copycatting is relatively easy for new flavours and packaging, and relatively difficult for

[1] Retailers may have other reasons to dedicate a lot of shelf space to private labels, for instance their proliferation vis-à-vis other retailers.

more substantial innovation such as the use of newly developed ingredients.

- The brand followers are in a more critical position, according to some of our interviewees. If their brands have a sufficient value to consumers, they might survive on the shelf; otherwise they will be out, and perhaps switch to private label production.
- Local producers with good reputations appear to be attractive to retailers, either under the private label umbrella (to be sold in a larger territory) or under their brand (to be sold locally). This was confirmed by a local processor: the firm had decided to stay out of modern retail and to focus on traditional/specialty shops and food service; however, given their reputation in the area, retailers wanted the firm's products to be sold in the stores within the region.
- Other firms specialise in private label production. In fact, the interviewed firms were not fully specialised, since they were also serving larger brand leaders or had their own brands. However, their dynamics are particularly interesting to mention:
    - One private label producer was initially a supplier of semi-finished food ingredients. It decided to become a private label supplier and made the investments that were required to grow. The producer initially started copycatting branded products. However, the investments made and the resources generated by the larger volumes increased its processing know-how. This allowed the next step: supplying national brand leaders. The producer became an important partner of industrial brands, jointly cooperating in developing new products under partnership relationships. This reduced the risk of being substitutable, compared to the private label supply.
    - Two private-label producers stated that thanks to private label production, they had evolved from being regional firms into companies that supply private labels internationally. They focused on a cost leadership strategy. They are now investing in developing their own brands.
    - Another processor grew thanks to the private label production and became a co-leader in its sector. The resources generated by private labels were invested in innovation and the firm is

now one of the most innovative firms in the category with an own brand that is now growing in importance.

- Urged by retailers, one producer started adding E numbers to its products. This boosted sales, because the physical attributes (i.e. the colours) of the products became more attractive, especially to children.

Not all food categories allow private label processors to evolve in this positive way and not all food processors are able to take this opportunity. For example, when the processed fruit or vegetable is more of a commodity type, the private label producer finds it hard to support its own brand and has virtually no alternative to private label production.

Some interviewees indicated that copycatting is a problem for brands and/or private labels. Brand dress, product formulation and packaging are copied by other brands and by private labels. Yet, it is also the case that a retailer's private label is copied by another retailer or a brand manufacturer. Copycatting is a problem if producers are not able to recoup their innovation costs. This, however, is a general rather than a private label problem.

The above points suggest that while retailers do not seem to directly promote innovation, private labels could have an indirect and positive innovation effect on both brand leaders and smaller processors. However, in some instances, some retailer business practices - whether or not they are related to the development of private label - also have a negative effect.

Producer indications

The interviewed retailers and suppliers in Italy and Hungary on the one hand and those in the UK, Germany and the Netherlands on the other hand had differing opinions about producer indications. Retailers and suppliers in Spain hold an intermediate position. It should be noted that many interviewees did not have strong opinions with respect to producer indications. The matter is not always being discussed in the companies concerned. Many interviewees gave personal opinions.

Producer indications are already common in Italy, Hungary and Spain. Many of the interviewed retailers (and suppliers) are favourable to the initiative of having an obligatory system of

producer indications on private labels. Many retailers already write the name of the producer on their private label. They see it as a way to give transparency to consumers, creating a positive attitude towards the product. Brands' suppliers may even feel obliged to advertise that they do not produce private labels. The interviewees did not show concern about the possible consequences for the differentiating objective of the chain (the same producer can appear on the private labels of various chains) since the product recipes are different. Retailers stated that in some cases the processors do not want their name on the product; this applies especially to processors that have higher brand reputations. One of the suppliers we interviewed confirmed this. It is difficult to market both brands and private labels, especially for commodities. However, for large firms the problem is easily solved: they create a new company with a new name. For SMEs, it may be an issue. Brands' suppliers sometimes use private label to optimise capacity and to realise economies of scale. An obligatory system of producer indications may compel firms to opt for either private label or brands. The choice will probably depend on the strength of the supplier and its brands. For this reason, some of the interviewees said that there should not be an obligatory system.

Other, smaller processors see the indication of their name as a tool to advertise their companies to other firms and retailers. Concerning the effects on consumers, some firms see having their name as a warranty of domestic production, which could defend the product category from imported products of doubtful quality and be a sign of transparency to consumers.

In general, this last point is what producers want: more transparency in the information given to consumers and controls by authorities that are comparable across firms and Member States. Unfair competition among processors is seen as an important threat to their growth.

Finally, producer indications may shift liability with respect to private labels from retailers to producers. Other interviewees indicated that nothing will change in this respect given, for example, the traceability requirements. Retailers will remain liable and will hold their suppliers responsible for any damage caused to the retailers.

The interviewees in the UK, Germany, the Netherlands and Spain envisaged several problems with such a policy:

- It would deter brand producers from making PL products if this led to their brands being undermined in terms of the perceived value on offer. This holds for both SMEs and large firms. One producer we interviewed stated: 'I am not going to promote private labels by putting my name on them.' If producers were deterred, it would be harder for retailers to source good quality, competitively priced private label products in many categories.
- As private label bears the retailer's name and is under the retailer's control regarding composition, formulation and image, the view expressed was that it was right for the retailer to carry the sole responsibility for that product's quality and reputation, and not to share that responsibility with a producer.
- In terms of a pragmatic perspective, where would the line be drawn in terms of recognising that many products are multi-sourced and are part of a lengthy supply chain (begging the question whether every supplier involved in bringing that product to market would have to be listed on the label)?
- Food product labels are already complicated enough and loading further information on them was perceived as not only unnecessary but also undesirable, as it could confuse the consumer (e.g. who would consumers complain to if they were dissatisfied with the product?).
- As suppliers indicated, producer indications may suggest to consumers that a PL and a branded product coming from the same firms are of the same quality. However, there may be important differences in recipes and quality.
- Private-label producers indicated that they are not keen on developing consumer information services. Retailers, on the other hand, indicated that they want to hear consumer complaints themselves and be able to act upon it, to go to their own development and marketing departments to improve the product, to go to their suppliers in order to get a new recipe or to deal with possible defaults.
- Changing suppliers may require replacing packaging.
- If consumers really demanded such information, then retailers would find it worthwhile to supply it on a voluntary, case-by-case basis without the need for regulation (as happens in some instances). The information may also be deduced from existing information.

- Regulation on a one-size-fits-all basis is inappropriate given the very wide differences across national markets in Europe, and national-level actions are more appropriate than pan-European ones given the disparities across Member States in terms of how national markets operate.
- It may increase the administrative burden on companies.

Some interviewees indicated that a system of producer indications is not likely to realize a change in bargaining relations between suppliers and retailers. Retailers have bargaining power because of their multi-product nature, their control over shelf space and their dual role as producer and customer. The effects of a system of producer indications is likely to be limited. The interviewees referred to the code of conduct, which had not changed bargaining relations.

6.3 Conclusion

Retailers contribute to product innovation by creating or stimulating the creation of additional product lines. They generate employment in their own R&D, marketing and design departments and enable their suppliers to grow, to invest and to innovate. What the impact of private label growth is on innovation at the industry level remains an unanswered question. Brand suppliers have more resources to pursue innovations. In many instances, private labels spur brand suppliers to intensify the use of these resources, but in many other cases private labels and retailer business practices do not. This section provided some examples of both. The interviews could not be used to give a final assessment in this respect.

Producer indications provide additional information to consumers. This is valuable as such, but one may wonder whether consumers really care who produces private labels. A mandatory system of producer indications may force SME suppliers to produce either private label or brands. This may limit the choices that are available to SMEs. Producer indications are not likely to have a profound impact on bargaining relations between suppliers and retailers. If retailers have bargaining power, buyer power will remain intact, because it depends on control over shelf space, their multi-product nature and the dual role as a customer and a competing supplier.

Part IV Legal analysis

7 Legal instruments to prevent unfair competition

7.1 Introduction

Some producers believe that they are confronted by unfair commercial practices applied by retailers. Retailers are said to be able to exercise such practices on the basis of the power they derive from the combination of their control of shelf space (e.g. access to consumers) and private label products.

Perceived unfair practices are copycatting and unfair contractual requirements, such as listing fees, restrictions on suppliers' trade with other retailers, applying different standards to different suppliers, imposing unfair risks or retrospective changes to contract terms, transferring costs to producers and requiring suppliers to use third-party suppliers nominated by the retailer, delisting and threatening to delist to gain advantages.[1] Producers of products that are sold as private labels fear becoming anonymous to the consumer and thus interchangeable. Thus, instead of brand loyalty, private labels help building store loyalty (Marsden and Whelan 2009).

While the economic and empirical results of our study do not suggest the existence of a structural problem of economic relevance, this does not a priori discount the possibility that individual cases of unfairness occur. We therefore analysed whether and, if so, to what extent current law provides instruments to protect from such unfairness and if improvements of the legal framework are possible.

Three issues and perceived problems are discussed here. Section 7.2 addresses the problem of copycatting, while the discussion of unfair contracting in section 7.3 forms the core of this section. Finally, section 7.4 looks into the possibility of producer indication on the label.

[1] See Section 3.3.

7.2 Problem of copycatting

Of the various roles that private labels can serve in the supply chain,[1] the one of providing cheaper alternatives to existing industrial brand products constitutes a specific area of concern for the protection of intellectual property rights (IPR). Copycatting (or copycat packaging) refers to selling private label products with packaging displaying similar characteristics to the packaging of a rival brand, which may as result induce consumers to buy the private label instead, either by mistake or by (rightly or wrongly) assuming that the copycat label has the same reputation as the branded product (UK Competition Commission, 2008).

Private labels but also other brands may copycat a product that has proved to be successful on the market and thus bear little or no risk of introducing new products onto the market. Such free-riding may raise specific concerns about a potentially negative effect of copycatting on the profits and innovation of the manufacturers of the products being copycatted.

The private labels that plagiarise the brand's dress make consumers think that the product is produced by the manufacturer and has the same characteristics or even is the same brand. These unfair commercial practices with regard to business-to-consumer transactions are dealt with in Directive 2005/29/EC.[2] The Directive bans unfair commercial practices, which are categorised as 'misleading' and/or 'aggressive'. The Directive also contains, in Annex 1, a 'black list' of practices which are considered unlawful under all circumstances (i.e. to which the average consumer test is not applied).

According to the Directive, a commercial practice is misleading if marketing of a product creates confusion with any products, trademarks, trade names or other distinguishing marks of a competitor in a way that causes the average consumer to take a transactional decision that he would not have taken otherwise.[3] Annex 1 considers 'promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to

---

[1] See Section 3.3.1.

[2] Dir. 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, O.J. 2005 L 149/22.

[3] Art. 6(2)(a) Dir. 2005/29/EC.

mislead the consumer into believing that the product is made by the same manufacturer when it is not' as an unconditional misleading practice.

7.2.1 Intellectual property

Legal protection against copycatting is the domain of intellectual property rights: trademarks and designs.[1] Some level of harmonization of national law on intellectual property has been achieved through the influence of the World Trade Organization (WTO) TRIPs Agreement.[2] At the EU level, an institutional system of protection has arisen from collaboration between Member States and the Office for the Harmonisation in the Internal Market (OHIM), which is responsible for EU trademarks and designs. The national systems operate in parallel to the EU system.[3] According to recent studies, industry has expressed support for a centralised and strengthened EU system (EU IPR Expert Group 2007).

Given that there is a considerable body of literature on the use of trademarks, designs and patents,[4] our study concentrated only on aspects that are relevant to private labels. We do not present here a general description of the IPR and institutional framework that protects them at international and national levels.

Informal protection

Many surveys highlight the importance of the informal protection of commercial ideas and practices, especially where SMEs are concerned. Informal methods of protection include:

- trade secrets and restriction on access to knowledge and sharing information: key knowledge is kept secret from external collaborators or information is disclosed only partially (business partners, retailers);

[1] In exceptional cases, patents may play a role as well.
[2] The Agreement on Trade Related Aspects of Intellectual Property Rights of the World Trade Organization.
[3] In addition, the European Patent Organisation - a non-EU body - delivers national patents based on a single application.
[4] For general information, see < www.ipr-helpdesk.org/ >.

- confidentiality: working with reliable partners may sometimes be more efficient than formalised contractual or legislative agreements;
- publishing: making the initial innovator immediately visible and known as the developer of a product or idea (through Internet websites, specialist journals, newspapers, etc.) (EU IPR Expert Group 2007, pp. 22-24).

These informal protection methods are difficult to put in practice in the relationships between suppliers and big retailers. In their role as customers (during their negotiations with suppliers), retailers obtain detailed information not only about the products, but also about the commercial plans of the suppliers. As indicated in the economic part of this study, this information can be abused by private label owning retailers in their role as competitor if the bargaining position of the supplier is not such that this can be prevented.[1] In such situations, the supplier needs to be able to rely on more formal arrangements.

Note that retailers may also need to rely on more formal arrangements in order to control the quality of private label products. Retailers and private-label producers conclude long-term relationships when product characteristics and product quality are hard to define and assess (Section 6).

Design

Design is becoming an increasingly important marketing tool that enables companies to differentiate their products on the market. Design is the appearance of the whole (or a part) of a product resulting from the features of, for example, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.[2] Although the main reason for registering designs is to prevent them being copied, a slightly different design can sometimes be registered as novel. Therefore, registration may not always offer

[1] This asymmetry of information also concerns prices: retailers know the prices of branded products, which allows them to fix prices for their own private labels in reaction to the producers of branded products. Clearly, the producers are not able to readjust their prices (See *Procter & Gamble/Gilette* (COMP/M.3732) Commission's decision of 15.07.2005).

[2] See Art. 3(a) Reg. 6/2002 on Community designs, O.J. 2002 L 3/1.

enough protection. Furthermore, the registration process can be lengthy, and therefore design registration will usually only play a role for products with a sufficiently long product cycle. Finally, the registration costs may be a problem for medium and small suppliers.

Trade marks

A trade mark is a sign or indicator capable of being represented graphically, particularly in the form of words, designs, letters, numerals, the shape of goods or of their packaging, if such signs distinguish the products or services of one undertaking from those of other undertakings.[1] It is often a name, symbol, logo and/or design, but can also be colours, smells or movement that distinguish particular goods or services from other products on the market and indicate their commercial source.

Trade marks also play an important role in consumer protection policy, allowing consumers to identify the origins and quality of the product and preventing them from being misled. For the same reason, they serve as an incentive for manufacturers to maintain the high quality of their products.

Apart from registered trademarks, some national legal systems protect unregistered trademarks. In general, in a legal context, it is allowed to copy packaging or products which do not have trade mark protection. However, copycatting may be considered an unfair commercial practice.[2]

The law of 'passing off' in common law tort enforces trademark rights through the protection of the goodwill of a business from misrepresentation that confuses consumers. The law protects the brand by preventing one from benefiting from somebody else's goods or business reputation.[3] The party must show damage resulting

[1] See Art. 4 Reg. 207/2009 on the Community trade mark, O.J. 2009, L 78/1.

[2] The Paris Convention for the Protection of Industrial Property defines acts of competition contrary to honest practices in industrial and commercial matters as '[a]ll acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor' (Art. 10bis).

[3] Case *United Biscuits (UK) Ltd* v *ASDA Stores Ltd* [1997] RPC 513 provides a remarkable example of the use of the law on passing off by a manufacturer against a retailer over lookalike private label products. The UK's High Court ruled that the packading of ASDA's private label 'Puffin' bars, their colour and style of packaging, use of the Puffin

from an act of unfair competition. In other words, in order to violate the law on passing off copycatting must create confusion among consumers.

In this context, the above mentioned Unfair Commercial Practices Directive constitutes an important step towards improving the protection of brands from misappropriation. Although its scope is in general limited to B2C transactions,[1] Article 11 of the Directive lists competitors among persons or organisations having a legitimate interest in combating unfair commercial practices, who should be able to take legal action or bring such unfair commercial practices before an administrative authority competent to decide on complaints or to initiate legal proceedings. Recital 14 of the Directive sets out the scope of the protection of brands in a way similar to the law on passing off, limiting it to the use of copycats which clearly confuse consumers as to the commercial origin of the product.

7.2.2 Elements

Intellectual property rights and unfair commercial practices regulation provide business with rights that they can invoke in a civil court of law. Apart from border controls and criminal law instruments against counterfeiting, no public law instruments provide official controls or sanctions.

EU involvement with IPRs can be based on the new Article 118 TFEU. Previously, no specific competence in the EC Treaty applied. Therefore, Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark was based on Article 308 EC. This article provides the competence to legislate by unanimity in the case that the Treaty does not provide the necessary powers necessary to attain, in the course of the operation of the common market, one of the objectives of the Community.

7.2.3 Conclusion

---

character, as well as shelving the product next to its branded counterpart, was deceptively similar to McVitie's Penguin biscuits.

[1] B2B transactions are covered by Directive 84/450/EEC relating to the approximation of the laws, regulations an administrative provisions of the Member States concerning misleading Advertising, O.J. 1984, L 250/17.

Intellectual property law provides producers with tools to limit copycat packaging, although it is apparently unable to eliminate all forms of copycatting. Regardless of the efficiency of the current legislation, however, the question is whether producers can actually invoke their rights if they find themselves in a dependent position. Businesses that produce both industrial brands and private labels may be reluctant to stand up for their brand out of fear of consequences on the private label contract. More in general, suppliers may be reluctant to sue a retailer that is a major customer. In consequence, intellectual property rights may be insufficient to protect branded products against their copycats, in particular private labels.

7.3 Problem of unfair contracting

The increased use of private label products does not affect competition *per se* adversely. In fact, private labels increase consumer choice - unless they merely replace industrial brands - and are likely to lead to a fall in consumer prices.

In specific circumstances, however, the fact that retailers are becoming their suppliers' competitors may raise some concerns, especially in relation to the concept of 'buyer power', which has captured significant public attention in recent years. 'Unequal bargaining power' exists when one contracting party can obtain terms that are more favourable and has better alternatives than the other contracting party; in other words, when one party can impose conditions without risking that the proposed contract will not be concluded. Because unequal bargaining power may lead to business relationships that are considered unfair and unjust from a social or economic point of view, various policy measures have been developed to correct this inequality.

In the context of private labels, the abuse of buyer power is linked to problems faced by suppliers in their contractual relations with stronger retailers. Various policy tools can be used to tackle these issues, for example unfair commercial practices law, consumer protection law, codes of conduct or competition law. Below is a brief overview of these options.

7.3.1 Contract law

Draft Common Frame of Reference (DCFR)

Contract law is almost exclusively a matter of the national law of Member States. However, implementation of European measures may depend on the civil law infrastructure in individual Member States. The European Commission therefore requested an international team of experts to explore the common features of civil (private) law in the EU Member States.[1] This team reported its findings in the form of a code, known as the 'Draft Common Frame of Reference' (DCFR).[2] In this report, we use the DCFR as a representation of private law - contract law in particular - in Member States.

Generally, contract law treats parties as equal. They can arrange their contractual relations any way they agree upon. The DCFR does, however, provide some protection against the exploitation of a position of dependence by a dominant party. In certain circumstances, such protection may be relevant to address practices that are at issue in this section.

Exploitation

Classical contract law recognises that it may not be just to enforce a contract if one party to it was in a weaker position, typically because when giving consent the party was not free or was misinformed. For example, a contract concluded as the result of mistake or fraud, or that was the result of duress or unfair exploitation, can be set aside by the aggrieved party.[3]

---

[1] See < http://ec.europa.eu/justice/policies/civil/policies_civil_contract_en.htm#cfr >.
[2] See < http://ec.europa.eu/justice_home/fsj/civil/docs/dcfr_outline_edition_en.pdf >. This DCFR is partly based on the earlier Principles of European Contract Law (PECL).
[3] DCFR p. 65.

Table 7.1	DCFR on unfair exploitation

II. - 7:207: Unfair exploitation

1. A party may avoid a contract if, at the time of the conclusion of the contract:
   a. the party was dependent on or had a relationship of trust with the other party, was in economic distress or had urgent needs, was improvident, ignorant, inexperienced or lacking in bargaining skill;
   and
   b. the other party knew or could reasonably be expected to have known this and, given the circumstances and purpose of the contract, exploited the first party's situation by taking an excessive benefit or grossly unfair advantage.
2. Upon the request of the party entitled to avoidance, a court may if it is appropriate adapt the contract in order to bring it into accordance with what might have been agreed had the requirements of good faith and fair dealing been observed.
3. A court may similarly adapt the contract upon the request of a party receiving notice of avoidance for unfair exploitation, provided that this party informs the party who gave the notice without undue delay after receiving it and before that party has acted in reliance on it.

It does not seem likely that the position of a producer in relation to a retailer will often qualify as dependence or economic distress in the sense of this provision or that any of the other conditions will be fulfilled.

Remedies

'Avoidance' is annulment or cancellation of the contract. This remedy may be helpful with regard to obligations that are retroactively imposed by the retailer. Generally speaking, however, the producer needs the contract to be continued on fair terms, not for it to be terminated. Sections 2 and 3 of Article 7:207 DCFR give the courts the power to adapt the contract.

Conclusion

General contract law does not seem to provide much relief for producers. The available remedy of adjustment of the contract terms by a civil court seems relevant, but the conditions to invoke this remedy seem geared towards private persons rather than businesses.

Elements

Contract law provides business with rights they can invoke in a civil court of law. In the establishment of unfair exploitation, dependence, the other party's knowledge of this and the achievement of excessive benefits play a role. The courts can amend the contract. There is no public law instrument providing official controls or sanctions.

The competence of the EU to regulate on contract law is contested. A precedent of EU legislation on civil law is the Product Liability Directive (85/374). This directive is based on harmonization for the internal market. Harmonisation of elements of contract law could arguably be based on the same competence.

7.3.2 Competition law

Competition law is one of the few areas where the Treaties address businesses directly, and also one of the few areas where the Commission has powers of enforcement towards businesses directly. Commission officials - in cooperation with the competent authorities in the Member States - can inspect the premises and documents of businesses. The Commission can also impose sanctions on businesses in the case of infringements; these sanctions include fines of as much as 10% of a business's worldwide annual turnover.

Competition law covers three areas: the ban on cartels, the ban on the abuse of dominance, and merger control. In the context of merger control, the European Commission has given some consideration to the specific role of private labels. However, to address behaviour such as complained about by processors, the other two areas seem more appropriate.

The Commission on private labels in merger control

The effects of private labels have been taken into account in the assessment of market power in a number of merger decisions. In *Rewe/Meinl*,[1] the European Commission noted that private labels increase retailers' profitability, because in the case of private labels, contrary to national brands, consumers are not able to make a direct price comparison. Therefore, traders carefully price branded products because these products often serve as a 'yardstick' in the assessment of a particular retailer, whereas private labels can achieve a higher margin.[2]

Private labels clearly shift the balance of power between manufacturers and retailers in favour of the latter. Because a retailer has private label produced in accordance with its own specification and under its own logo, the actual manufacturer of the product becomes invisible and hence easily exchangeable. Billa's 'Heidi Teebutter' brand provides an illustrative example: the brand was initially produced by an Austrian company, and when production was taken over by a Dutch firm hardly any changes were made to the packaging.[3]

The market investigation in *SCA/P&G ETC*[4] revealed that manufacturers that produce both branded products and private labels can easily react to shifts in demand between these two categories because this adjustment entails practically no costs. The introduction of private label products allows them to utilize spare production capacity. However, the Commission considers the number of manufacturers that produce both branded products and private labels to be very low: most private-label producers do not supply branded products because of high entry cost into the branded segment products and considerable investments in 'building' a brand and consumer awareness. Consequently, the competitive position of private-label producers is asymmetric.[5]

The success of private labels leads to increasing shelf space being devoted to them, and also to increasing active advertising and

[1] *Rewe/Meinl* (Case IV/M.1221), Dec. 1999/674/EC, O.J. 1999, L 274/1.
[2] Ibid., at 51.
[3] Ibid., at 112.
[4] Case No COMP/M.4533 - SCA/P&G (European tissue business), 05/09/2007.
[5] Ibid., at 24

promotion of private labels, similar to those of branded products.[1] Because the retailers make space for private labels, the tendency is to limit the stock to one or two leading (or premium) brands for a category and private labels that provide direct price competition for the leading brands. In consequence, slower brands face the risk of being delisted (Ezrachi 2010, p. 261). As noted in *Rewe/Meinl*:

The presence of private labels endangers in particular weaker brands which do not number among the must-carry products. Such brands are quite easily replaceable by private labels. The presence of private labels therefore makes delisting threats against the producers of such brands even more credible than against producers of must-carry brands.

Because branded products bring higher margins than private labels, 'must-have' brands would still be actively supported by their manufacturers, and retailers would still be interested in offering these brands to consumers, even though these products would be subject to the intense competitive pressure from the existence of private labels next to them and resulting in a limited ability to raise prices.[2] The competition is especially visible on the market of 'low emotion' products, which are characterised by lower consumer loyalty and consumers easily switching temporarily between different brands depending on the best value-for-money offer.[3]

Consequently, private labels may in the long run lead to the foreclosure of suppliers. An example provided in *Rewe/Meinl* states that:

Billa has selectively delisted secondary brands or weaker producer's brands (not only of international branded goods producers but also goods of Austrian producers) and replaced them with private labels. Although must-carry products are as a rule not delisted, as they continue to be needed on the shelves as eye-catchers, their share is reduced to the extent necessary for them to perform their eye-catching function, for example by limiting the

---

[1] Ibid., at 18.

[2] Case No COMP/M.4533 - SCA/P&G (European tissue business), at 26. Interestingly, while the observation on margins is the opposite from the observation made in *Rewe/Meinl*, it is phrased as 'not changed significantly during the last years'. The observation is, however, limited to the parties at issue.

[3] Ibid., at 19.

range. By the same token, the private label share can be considerably increased.[1]

Cartels

Article 101 TFEU prohibits all agreements between undertakings[2] and all practices that have as their object the prevention, restriction or distortion of competition and affect trade between Member States. Regarding business behaviour that does not affect trade between Member States, national systems of competition law often exist, reflecting the European approach.

Regarding business' behaviour that does not affect trade between Member States, Member States have their own systems of competition law often reflecting the European approach.

In this context, some forms of vertical agreement may concern producers and private label owners. Category management agreements may limit or disadvantage the distribution of certain suppliers. This may happen when the distributor, who also sells products under private label, may be interested in limiting the choice of other products, and excluding suppliers of intermediate range products (EC 2010, at 210).

It has to be noted, however, that Article 101 TFEU applies to agreements in which the parties have expressed a joint intention to conduct themselves on the market in a specific way. Thus, it does not apply to unilateral conduct of the undertakings. Such conduct, which is more relevant to the issues raised in this study, falls within the scope of Article 102 TFEU.

[1] *Rewe/Meinl*, at 114.

[2] For all practical purposes, the competition law concept of 'undertaking' can be considered equivalent to the concept 'business' used elsewhere in this report.

Abuse of dominance

Table 7.2	Article 102 of the Treaty on the Functioning of the European Union

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.
Such abuse may, in particular, consist in:

a. directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
b. limiting production, markets or technical development to the prejudice of consumers;
c. applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
d. making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 102 TFEU prohibits abuse of a dominant position that affects trade within the internal market.

Several of the practices complained about by processors would qualify as abuse if other requirements (dominance in particular) were met, for example excessive pricing,[1] high listing fees,[2] discrimination[3] and tie-in.[4]

In general, competition law is not concerned with particular contracts between parties. A practice that would be considered unlawful if applied by an undertaking with a dominant position on the market, is allowed for undertakings that do not have a dominant position. From a competition policy perspective, a problem arises only when contracting partners of the dominant undertaking do not have sufficient alternatives.

---

[1] See Case 40/70, *Sirena* v. *Eda*, ECR [1971] 69, at 17; ECJ 13 July 1989 (Case 395/87, Tournier, ECR [1989] 2521, at 38; Case C-62/86, *AKZO Chemicals* v. *Commission*, ECR [1991] I-3359, at 70-72; Case C-333/94, *Tetra Pak* v. *Commission*, ECR [1996] I-5951, at 44; Case C-202/07, *France Telecom* v. *Commission*, ECR [2009] I-2369, at 110-112.
[2] On unwarranted tariffs see: Case 27/76, *United Brands* v. *Commission*, ECR [1978] 207, at 249-251; Case 78/70, *Deutsche Grammophon*, ECR [1971] 487, at 19.
[3] Case 226/84, *British Leyland*, ECR [1986] 3263, at 27; Case T-30/89, *Hilti*, ECR [1991] II-1439, at 100; Case C-333/94, *Tetra Pak* v. *Commission*, ECR [1996] I-5951, at 37.
[4] Case 22/78, *Hugin* v. *Commission*, ECR [1979] 1869, at 11.

'Dominant position' is defined in EU law as:

A position of economic strength enjoyed by an undertaking, which enables it to prevent effective competition being maintained on a relevant market, by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of consumers (EC 2009).

Therefore, in the context of private labels, Article 102 TFEU will only find application if the market practices exercised by a retailer were connected to its dominant position on the market.[1]

Consequently, even if the effects of the increasing number of private labels and foreclosure of suppliers[2] could be an observed practice of all or a majority of retailers on the market, those measures will not be considered subject to European competition law, unless they result from agreed and joint policies established collectively by the retailers (Article 101 TFEU) or are practised by an undertaking that holds a dominant position.

Thus, the matter of establishing dominance becomes important. Such a position is related to the relevant market defined by product and geography. If there are sufficient competitors on the relevant market, a business will not be considered to hold a dominant position. An important indication is market share. The tilting point is roughly 50% market share, but other factors are also taken into account.

The organisation of the food sector is typical in that producers largely depend on retailers to acquire access to consumers. The logistics needed by the perishable character of many food products, the use of private standards and other factors that contribute to organisation in chains, has so far not led to qualifying individual chains as separate markets. This in connection with high retailer density in many Member States will ordinarily mean that retailers will not be considered dominant on the basis of the presence of other (competing) retailers.

[1] In this context it has to be noted that the bargaining power between retailers and suppliers also changes due to 'buying alliances' formed by independent national wholesalers and supermarkets against big supermarket chains. These European buying groups secure a number of benefits for their members, trying obtain the same prices from suppliers as large retailer chains. Examples of European buying alliances include AMS, Coopernic and CBA.

[2] As indicated by the Commission in Rewe/Meinl.

So far, no specific analysis of the position of private label owners exists in the context of Article 102 TFEU. The Commission has, however, addressed the topic in the context of merger control.

Additional national legislation

At the national level, some Member States have developed enforcement provisions encompassing a wider set of unfair commercial practices than those covered by EU competition law, including abuse, a better bargaining position or taking advantage of economic dependency. Examples include:

- provisions on unfair practices resulting from superior bargaining power without having to prove harm to consumers (Germany);
- law against abuse of dominant bargaining position (Italy);
- competition law containing the concept of abuse of dominant position by retailers over suppliers (Latvia);
- provisions on 'inadequate conditions in commercial transactions' (Slovakia);
- law against abuse of the state of economic dependency (Portugal) (Van der Stichele and Young, 2009).

The majority of Member States, however, do not have legislation that can address unfair retailers' practices. Some authors suggest that vertical competition between retailers' private labels and industrial brands (as opposed to horizontal competition between suppliers at the same level) represents a gap in the current system and should be addressed by European competition policy (Ezrachi 2010). These arguments are reinforced by the fact that the general goals of EU competition policy refer to preventing an adverse effect on consumer welfare, which can be affected not only by higher prices, but also by limiting quality or reducing consumer choice. Consumer harm also occurs where competitors are prevented from bringing innovative products to the market.

Elements

Competition law provides businesses with rights they can invoke in a civil court of law. The European Commission is endowed with powers to inspect business behaviour and to impose sanctions in case of infringements. Most Member States have a national system of competition law with competent authorities endowed with similar powers.

Private label owning retailers are not generally considered in competition law to hold a dominant position.

7.3.3 Liberalization law

In several regulated markets, there are instruments to facilitate the transition towards a free market. Examples of such markets are energy (electricity and gas), postal services and telecommunications. A common feature in these markets is the role of physical or virtual networks to supply consumers.

In legislation on the transition, positions that do not qualify as dominance in competition law are often subject to provisions that ensure ex ante that they will not behave in ways similar to abuse of dominance. Such positions are labelled 'significant market power'.

Significant market power

For example, in the telecommunications sector, Directive 2002/21 EC on a common regulatory framework for electronic communications networks and services[1] now equates the concept of significant market power to dominance. The previous Directive 97/33/EC on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP),[2] however, applied a distinct definition:

[1] OJ 2002 L 108/33.
[2] OJ 1997, L199/32.

Table 7.3	Article 4(3) Directive 97/33/EC
An organisation shall be presumed to have significant market power when it has a share of more than 25 % of a particular telecommunications market in the geographical area in a Member State within which it is authorized to operate. National regulatory authorities may nevertheless determine that an organisation with a market share of less than 25% in the relevant market has significant market power. They may also determine that an organisation with a market share of more than 25% in the relevant market does not have significant market power. In either case, the determination shall take into account the organisation's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources and its experience in providing products and services in the market.	

Among the obligations of businesses with significant market power is that to grant access to networks on reasonable terms.

The network markets that are subject to liberalization share some characteristics with the food sector. Shopping shelves show some similarity to networks as means of accessing the consumer (Kuipers 2009).[1]

The dependence of the producer on the supermarket as a gatekeeper and major customer will likely prevent the producer from seeking redress in courts. It is generally recognised that switching between distribution channels is difficult, costly and generally impossible in the short term (Ezrachi 2010).

Elements

Liberalisation legislation imposes specific duties on businesses that have significant market power. These obligations are listed in appendices to the legislation. Among them is the obligation for owners of networks to grant access on reasonable terms.

EU liberalization legislation is based on harmonization for the internal market.

[1] For the - limited - competition law relevance of such similarity, see Case C-7/97, *Bronner*, ECR [1998] I-7791, at 41-46.

7.3.4 Consumer protection law

The general approach in contract law where parties are considered equal unless specific dependencies are shown, is reversed in consumer protection. Consumers are considered weaker in their relation with businesses and the law provides protection to compensate for this inequality.

European legislation provides interesting examples of harmonisation of protection against unfair trading practices committed towards consumers.

Table 7.4	Regulation (EC) No 2006/2004

Article 3

1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

   The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

   Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.
3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.

Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)[1] requires the Member States to have a competent authority with powers of investigation (including document checks and on-site inspections) and enforcement necessary for the application of that regulation.[2] The Regulation focuses on intra-Union[3] infringements. These are omissions or acts likely to harm the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place; or where the responsible seller or supplier is established; or where evidence or assets pertaining to the act or omission are to be found.[4]

[1] OJ 2004, L 364/1.
[2] Article 4(1) and (3) Reg. 2006/2004.
[3] Intra-Community in the wording of the Regulation.
[4] Article 3(b) Reg. 2006/2004.

National competent authorities have to provide each other mutual assistance, exchange of information and enforcement on request.[1]

The enforcement powers the Regulation requires national competent authorities to have at their disposal, include the power to obtain from the seller or supplier responsible for intra-Union infringements an undertaking to cease the infringement and, where appropriate, to publish the resulting undertaking and the power to impose payments such as fines.

Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests[2] already required Member States to provide the possibility to bring actions for an injunction requiring the cessation or prohibition of certain infringements against consumers' interests. The right to commence such proceeding should be granted to public bodies responsible for protecting consumers' interests and/or private organisations whose purpose is to protect such interests.

Both in Regulation 2006/2004 and in Directive 98/27 the consumers' interests at issue are laid down in legislation listed in an annex to the Regulation and Directive, respectively.

Elements

In consumer protection law, we find specific rights that consumers can invoke in a civil court of law. The law addresses contractual relations that are qualified as suspect. Consideration in the qualification is single-sided drafting of obligations in advance in combination with an annex to the law listing some unfair terms. We find possibilities for collective action. Finally, European law requires the Member States to have competent authorities endowed with powers to inspect business behaviour and to impose sanctions in the case of infringements.

7.3.5 Code of conduct

Retailer practices can also be addressed by codes of conduct that establish rules for transactions between retailers and their suppliers. An example at national level can be found in the UK, where - as a

[1] Articles 6 to 8 Reg. 2006/2004.
[2] OJ 1998, L 166/ 51.

result of the Competition Commission's[1] investigation of the retailers' practices carried out between 2006 and 2008 - the new, strengthened and extended Groceries Supply Code of Practice (GSCOP) was developed to deal with power imbalances between large retailers (those with turnovers above UKP1bn per year) and their suppliers, and to tackle the economic issues related to the dominant position of the former, which often resulted in shifting unnecessary risks onto suppliers and charging them excessive costs.

The GSCOP came into force in February 2010, replacing the former Supermarkets Code of Practice. The GSCOP is meant to be incorporated into supply agreements so that its terms become part of the contract and will result in contractual breach if broken. It also provides for the establishment of an ombudsman to enforce the new rules and ensure their effectiveness. The ombudsman's role would not be limited to that of an arbitrator of disputes or an investigator of specific practices of retailers: he would also be vested with more comprehensive powers of investigating and penalizing retailers for non-compliance with the Code.

- Fair dealing is the overarching principle behind the GSCOP, which imposes constraints on the behaviour of retailers and limits the practices that have an adverse effect on competition. The GSCOP regulates the following key aspects:
- payments have to be made within a reasonable time and according to the supply agreement;
- unless provided in the agreement, a retailer cannot require that a supplier bears the marketing costs of the retailer;
- a retailer may not require a supplier to pay for shelf space, except for promotions or other specific costs related to new product listings;
- a retailer must not require a supplier to make any payment to secure a better positioning or an increase in the shelf space allocation, except for promotions;
- a special procedure must be followed in the case of delisting, which may occur only for genuine commercial reasons.[2]

---

[1] The Competition Commission is an independent public body that carries out investigations into mergers, markets and the regulated industries.

[2] The GSCOP can be found at < www.competition-commission.org.uk >.

Elements

The GSCOP mainly gives requirements for the content of contractual relations. There is no mechanism to enforce compliance when concluding contracts. After inclusion in the contract, the general contract law instruments apply to compliance.

7.3.6 Common Market Organisation

Article 42 TFEU provides that provisions of the section relating to rules on competition apply only to the production of and trade in agricultural products to the extent determined by the European Parliament and the Council.

This power has been exercised in Article 176 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation). This provision still refers to the numbering in the EC Treaty. Article 81 is now numbered 101.

Table 7.5 Regulation 1234/2007

Article 176

Exceptions

1. Article 81(1) of the Treaty shall not apply to the agreements, decisions and practices referred to in Article 175 of this Regulation which are an integral part of a national market organisation or are necessary for the attainment of the objectives set out in Article 33 of the Treaty.

   In particular, Article 81(1) of the Treaty shall not apply to agreements, decisions and practices of farmers, farmers' associations, or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 33 of the Treaty are jeopardized.

2. After consulting the Member States and hearing the undertakings or associations of undertakings concerned and any other natural or legal person that it considers appropriate, the Commission shall have sole power, subject to review by the Court of Justice, to determine, by a decision which shall be published, which agreements, decisions and practices fulfil the conditions specified in paragraph 1.

   The Commission shall undertake such determination either on its own initiative or at the request of a competent authority of a Member State or of an interested undertaking or association of undertakings.
3. The publication of the decision referred to in the first sub-paragraph of paragraph 2 shall state the names of the parties and the main content of the decision. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

While the phrasing of this provision leaves much to be desired, it is clear that the Commission has been granted the authority to authorize agreements between agricultural producers that would otherwise come under the ban on cartels.

Such power can be used to grant agricultural producers the possibility to undertake collective action and in this way create countervailing power.

Elements

The most important element the CMO brings to the table is the application of a similar feature as found in consumer protection law: the possibility of collective action. Businesses are limited in collective action by competition law, as collective bargaining could be seen as collusion (cartel). The CMO gives the Commission the possibility to allow it. The CMO is based on the treaty provisions on agriculture.

7.3.7 Discussion

Law and Power

Generally speaking, the law treats people as equal. Where equality is distorted by an imbalance of power, the law provides countervailing measures. The greater the imbalance, the more drastic the measures. The State holds public authority ultimately based on a monopoly on violence (Weber 1919). This ultimate power over the citizens is compensated for by measures that together are known as 'the rule of law', including checks and balances, and review and adjudication procedures. At the other end of the spectrum is contract law, which is based on the meeting of minds of equals. In between we see a shift in emphasis. Competition law compensates for economic dominance (which is associated with a market share of over 50%) by banning abusive behaviour, a ban enforced by official controls and austere sanctions. Liberalisation legislation similarly restricts significant market power, which is associated with a market share of over 25%. The Common Agricultural Policy recognises that the agricultural sector needs to be protected from powerful customers - regardless of market share. To this end, the Treaty provides for a possibility to restrict the application of competition law to the agricultural sector. For all practical purposes, this means that the creation of countervailing power through cooperation, may be exempted from the ban on cartels. The Common Market Organisation provides the Member States with an instrument to implement this option. Consumer law regards the relations between businesses and consumers by definition as a relation between unequals, where compensation is due.

The various elements identified in this section are set out in table 7.6.

Table 7.6	Legal elements ensuring fair practices						
	Rights the weaker party can invoke	**Requirements on the content of contracts**	**Access to civil courts**	**Remedy**	**Official controls by authorities**	**Sanctions by authorities**	**Collective action Countervailing cooperation**
IPR	+	-	+	Injunction Damages	-	-	-
DCFR	+	-	+	Injunction Annulment Damages	-	-	-
Competition law	+	+	+	Injunction Annulment Damages	+	Injunctio n Fines	-
Liberalization law	+	+	+	Injunction Annulment Damages	+	Injunctio n Fines	-
Consumer law	+	+	+	Injunction Annulment Damages	+	Injunctio n Fines	+
GSCOP	+ -	+	+ -	?	-	-	-
CMO	-	-	-	-	-	-	+

Most of the involvement of the EU is based on the competence to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States that have as their object the establishment and functioning of the internal market (Article 114 TFEU).

Roadmap

On the basis of these elements, a roadmap can be sketched. This roadmap consists of several steps that can be taken subsequently, taking the next step if it is shown that the previous step did not satisfactorily solve the problem. This approach gives businesses the opportunity to take their own responsibility and helps the legislature not to intervene too much in the market.

1. agreement on a code of conduct
2. creation of countervailing powers
3. formulation of legal requirements and access to court
4. public law inspections and sanctions.

Insofar as it is agreed that the conduct complained about by processors is undesirable, a voluntary code of conduct can describe the do's and don'ts. This code of conduct should ideally be drafted in cooperation with the business sectors concerned (processing and retail). The GSCOP can be taken as a useful example.

The EU does not need specific powers to agree with stakeholders on a voluntary code of conduct.

If it turns out that a voluntary code of conduct does not lead to a sufficient level of compliance, the instrument of the CMO should be mobilised to ensure the possibility of collective action by the primary sector. A similar structure could be provided for other producers as well.

A third step in the development of the framework could be to lay down the content of the code of conduct in a regulation or directive. Liberalisation legislation and consumer protection law provide the example of listings of dos and - in particular - don'ts in annexes to the law.

The final step would be to put in place public law instruments of inspection and law enforcement. At least two models present themselves. The first is the one applied in Regulation 2006/2004 requiring Member States to have an infrastructure capable of dealing with intra-Union infringements through cooperation, and inspiring the Member States to have a similar structure at the national level as well. The other model is at the same time both simpler and more radical. We have seen above that the behaviour complained about would be considered abuse of a dominant position if the retailer were to

hold such position. We have also seen in liberalisation legislation that a position of dominance need not always be analysed on the basis of economic data but can also be defined by law. EU legislation could define that businesses engaging in behaviour contrary to the code of conduct are considered dominant for the application of Article 102 TFEU. From this it would follow automatically that the entire competition law infrastructure that is in place both at the EU level and in the Member States, including powers of inspection and sanctioning, would apply.

The competence to legislate can be construed in a similar way as in consumer protection law and competition law. In both areas, EU norms address intra-Union trade only. It is left to the Member States to follow the example or to adapt it to their own style and culture. This manner of harmonisation leaves more leeway than harmonisation via a directive. Subsidiarity will then be fully respected. But the model of Directive 85/374 (on product liability) is also conceivable. In that case, harmonisation would cover both intra-Union and national trade relations. From the point of view of ensuring a level playing field in the entire Union, this option is also defendable from the perspective of subsidiarity.

7.4 Producer indication on private labels and liability

Another concern voiced by processors is the position of the private-label producers towards consumers. The producers perceive private labels as depriving them of identity and making them invisible on the market, because the direct link between them and consumers is broken. The bond between consumers and specific brands cannot be established and consumers cannot be reached through advertising. This situation places manufacturers in the position of being mere agents that are dependent on retailers, which decide on the product specification and marketing, and - finally - promote their own name on product labels and build loyalty with their customers.

In this regard, producer indication on the label is suggested as a step towards improving the position of private-label producers. The benefits of a system of producer indications [1] can be argued from the consumer's point of view - such a system enhances transparency and

[1] Also known as 'chain transparency' or 'co-labelling'.

enables consumers to make more informed choices. It can be argued, however, that the initiative of introducing a mandatory system of producer indication is not desired by all manufacturers. This could especially hold true for manufacturers with high brand reputation. Those who are not interested in disclosing their brand name or product name on the private label could favour a voluntary system instead. In this regard, a framework where the retailer has to accept the indication of the producer's name on the label upon request of the producer could present a solution. In this regard, the system would be voluntary because it would create no obligation to put the producers' name or its brand name/trademark. However, if the producer requests it, the retailer would have to accept it (it would become mandatory).

7.4.1 Product liability

A system of producer indication is not currently in place. Article 3(7) of Directive 2000/13/EC on the labelling, presentation and advertising of foodstuffs[1] requires indication of the name or business name and address of the manufacturer or packager, or of a seller within the EU. This provision, however, seems only intended to allow those liable for the product - not necessarily the actual manufacturer - to be easily identified by final consumers. According to the rules on product liability laid down by Directive 85/374,[2] the definition of the producer who may be held responsible for a damage caused by a defective product put on the market is very broad - it means not only the manufacturer of a finished product, but also the producer of any raw material or the manufacturer of a component part and any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as its producer. In principle, all these persons bear liability, which means that the victim can make a claim for compensation against any of them.

Under the liability provisions, the supplier is treated as the producer of the product, unless he can inform the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product.[3] Producer indication on private labels

[1] O.J. 2000, L 109/29.
[2] O.J. 1985, L 210/29.
[3] Article 1(3) Dir. 85/374.

may thus have the effect of releasing the retailer of liability to third parties. This effect is marginal, though, as Regulation 178/2002 - which lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety - sets out a system of traceability, according to which a food or feed business is able to trace and follow a food, feed or substance intended to be incorporated into a food or feed, through all stages of production, processing and distribution.[1]

Similarly, producer indication on private labels does not affect the liability of retailers for ensuring that foodstuffs satisfy the requirements of food law, even where they act as mere distributors marketing the product as delivered to them by the producer. Regulation 178/2002 gives a wide definition of the operators who may be held responsible for infringements of obligations with regard to the safety of foodstuffs they put on the market.[2] This has been confirmed by case law concerning the retailer's responsibility for infringements of the labelling provisions, imposing on the retailer administrative fines for inaccurate statements on the product label about the alcoholic strength by volume of the product that was delivered by the producer and simply marketed by the retailer.[3]

7.4.2 Producer indications

A small survey we conducted in a previous study[4] shows that businesses value the mentioning of their names on product labels. Producers seem to believe that they can build a certain reputation if they are mentioned as the producer on the label of the brand holder.

---

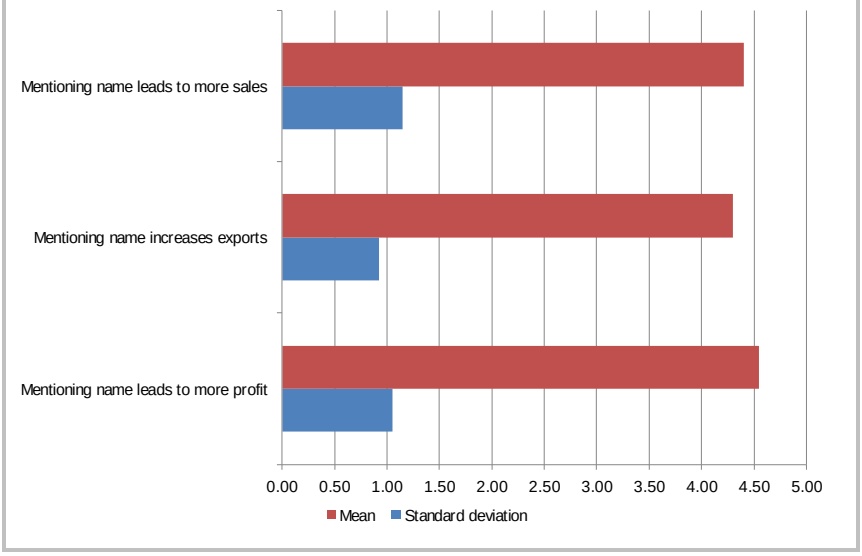
[1] Article 18 Reg. 178/2002, O.J. 2002, L 31/1.

[2] Article 17(1) Reg. 178/2002 provides: 'Food and feed business operators at all stages of production, processing and distribution within the businesses under their control shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met.' 'Food business' means 'any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food.' (Article 3(2)).

[3] Case C-315/05, *Lidl Italia Srl* v. *Comune di Arcole*, [2006] ECR I-11181.

[4] See Bernd M.J. van der Meulen, Reconciling food law to competitiveness. Report on the regulatory environment of the European food and dairy sector, Wageningen Academic Publishers, 2009.

Figure 7.1 **Scores on a scale of 1 to 7 (1 = totally disagree; 7 = totally agree)**



Producer indication can be perceived from two perspectives: that of businesses that produce their own brands and produce for private label holders, and the perspective of businesses that produce private label only. The former may not be overly pleased by producer indication, as the private label may be perceived as undermining their own label: premium brand's quality at private label price. Given the choice in a voluntary scheme, they will probably choose not to be indicated. Businesses that depend on a private label, however, will not be in a bargaining position to exercise their rights under a voluntary scheme, as the private label holder is likely to prefer to do business with operators who do not invoke their rights. In the survey we presented three options to stakeholders:

1. a mandatory system requiring the name(s) of the processor(s) to appear on the label of the end product;
2. a voluntary system giving processors the right to demand indication of their name on the label;
3. a voluntary system giving the end-producer the choice to print names of processors on the label.

None of these models was greeted with much enthusiasm.

Table 7.7		Opinions on co-labelling (1 = totally disagree; 7 = totally agree)		
		Mandatory	**Voluntary for processor**	**Voluntary for end-producer**
N	Valid	28	28	29
Mean		2.89	3.25	3.03
Std. Deviation		2.114	2.255	1.936

The intended beneficiary of the scheme is not the business doing the labelling, but a business earlier in the chain. Such a scheme can only be expected to be effective if it is mandatory. The limited data available at this point do not show much support for such a scheme.

7.4.3 Conclusion

It is possible for the EU legislature to adopt the suggestion to require producer indication and brand or trademark indication on the label of food products. Such a system would have certain benefits, such as transparency for consumers and identity for processors. However, so far no clearly supported solution to a keenly felt problem seems to be emerging.

7.5 Conclusions

In this section we addressed three legal aspects relating to processors' unease regarding their relation to private label owning retailers.

Intellectual property provides industry brand owners with instruments to uphold their rights in civil courts of law. There may be some practical issues such as costs to acquire protection, but if there is a specific issue in the relation between processors and private label owning retailers, it would seem to be rooted in the distribution of power in the food chain. As such, it is not a topic separate from the issue of contracting practices.

Several areas of law deal with inequalities in contractual relations. The perceived unbalance in power between processors and private label owning retailers does not in general seem to qualify for the application of any of these mechanisms.

However, the analysis shows that the EU legislature has the competence to address the issue *if* it believes this to be desirable and that elements can be taken from the existing models (Article 114 TFEU on harmonisation for the internal market). These elements can be grouped as steps that can be taken at different moments in time. The first step would follow the British example of a voluntary code of conduct delineating fair and unfair trading practices. In the case of compliance with commonly accepted requirements of fairness, no further steps need to be taken. In the case of non-compliance, that system can be expanded with legal requirements that interested parties can uphold in a civil court of law, and after that can be further expanded with public law powers of official controls and sanctions.

The introduction of producer indication on the label is possible from a legal point of view. However, because of the diversity of interests of processors, no form for such requirement presents itself that is likely to gain wide support.

Part IV Synthesis

8 Synthesis

This study investigated the impact of private label growth on the competitiveness of the European food processing industry, in particular the impact on the viability of SMEs and the innovativeness of the industry.

In the economic analysis, we established that the viability of the food and beverage industry is not at stake. The number of firms, and particularly the number of SMEs, in the food and beverage industry is decreasing. However, the decline does not hold for all countries and all sectors, notably those that produce consumer products. The decrease in the number of firms is not due to a fall in profitability, because profitability has not deteriorated, at least not before the financial and economic crisis. The decrease in the number of firms is probably due to an increase in economies of scale.

The growth of the private label share is both a challenge for and a threat to SMEs. French evidence shows that SMEs are less likely to produce private labels than large firms. This holds in particular for the meat, fish, dairy and other food sectors. On the other hand, the share of SMEs in private label production is larger than their share in total turnover. SMEs increasingly depend on private label production.

Innovation is not declining in the food and beverage industry, at least not in the sectors studied, with the exception of Spain.

- In Italy, the number of brands is increasing for many dairy and cereal products. Private labels are gaining market share by extending product lines and by lowering prices relative to the market level. The growth in the numbers of brands is leading to market expansion: turnover per brand is growing. Innovation is high for products in which leading brand producers have a large market share. However, a growing private label share is not detrimental to innovation and, in some cases, may boost innovation by leading firms.
- The number of new product introductions grew between 2005 and 2009 for fruits and vegetables, dairy and cereal products, except in Spain where a reduction in the number of new product introductions by brands producers is due to the fact that they have limited access to a large part of the retail market. This is a result of two legitimate strategies of major retailers: the promotion

of private labels and the reduction in the number of SKUs. In all other countries, product variety is still increasing and both private labels and industrial brands contribute in this respect. The share of private label in product introductions is growing, with the exception of the UK. Industrial brands are able to fight their way back in the UK.

The interviews illustrate that private labels create employment and value added in the R&D, marketing and design departments of retailers and in the companies of their suppliers. They also spur the innovation activities of brand suppliers, as is corroborated by the data analysis. Some of the brand suppliers interviewed indicated that private label growth gives them an incentive to innovate more (or at least, not less) and to improve their efficiency.

However, the interviews indicate that in some instances retailer practices, whether or not they involve private labels, may have a negative influence on the innovation efforts of brands suppliers and possibly on innovation at the industry level. Retailer practices can be addressed using codes of conduct, intellectual property rights and producer indications.

However, codes of conduct and legislation against unfair practices or protecting IPR have so far not led to fundamental changes in retailer and supplier behaviour or in their bargaining relations. There are two possible explanations for this. First, there is nothing to complain about: retailers do not have buyer power and on average behave competitively. Second, the policy measures taken do not take away retailer power and the ability to exert it one way or another. Food producers might not go to court or other administrative agencies if retailers are expected to retaliate using fair commercial practices such as delisting in due time. As a result, policy measures might have little impact on market performance. If retailer power is to be addressed, more fundamental issues have to be addressed, like the use of information by retailers and their dual role as customer and competing supplier. This should be considered under a broader view, where effects on overall social welfare and growth are evaluated.

This view is confirmed by the legal analysis. There is little case law dealing with supplier-retailer relations, either in general or with respect to private label development and production. There are two

complementary explanations. First, suppliers do not have cases to bring to court, because for example supplier complaints do not qualify for provisions for fair competition in current legislation. Contract law in principle presumes that parties act upon equality (see DCFR). Suppliers must have a strong case in order to establish unfair exploitation if they go to court. Competition law also does not offer many starting points for addressing competition issues related to supplier-retailer relations with the exception of merger control. Competition law would be applicable if retailers (respectively suppliers) form a cartel relative to suppliers (respectively retailers) or if they are in a dominant position. However, according to current competition law, food retailers are not dominant. Several countries have specific legislation dealing with economic dependency, but again there is little case law. Codes of conduct are introduced as a form of self-regulation, but they have had little impact so far.

Second, suppliers may be reluctant to go to court out of fear that legal action will have consequences for the continuation of commercial relations. Suppliers may let retailers infringe their intellectual property rights or impose unfair conditions if they fear that commercial relations will be cut off stopped or otherwise affected.

To conclude, current legislation offers little opportunity to go to court, even if suppliers want to. If the government perceives a problem with respect to supplier-retailer relations and existing legislation or codes of conduct do not work, it may consider stimulating countervailing powers (comparable to CMO for agriculture), promoting access to courts (e.g. collective action provisions) and finally applying public law inspections and sanctions.

9 Impact assessment

9.1 Problem description

9.1.1 Motivation

The competitive performance of the European food industry is poor compared to the food industry of other major economies. One possible explanation for this is retail concentration and changes in retail buying behaviour. Innovation may be under pressure due to the competitive pressure exerted by supermarket chains. For this reason, the High Level Group on the Competitiveness of the Agro-Food Industry recommended the EC to study the impact of private labels on the competitiveness of the agro-food industry, in particular the competitiveness of SMEs, and to examine whether it is feasible to address possible imbalances of power within the food supply chain.

The purpose of the impact assessment was 1) to identify possible imbalances in supply chain relations in the food supply chain and to analyse the effects of these imbalances; and 2) to provide possible solutions to the imbalances found. There are two possible reasons for imbalances. Either there is a lack of legislation, or current legislation is not fully used to remedy any market failures found.

9.1.2 Key players

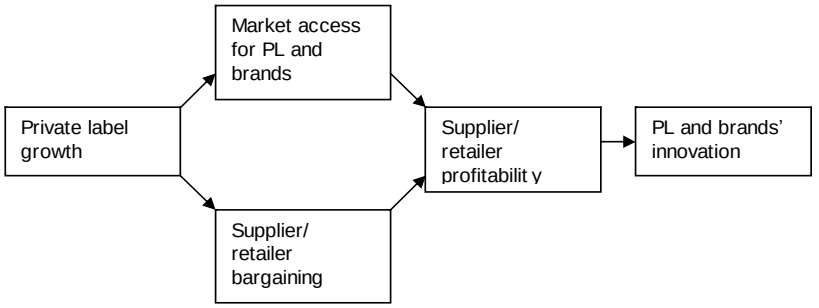
The key players affected are:

- Food processors. Processors (both SMEs and large firms) may be divided into producers of private labels, producers of industrial brands and producers of both.
- Food retail. Retailers (both SMEs and large firms) may be divided into discounters, hypermarkets, supermarkets and convenience stores.
- Consumers.

9.1.3 Causes

Private label penetration is steadily increasing in all Member States, even though there are major differences between retailers, products and countries. Private labels strengthen retailers' bargaining position relative to their suppliers. Retailers derive bargaining power from the fact that they perform three interlinked roles in the supplier-retailer relation: they act as customers, they compete directly with suppliers (since they supply competing retail labels) and they supply the most crucial asset in the food supply chain, namely shelf space or access to consumers. Because private labels strengthen the bargaining position of retailers relative to processors, suppliers may be forced to accept a fall in wholesale prices and profit margins. The decrease in profitability may affect the ability to invest in R&D, product design and marketing, and thus the ability to innovate. Private label growth also has a direct effect on the profitability of brands: when private label replaces brands, the volume sales of brands go down.

Figure 9.1 **Problem description**



In theory, there are two mechanisms through which innovation at the industry level may be under pressure (figure 9.1). Profit margins may be reduced due to retail buyer power. Demand may fall, because brand producers no longer have access to parts of the market.

9.1.4 Role of EU

Article 173 of the Treaty on the functioning of the European Union requires the EU and the Member States to ensure the existence of the conditions necessary for the competitiveness of the EU's industry. This gives the EU grounds to act. However, on the basis of the analysis provided, there is no reason to say that the competitiveness of the European food industry is deteriorating due to private label growth.

There is no deterioration either in the development of the number of firms or in industry profitability.

- SMEs are not hurt by private label production.
- Innovation continues, except in Spain where brand producers are developing fewer products, because their market access has been reduced by the growing market share of private labels and the tendency of some retail chains to reduce the number of SKUs.

As far as we know, there is no overall problem with the innovativeness of the European food industry.

The introduction of national systems of producer indications may affect the internal market. They may create (minor) barriers to entry. This would make it an EC competence.

9.2 Objectives

The overall objective is to promote the competitiveness of the food processing industry. Following the terms of reference and taking account of economic measures for performance, we identified three specific objectives.

- To strengthen the position of SMEs
- To increase value added, including profitability
- To promote innovation

Static analysis of industry performance takes the income (value added[1]) generated by an industry as a benchmark (Scherer and Ross 1990). Dynamic analysis of economic performance takes account of growth and innovation. Innovation lowers costs, raises product quality and enhances product variety.

[1] Value added is the income from labour and capital (including land).

These specific objectives were measured using the following indicators:

- Development of the number of firms, in particular SMEs
- Development of profitability, measured by gross operating profits
- Share of SMEs in private label production
- Innovation as measured by development of number of product introductions and number of brands.

9.3 Possible policy options

The introduction of producer indications on private labels may influence consumer perceptions of private label products and improve supply chain competition. Producer indications improve consumer perceptions of private label products provided that they rate specific food processors. This may strengthen the competitive position of private label products, as well as the position of the food processor relative to the retailer. It would raise the retailer's costs, reducing the incentive to switch to another food processor. This could enhance competition among food processors. They would have an incentive to become well perceived suppliers of private labels.

Based on the terms of reference of the study, we considered three options:

1. no policy at all
2. a voluntary system of producer indications
3. a compulsory system of producer indications.

Because there are no legal impediments to the voluntary use of a system of producer indications, there is no basic difference between policy options (1) and (2). Producer indications already appear on many private label products throughout the EU. Producer indications include businesses' names, brand names and trademarks. In the rest of this report, we therefore compare the current situation with a compulsory system of producer indications, unless there is a difference between option (1) and (2).

9.4 Impact

9.4.1 Economic impact

International competitiveness and trade

Producer indications may have a minor effect on international competitiveness if innovation in the European food industry is promoted. However, there is no reason to believe that a system of producer indications will have a profound impact on innovation.

Competition in the internal market

An obligatory system of producer indication would affect the internal market. Many food processors process both private labels and industrial brands. There is reason to believe that consumers would no longer buy industrial brands if they knew that there are cheap private label alternatives produced by the same producers on the market. This is especially likely for commodities. This would force the processors to produce either only private label or only brands. There is one way out of the processors' dilemma to produce either private label or brands. If producers have the choice an under voluntary system to make producer indications compulsory upon their request, the dilemma no longer exists. However, retailers may threaten to terminate commercial relations if producers request the indication of their name, brand or trademark.

The impact on the number of firms, the number of brands and innovation is not clear on a priori grounds. Moreover, if firms are not able to produce both private label and brands at the same time, they will have fewer opportunities to optimise production capacity. This is likely to be detrimental to supplier profitability. The choice between brands and private label may not be necessary in the case of product heterogeneity.

An obligatory system of producer indications will not be effective if food processors create new legal entities to produce both private label and brands. Large processors already do this in, for example, Italy. SMEs may have fewer opportunities to do so. But even large processors may risk reputation effects in the long run. Some food processors run promotional campaigns to indicate that they do not produce private label. Legal solutions may not be able to overcome reputation effects in the long run.

If food processors confine themselves to either private label or brands, sourcing opportunities for retailers will be reduced. Moreover, a system of producer indications may make it transparent that some producers produce private label for more than one retailer. And, as one SME retailer pointed out, if retailers demand exclusivity, SME retailers may have even less choice.

Consumers are likely to benefit from an obligatory system of producer indications, because they will receive more information. The market will become more transparent for them. The producer indication tells who the producer is. The system also makes it transparent what processors produce brands, private label or both. However, it is not clear whether consumers are really waiting for this information.

Changing suppliers will require changing packaging. This constitutes a transaction cost and a barrier to entry. This makes it less likely that retailers will switch suppliers for a short period of time. Ceteris paribus retailers are more likely to stick to current suppliers. In this sense, EU and/or national systems of producer indications may act as a barrier to entry to the Common Market.

Operating costs

Changing suppliers will become more expensive, because new packaging material will be required. Operating costs may even be higher, when one takes into account that one cannot predict supply and demand precisely due to the variability in agricultural supply and the fact that food products are perishable.

An obligatory system of producer indications may segment the food supply chain (see above). If so, both sourcing and distributing will become more difficult for individual companies. This may effect capacity utilisation, economies of scale, and input and output prices. SME suppliers and retailers may be adversely affected. However, French evidence shows that there is no difference in investment between small and large private label suppliers.

Administrative costs

A system of producer indications will entail some administrative costs, but we do not think that these costs will be substantial.

Innovation and research

The number of products introduced and the number of brands are still growing in the sectors and countries studied (with Spain as the exception). This holds for both private labels and industrial brands. We do not think that a system of producer indications will lead to changes in innovation at the industry level. However, the system may lead to changes in the competitiveness of brand suppliers compared to private label suppliers.

A system of producer indications is not likely to affect the balance of power in the food supply chain. Retailer bargaining power is based on control over shelf space, their size combined with their multi-product nature, and the fact that they act as both customer and supplier. Producer indications would not have a major impact on these points. If retail bargaining power has a negative impact on innovation, a system of producer indications is not going to change this.

Consumers

Following the terms of reference, the study focused on supplier-retailer relations. We did not study the effect on consumers. However, we have no reason to believe that the effect on consumers would be substantial in terms of prices, product variety and quality, and innovation. But, of course, producer indications would increase transparency for consumers.

Specific regions or sectors

Retailers are already keen on supplying local and regional products, especially in southern Europe. This is not likely to change and will remain beneficial to local SMEs.

Third countries and international relations

The policy options consisting of introducing voluntary or compulsory systems of producer indications on private labels) are not expected to have a negative impact on traders. In fact, manufacturers often have to adjust their labelling in accordance with the language requirements of the country of marketing. The introduction of producer indications does not induce fundamental redesigning of the label. Furthermore, the system would not accord less favourable treatment to non-EU traders and products, although it is likely to raise

transaction costs. The perception of these transaction costs may be different between EU and non-EU enterprises.

The World Trade Organization regime recognises the legitimate differences in national regulations and standards aiming at the protection of human health and the environment and preventing deceptive practices. A majority of these regulations take the form of labelling requirements. The WTO Agreement on Technical Barriers to Trade (TBT Agreement) states in the Preamble that 'no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal, or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate'. These measures, however, cannot create unnecessary obstacles to trade, i.e. cannot create arbitrary or unjustified discrimination between countries or be more restrictive than necessary to attain the desired objective

Public authorities
An obligatory system would not have a major impact on the government budget. It does, however, imply an additional administrative burden on the government.

The macroeconomic environment
It is unlikely that this micro policy would have an impact on the macroeconomic environment.

9.4.2 Environmental impact

There is no reason to presuppose that the environment would be affected.

9.4.3 Social impact

There is no major reason to presuppose that measures would have a substantial social impact. If the measures were to lead to changes in production from one type of firm to other types of firms, employment would likely shift from one firm to another. In that case, some jobs would be created and others would be lost.

The growth of private labels may lead to the further rationalisation of food processing and distribution and lead to a loss of jobs. On the other hand, the loss of jobs is a sign of economic progress.

There is no reason to presuppose an impact on job quality, the social inclusion of particular groups, equality, private life, governance, health and safety, security or social access. The research focused on the economic impact based on the terms of reference.

By putting producer indications on private label products, producers would become directly liable for any damages inflicted upon a consumer. Consumers would be able to make a claim directly against the producer. Producers of private labels are currently indirectly liable, because retailers hold them liable. There is no reason to presuppose that there would be major shifts in liability in the supply chain.

9.5 Summary

A compulsory system of producer indications might:

- Force some food processors that are currently producing both private label and brands to produce either only brands or only private label products. This would limit their possibilities to sell a variety of brands and private labels to a range of retailers and may have a negative impact on capacity utilisation. This would be detrimental to their profitability. It is unclear what the impact would be on innovation.
- Further segment the food supply chain. Sourcing and distribution possibilities might become more limited for individual companies. SME processors and retailers are more likely to be hurt by market segmentation than large companies.
- Make the food supply chain a little more transparent. It is likely that this would benefit processors that supply brands, and also make transparent what processors supply good private label products.
- Create relatively limited barriers to entry to the internal market and to trade with third countries.

Finally, as stated before, a system of producer indication would not address the balance of power in the supply chain.

10 Conclusion

This study addressed the impact of private label growth on the competitiveness of the European food and beverage industry. It focused on two aspects, namely the development of the number of firms and their profitability, and the innovativeness of the sector.

The conclusion is that the decline in the number of firms is probably due to increases in economies of scale, for example because average profitability is more or less constant.

Industry innovation is not decreasing. The number of both private labels and industrial brands being introduced is rising in most countries for the sectors studied (processed fruits and vegetables, dairy, and cereal products). Of course, this does not say anything about average product quality or developments in 'real' innovations. Italian evidence indicates that there is more innovation in firms that produce leading national brands, but also that private label growth is not detrimental to innovation or may even be a stimulus.

Private label production is not detrimental to SMEs. Although SMEs are less likely to produce private labels in France, their market share in private label production in that country is higher. SMEs that produce private label invest as much as their larger counterparts do.

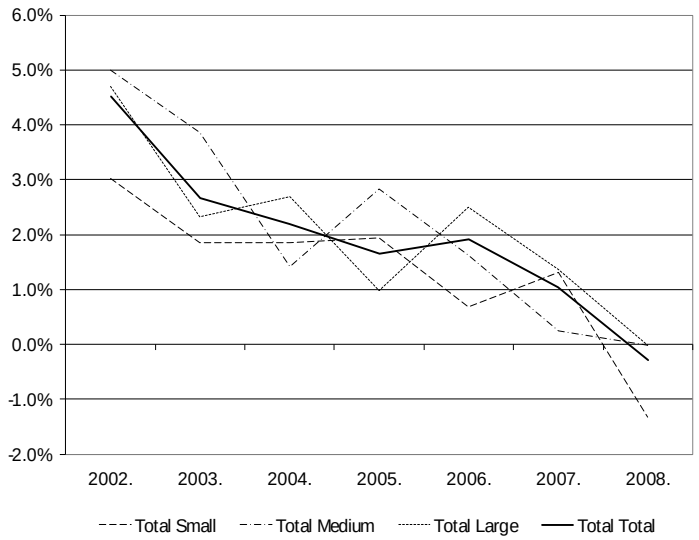
It is increasingly more difficult for brand producers to get new products listed in countries like Spain. Because retail formulas that have a limited product assortment are growing in these countries, it is hard for brand producers to obtain high levels of distribution. This has a negative impact on product development by brand producers (but not by private label suppliers). Moreover, in some cases, such business practices as copycatting also have a negative impact on product development.

There may be reasons to address the business practices of both retailers and large suppliers. We are not convinced that a system of producer indications would do this job. If an obligatory system of producer indications were effective, it might compel food processors to produce either brands or private label, especially for commodities. This would segment the food supply chain and may very well limit the choices of SME processors and retailers. More importantly, we did not identify a clear-cut relation between an obligatory system of producer indications and innovativeness and value creation.

Appendix 1A

Profits before taxes in Hungary

Figure 1A.1 **Profits before taxes in the Hungarian food and beverage industry**



Appendix 1B

Private label shares per product category

Table 1B.1 **Market share of private labels by product (2008)**

	Austria	Belgium	Denmark	Finland	France	Germany	Greece
Dairy	50.2	54.1		13.1		56.7	
Frozen	50.7	65.5	35.4	40.7	55.8	53.5	} 22.6
Fresh			18.4	9.7	46.3		
Delicatessen					51.3		
Dry grocery	36.2	48.9	22.2	36.7	43.0	53.4	23.7
Confectionery	32.4	30.8	8.3		18.2	35.5	13.3
Hot beverages	41.4					38.4	
Non-alcoholic beverages	31.2	38.3	24.4	} 23.8	27.2	53.7	8.3
Alcoholic beverages	11.7	25.3	19.5		23.4	27.8	8.6

	Hungary	Italy	Netherlands	Portugal	Spain	Sweden	UK
Dairy			29.4	34.9	38.7	9.6	61.2
Frozen	44.7	26.1	25.3	38.8	70.4	35.4	49.8
Fresh	28.9					20.8	
Delicatessen		23.4	43.1		34.5		76.9
Dry grocery	33.6	16.3	22.5	34.6	48.7	25.7	41.0
Confectionery	25.3		15.8		21.6	14.6	22.9
Hot beverages	13.7				38.1		
Non-alcoholic beverages	32.4	12.9	18.3	} 18.4	24.4	} 25.4	
Alcoholic beverages	17.7	5.1	13.0		25.3		30.4

Table 1B.2	Market share of private labels for top-5 product categories in selected countries (2008)			
	France	**Germany**	**Hungary**	**Italy**
Number 1	Single frozen vegetables	Fruit and milk drink	Cottage cheese	Frozen herbs
	88.5	91.5	80.8	84.8
Number 2	Frozen vegetables mixed	Instant tea	Gin	Other salted meat
	80.8	90.1	70.0	74.8
Number 3	Food wrapping rolls	Grainy cream cheese	Frozen potatoes	Fruit in syrup and juice
	77.6	83.7	67.1	68.8
Number 4	Vegetables in brine	Butter baguettes	Tomato juice	Boiled green beans
	74.7	82.2	59.1	67.4
Number 5	Vinegar	Spray cream	Peanuts	Frozen French beans
	74.5	82.0	56.6	65.5
	Netherlands	Poland	Spain	UK
Number 1	Refrigerated cakes and pastries	Sesame snaps	Peaches in syrup	Fruit juice concentrate
	94.8	64.7	80.7	100.0
Number 2	Chilled ready meals	Sweeteners	Frozen vegetables	Chinese sauces
	71.9	52.5	74.8	99.3
Number 3	Cooked potato products	Frozen pizzas	Ice cream	Salad dressings
	58.9	46.9	74.3	99.0
Number 4	Eggs	Chocolate spread	Sunflower oil	Hard cheese
	52.9	45.8	74.2	98.8
Number 5	Pre-packed bread	Frozen potatoes	Nuts	Cooked meat
	51.9	44.9	72.9	98.8

Appendix 1C

Private label production by SMEs versus big firms in France

Table 1A.1 is a comparison of private label production by SMEs and big firms in France with respect to investment and turnover in 2006. Across all agrofood sectors, the proportion of SMEs that produce private label is lower than the proportion of big firms that produce private label (21.1% vs 31.1%). This result is driven by firms in the meat, fish, dairy and other food products sectors (NACE 151, 152, 155 and 158). In the other sectors, there is no statistical difference between SMEs and big firms. Moreover, SMEs that produce private labels have a higher turnover than other SMEs. This is not the case for big firms. One possible explanation is that private label goods are sold at a lower price than branded products, which leads to a lower turnover on private labels.

When a firm produces private label, the share of private label in its aggregate production does not differ significantly across the food industry. However, for 'other food products' (bread, biscuits and chocolate), the share of private label production in total turnover is larger for SMEs than for big firms. The results for this sector lead to the general conclusion that SMEs participate more in private label production than big firms.

Firms' investment rate does not differ across firms' size.[1] This suggests that private label production could be motivated by production capacity use rather than investment in research and development.

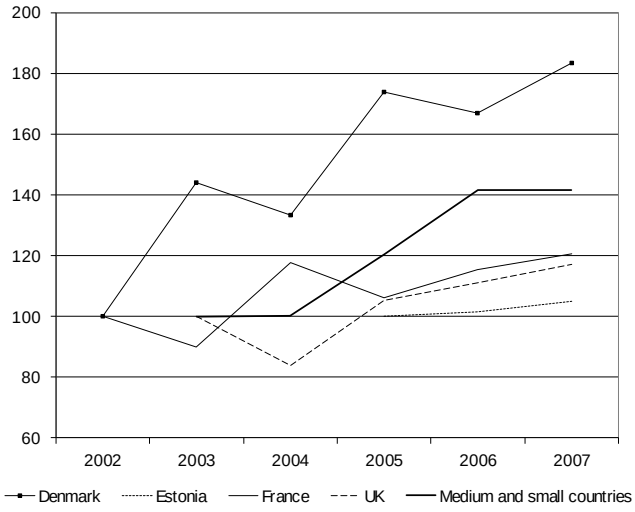
[1] Investment rate is defined as the ratio between the investment and the added-value of the firm at the market price (INSEE definition statistic).

NACE	SME (less than 250 employees)								Big Firms (more than 250 employees)								Pairwise mean test (SME vs BIG)		
	N	No PL Production			With PL Production				N	No PL Production			With PL Production						
		%	Turnover	Investment Rate	%	PL Rate	Turnover	Investment Rate		%	Turnover	Investment Rate	%	PL Rate	Turnover	Investment Rate	PL production	PL Rate if PL production	Investment Rate
151 Production-Proc. and pres. of meat	821	86.5	11 072 (10 353)	14.0 (52.3)	13.5	33.4 (31.1)	18 838 (12 493)	13.5 (26)	131	64.1	163 210 (182 686)	14.6 (23)	35.9	36.3 (25.5)	163 724 (188 401)	13.9 (16.2)	<	=	=
152 Proc. and pres. of fish	130	72.3	10 524 (9 871)	27.7 (140)	27.7	35.0 (29.7)	16 337 (12 528)	18 (20)	17	41.2	77 236 (52 971)	5.1 (3.7)	58.8	24.2 (24.1)	128 749 (81 869)	8.9 (5.9)	<	=	>
153 Proc. and pres. of fruit and vegetables	121	67.8	12 971 (10 795)	18.0 (34.8)	32.2	45.7 (32.9)	15 582 (11 083)	22.9 (42.2)	40	62.5	138 988 (126 941)	18.3 (16.5)	37.5	35.6 (27.3)	112 202 (57 564)	24.5 (27.2)	=	=	=
154 Man. of vegetable and animal oils and fats	24	79.2	12 817 (9 154)	13.1 (11.3)	20.8	44.5 (40.9)	15 903 (13 888)	10.8 (8.3)	5	80	290 212 (418 829)	*	20	*	*	*	=	*	*
155 Man. of dairy products	193	69.4	15 587 (12 430)	17.8 (28.3)	30.6	33.9 (29.0)	17 011 (12 385)	26.7 (44.3)	109	55.1	188 917 (244 226)	15 (20.4)	44.9	37.6 (27.8)	177 149 (267 925)	22.1 (21)	<	=	=
156 Man. of grain mill and starch products	90	85.6	14 295 (10 457)	39.0 (177)	14.4	31.1 (31.5)	16 504 (9 684)	19.8 (24.6)	15	86.7	263 736 (358 894)	17.9 (15.7)	13.3	*	*	*	=	=	=
157 Man. of prepared animal feeds	174	94.3	18 232 (12 696)	19.8 (34.8)	5.7	37.8 (34.7)	13 549 (11 410)	19 (14.3)	39	83.3	173 363 (252 006)	13.2 (12.3)	16.7	*	*	*	=	=	=
158 Man. of other food products	626	74.8	9 569 (9 414)	12.6 (19)	25.2	46.7 (33.0)	14 164 (10 699)	19.4 (35.9)	112	67.9	196 953 (314 924)	18.5 (23.2)	32.1	24.6 (30.0)	155 802 (233 902)	13.2 (9.3)	<	>	=
159 Man. of beverages	333	79.9	13 202 (9 501)	41.1 (110)	20.1	32.9 (29.1)	16 199 (11 733)	20.3 (23.6)	67	79.1	249 448 (329 142)	13.1 (21.1)	20.9	27.0 (21.6)	171 331 (232 611)	23.7 (21)	=	=	=
TOTAL	**2 512**	**78.87**	**12 079**	**19.70**	**21.1**	**38.8**	**16 151**	**19.1**	**535**	**68.9**	**190 167**	**15.2**	**31.1**	**33.2**	**161603**	**17.6**	**<**	**>**	**=**

Appendix 1D

R&D expenditure in European food processing industry

Figure 1D.1 **Development of R&D expenditures in European food processing industry (euro, 2002 =1)**



Source: Eurostat.
Small countries include Czech Republic, Estonia, Greece, Cyprus, Austria, Hungary, Romania and Sweden.

Appendix 2A

Questionnaire for suppliers

Introduction

This questionnaire is part of a study commissioned by the EC on the impact of private labels on the competitiveness of the European food processing industry, with a particular focus on the role of SMEs. The aim of the study to find out what effect private labels have on the innovativeness of the food processing industry. The study considers the impact on suppliers of private labels and industrial brands, as well as the impact on retailers.

According to economic theory, the ability and willingness to innovate depends on the ability to appropriate profits from innovations. For this reason, the questionnaire addresses not only the key problem statement, but also developments in bargaining relations between suppliers and retailers, profitability and the possible impact on innovation.

The research addresses the relation between suppliers and retailers, and disregards the consumer. Consumer well-being may be addressed in another study.

The questionnaire is made up of three parts: (1) a general introduction; (2) innovation in private labels and industrial brands; and (3) bargaining relations and the implications for profitability and innovations.

The questionnaire is anonymous. The name of your company will not appear in the final report. The research group will draft a general summary of the results without going into company, sector or country specifics.

Part 1 General

Position of the interviewee:

Try to find out whether the interviewee depends on a limited number of retailers and other customers.

1. Do you supply domestic supermarkets chains only, or also foreign supermarket chains? Do you supply alternative distribution channels (e.g. traditional shops, food service outlets)?
2. What type of supermarket chains do you supply? How have your customers changed in the last ten years?
3. What is the market share of your largest customer, your second largest customer, etc.?

Establish whether the interviewee sells private labels and industrial brands, and the strengths of both the brands and the suppliers.

4. What policy does your company pursue with respect to private labels and industrial brands? What is the position of your products in the market?
5. What are consumer preferences of the products you supply vis-à-vis PL and industrial brands?

Based on your experience, discuss the bargaining process and contract terms between the supplier and retailers. Make a distinction between PL and industrial brands.

6. Can you characterise the bargaining process and the contract terms?

Part 2 The impact of private label growth on innovation in private labels and industrial brands

Establish the impact of private labels on suppliers' performance.

For private label suppliers

7A. What is the impact of private label supply by your company on your company's

- Sales, growth and employment?
- Competitive position?
- Investments and productivity?
- What are the main mechanisms contributing to these effects?

For industrial brand suppliers

7B. What is the impact of private label supply by retailers on your company's

- Sales, growth and employment?
- Competitive position?
- Investments and productivity?
- What are the main mechanisms contributing to these effects?

Find out how innovative the company is now compared to 5, 10 years ago.

8. Does your company develop more or fewer new products than it did 5, 10 years ago?
9. How difficult is it to introduce new products (either private labels and industrial brands) onto retailers' shelves now compared to 5, 10 years ago?
10. Can you give a concrete example of an innovation pursued by your company that was successful and one that was unsuccessful? Why was it successful/unsuccessful?

Characterise competitive relations between private labels and industrial brands in the industry the interviewee's company is active in.

11. To what extent do private labels and industrial brands compete with each other?
12. How are the number and the market share of private labels developing compared to industrial brands?
13. Is there a difference in the way retailers treat private labels as opposed to industrial brands? If so, what is the difference?
14. How is the innovation rate developing in the industry?
15. Is copycatting an issue in the market in which your company operates?

Part 3 Bargaining relations between retailers and suppliers

In this part we investigate to what extent the business practices mentioned below are common between suppliers and retailers. Note that both suppliers and retailers may apply these practices. The practices mentioned might have anti-competitive effects, but they might also enhance supply chain efficiency and competition. See whether there are differences between private labels and industrial brands.

List of business practices

16. What business practices are relevant to your relations with retailers?

17. What about financial contributions required by retailers or your company? For example, listing fees, slotting allowances or contributions to promotional expenses.

18. What about arrangements with your customers with respect to the distribution of risks and costs regarding perishability, buy-back of unsold products and payment periods?

19. How do you and your customers deal with adjusting the contract terms, if required?

20. How do you and your customers deal with terminating a contract?

21. Are there any other business practices relevant to your relations with retailers?

Effects of business practices

22. What are the main effects of the business practices discussed above on your company's competitiveness, supply chain coordination and efficiency in general?

23. What is the impact of these business practices on your company's profitability?

24. Are there any differences between private labels and industrial brands in terms of practices applied and the effect on your company's competitiveness and profitability, and supply chain efficiency and coordination?

25. Does producing PL for a given supermarket chain have an impact on the business practices applied by the same supermarket chain in relation to your industrial brands?

The European Commission is considering introducing a voluntary or obligatory system of producer indications on private labels.

26. Would you favour such a system? Why/why not?

27. What do you think about possible consequences with respect to:
    - Competitive relations between industrial brands and private labels?
    - Competitive relations between suppliers and retailers?
    - Liability of food processors with respect to private labels?

28. Is there any other policy you would advocate in order to promote the competitiveness of the European food supply chain?

Conclusion

29. Have you anything to add to the interview and/or the research question?

Appendix 2B
Questionnaire for retailers

Introduction

This questionnaire is part of a study commissioned by the EC on the impact of private labels on the competitiveness of the European food processing industry, with a particular focus on the role of SMEs. The aim of the study is to find out what effect private labels have on the innovativeness of the food processing industry. The study considers the impact on suppliers of private labels and industrial brands, as well as the impact on retailers.

According to economic theory, the ability and willingness to innovate depends on the ability to appropriate profits from innovations. For this reason, the questionnaire addresses not only the key problem statement, but also developments in bargaining relations between suppliers and retailers, profitability and the possible impact on innovation.

The research addresses the relation between suppliers and retailers, and ignores the consumer. Consumer well-being may be addressed in another study.

The questionnaire is made up of three parts: (1) a general introduction; (2) innovation in private labels and industrial brands; and (3) bargaining relations and the implications for profitability and innovations.

The questionnaire is anonymous. The name of your company will not appear in the final report. The research group will draft a general summary of the results without going into company, sector or country specifics.

Part 1 General

Position of the interviewee:

Try to find out whether the interviewee depends on/buys from a limited number of suppliers both with respect to private labels and industrial brands.

1. Do you source domestically and/or internationally?

2. How many suppliers do you have for the product/product group under consideration? How stable are the relations with your suppliers?

3. What is the share of your largest supplier in the purchases of the product/product group under consideration, the second largest, etc.? Is there a difference in the size of suppliers of private labels as opposed to suppliers of industrial brands?

Find out for the retailer interviewed what the share and the role of private labels are in general and in the product group under consideration.

4. Describe your company's private label strategy and the position of your company's private labels in the market.

Discuss the bargaining process and contract terms between the supplier and retailers in general terms. Make a distinction between private labels and industrial brands.

5. Can you characterise the bargaining process and the contract terms?

Part 2 The impact of private label growth on innovation in private labels and industrial brands.

Establish the impact of private labels and industrial brands on retailer performance.

For private labels

6. What is the impact of the private labels you sell on your company's
   - Sales, growth and employment?
   - Competitive position in relation to suppliers and rival retailers?
   - Composition and value of the category?
   - What do you think are the effects of private labels on your suppliers and on the overall supply chain?

For industrial brands

7. What is the contribution of the industrial brands you sell on your company's
   - Sales, growth and employment?
   - Competitive position in relation to suppliers and rival retailers?
   - Composition and value of the category?
   - What do you think are the effects of private labels on your suppliers and on the overall supply chain?

Discuss the innovativeness of the category and the retailer now compared to 5, 10 years ago.

8. Do you now develop and market more or fewer new PL products compared to 5, 10 years ago? Are there now more or fewer new industrial brands being introduced onto your shelves compared to 5, 10 years ago? Has there been a change in the success rate of new product introductions?

9. What are the differences in costs, benefits and risks in introducing a new PL product on the shelf compared to a new variety of an industrial brand?

10. Can you give a concrete example of a private label innovation that creates value for your category and company, and possibly your PL supplier?

Characterise competitive relations between private labels and industrial brands in the industry under consideration.

11. To what extent do private labels and industrial brands compete with each other?

12. How are the number and the market share of private labels developing compared to industrial brands?

13. How do you expect private labels to develop in terms of competitive position and market share in the future?

14. Is there a difference in the way you treat private labels as opposed to industrial brands? If so, what is the difference?

15. How is the innovation rate developing in the industry?

16. Is copycatting an issue in the market in which your company operates?

Part 3 Bargaining relations between retailers and suppliers

In this part we investigate to what extent the business practices mentioned below are common between suppliers and retailers. Note that both suppliers and retailers might apply these practices. The practices mentioned might have anti-competitive effects, but also might enhance supply chain efficiency and competition. See whether there are differences between private labels and industrial brands.

List of business practices

16. What business practices are relevant to your relations with suppliers?

17. What about financial contributions required by either your company or your suppliers? For example, listing fees, slotting allowances or contributions to promotional expenses.

18. What about arrangements with your suppliers with respect to the distribution of risks and costs regarding perishability, buy-back of unsold products and payment periods?

19. How do you and your suppliers deal with adjustment of the contract terms, if required?

20. How do you and your suppliers deal with terminating contracts?

21. Are there any other business practices relevant to your relations with suppliers?

Effects of business practices

22. What are the main effects of the business practices discussed above on your company's competitiveness, supply chain coordination and efficiency in general, and with respect to innovation and PL development?

23. What is the impact of these business practices on your company's profitability?

24. Are there any differences between private labels and industrial brands in terms of practices applied and the effect on your company's competitiveness and profitability and supply chain efficiency and coordination?

25. Are these differences reflected in the selection of suppliers?

The European Commission is considering introducing a voluntary or obligatory system of producer indications on private labels.

26. Would you favour such a system? Why/why not?

27. What do you think about possible consequences with respect to:
    - Competitive relations between industrial brands and private labels?
    - Competitive relations between suppliers and retailers?
    - Liability of food processors with respect to private labels?

28. Is there any other policy you would advocate in order to promote the competitiveness of the European food supply chain?

29. Do you have anything to add to the interview and/or the research question?

References

ABN-AMRO. *De markt in de hand*, 2003.

AGCM, *Indagine conoscitiva sulla distribuzione alimentare*. IC/28, June 2007.

AGCM, *Audizione del Presidente dell'Autorità garante della concorrenza e del mercato Antonio Catricalà, presso la XIII Commissione Agricoltura della Camera dei Deputati nell'ambito dell'indagine conoscitiva sull'andamento dei prezzi nel settore agroalimentare*. July 31st, Roma, 2008.

Ailawadi initiaal, L. Kusum and B. Harlam, 'An Empirical Analysis of the Determinants of Retail Margins: The Role of Store-Brand Share.' In: *Journal of Marketing* 68 (2004) 1, pp. 147-165.

Ailawadi initiaal, L. Kusum, K. Pauwels and J.E.M. Steenkamp, 'Private-Label Use and Store Loyalty.' In: *Journal of Marketing* 72 (2008) 6, pp. 19-30.

Barros, P.P., B. Duarte and D. de Lucena, 'Mergers in the food retailing sector: an empirical investigation.' In: *European Economic Review* 50 (2006), pp. 447-468.

Barsky, R., M. Bergen, S. Dutta and D. Levy, *What Can the Price Gap between Branded and Private Label Products Tell Us about Markups?* NBER Working Paper W8426, National Bureau of Economic Research, Cambridge MA, 2001.

Bauer, A. and I. Agárdi, 'The directions of the food trade developments in the European Union.' In: *Marketing & Management* XXXIV (2000) 3, pp. 4-7.

Bell, R., D. Ross and E. Howard, 'The Changing Structure of Food Retailing in Europe: The Implications for Strategy.' In: *Long Range Planning* 30 (1996) 6, pp. 853-861.

Bergès-Sennou, F., P. Bontems and V. Réquillart, 'Economics of Private Labels: A Survey of Literature.' In: *Journal of Agricultural & Food Industrial Organisation* 2 (2004), article 3.

Bergès, F., D. Hassan, S. Monier-Dilhan and H. Raynal, 'Consumers' decision between private labels and national brands in a retailer's chain: a mixed multinomial logit (moet dit soms logic zijn?) application.' In: *Gestion* 3 (2009), pp. 41-57.

Bergès, F. and V. Orozco, 'Measures of Store Loyalty in French Food Retailing.' Forthcoming in *Review of Agricultural and Environmental Studies* 2010 (14 pages).

Alle rode namen zijn volgens mij dezelfde auteur?

Bergès, F. and C. Chambolle, 'Threat of Exit as a Source of Bargaining Power.' In: *Louvain Economic Review - Recherches Economiques de Louvain* 75 (2009) 3, pp. 353-368.

Bergès-Sennou, F., 'Store loyalty, bargaining power and the private label production issue.' In: *European Review of Agricultural Economic* 33 (2006) 3, pp. 315-335.

Bergès-Sennou, F. and M. Waterson, 'Private Labels as Experience Goods.' In: *Journal of Agricultural and Food Industrial Organisation* 3 (2005) 2, 19 pp.

Bernitz, U., 'Misleading packaging, copycats, and look-alikes: an unfair commercial practice?' In: A. Ezrachi and U. Bernitz (eds.) *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*. Oxford University Press, Oxford, pp. 217-234.

Bijman, W.J.J., A. Pronk and R.P.M. de Graaff, *Wie voedt Nederland? Consumenten en aanbieders van voedingsmiddelen*. LEI Wageningen UR, Den Haag, 2003.

Bonanno A. and R.A. Lopez, 'Private Label Expansion and Supermarket Milk Prices.' In: *Journal of Agricultural & Food Industrial Organisation* 3 (2005) 1, article 2. Available at <www.bepress.com/jafio/vol3/iss1/art2>

Bonfrer, A. and P.K. Chintagunta, 'Store brands: who buys them and what happens to retail prices when they are introduced?' In: *Review of Industrial Organisation* 24 (2004), pp. 195-218.

Bontems Ph., S. Monier-Dilhan and V. Réquillart, 'Strategic effects of private labels.' In: *European Review of Agricultural Economics* 26 (1999) 2, pp. 147-165.

Bontemps, C., V. Orozco, A. Trévisiol and V. Réquillart, 'Price Effects of Private Label Development.' In: *Journal of Agricultural & Food Industrial Organisation* 3 (2005a) 1, article 3. Available at <www.bepress.com/jafio/vol3/iss1/art3>

Bontemps, C., V. Orozco and V. Réquillart, 'Confirming the Price Effects of Private Label Development.' Paper presented as 'Contributed paper' at the 11th *Congress of the European Association of Agricultural Economists*. Copenhagen, Denmark, August, 2005b.

CERMES - Bocconi, *Osservatorio sulle liberalizzazioni in Italia: sintesi del rapporto di ricerca.* Milan, October 6, 2008.

Chintagunta initiaal, K. Pradeep, 'Investigating Category Pricing Behavior at a Retail Chain.' In: *Journal of Marketing Research* 39 (2002) 2, pp. 141-154.

Chintagunta initiaal, K. Pradeep, A. Bonfrer and S. Inseong, 'Investigating the effects of store brand introduction on retailer

demand and pricing behaviour.' In: *Management Science* 48 (2002), 10, pp. 1242-1267.

Competition Commission, *Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*. Cm 4842, TSO, London, 2000.

Competition Commission, *Groceries Market Investigation - Final Report*. April 2008.

Corstjens, J. and M. Corstjens, Store Wars. Wiley, Chichester, 1999.

Corstjens, M. and R. Lal, 'Building Store Loyalty Through Store Brands.' In: *Journal of Marketing Research* 37 (August 2002), pp. 281-291.

Czibik Á. and Á. Makó, 'Casual analysis of relationships of large retail chains and their suppliers.' Study made on behalf of the Hungarian Competition Authority. In: *MKIK Gazdaság- és Vállalkozáselemző Intézet*, Budapest, 82 p., 2008.

Dhar, S.K., J. Stephen and J. Hoch, 'Why Store Brand Penetration Varies by Retailer.' In: *Marketing Science* 16 (1997) 3, pp. 208-227.

Dobos, K., 'Relationships of large retail chains and their suppliers.' In: *MKIK Gazdaság- és Vállalkozáselemző Intézet.* Working Papers 3rd, 105 p., Budapest, 2007.

Dobson, P.W., *The Economic Welfare Implications of Own Label Products School of Management*. University of Nottingham, Discussion Paper 1998.IV., 1998.

Dobson, P.W., 'Voices from the Supermarket Shelves - The Language of Competition.' In: *British Brands* 18, Autumn 2003 (available at <www.britishbrandsgroup.org.uk/18.pdf>).

Dobson, P.W., 'Exploiting Buyer Power: Lessons from the British Grocery Trade.' In: *Antitrust Law Journal* 72 (2005) 2, pp. 529-562.

Dobson, P.W, 'Relationship between Buyer and Seller Power in Retailing: UK Supermarkets (2000).' In: *Cases in European Competition Policy: The Economic Analysis*. B. Lyons (ed.), Cambridge University Press, 2009.

Dobson, P.W. and R. Chakraborty, 'Private Labels and Branded Goods: Consumers' 'Horrors' and 'Heroes'.' In: *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*. A.Ezrachi and Ulf Bernitz (eds.). Oxford University Press, Oxford 2009, pp. 99-124.

Dobson, P.W. and R. Inderst, 'Differential Buyer Power and the Waterbed Effect: Do Strong Buyers Benefit or Harm Consumers?' In: *European Competition Law Review* 28 (2007) 7, pp. 393-400.

Dobson, P.W. and R. Inderst, 'The Waterbed Effect: Where Buying and Selling Power Come Together.' In: *Wisconsin Law Review* (2008) 2, pp. 331-357.

Dobson, P.W. and R. Inderst, 'Differential Buyer Power and the Waterbed Effect: Do Strong Buyers Benefit or Harm Consumers?' In: *European Competition Law Review* 28 (2007) 7, pp. 393-400.

Dobson, P.W. and R. Inderst. 'The Waterbed Effect: Where Buying and Selling Power Come Together.' In: *Wisconsin Law Review* 2008 (2), pp. 331-357.

European Commission. *Green paper on vertical restraints in EC competition policy*, 1997.

Ezrachi, A. and J. Reynolds, 'Advertising, Promotional Campaigns, and Private Label.' In: *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition* (A. Ezrachi and U. Bernitz (eds.)). Oxford University Press, Oxford, 2009, pp. 259-279.

Fernandez Nogales, A. and M. Suarez, 'Shelf space management of private labels: a case study in Spanish retailing. In: *Journal of Retailing and Consumer Services* 12 (2005) 3, pp. 205-216.

Gabrielsen, T.S. and L. Sorgard, 'Private labels, price rivalry and public policy.' In. *European Economic Review* 51 (2007) 2, pp. 403-24.

Gabrielsen, T. S., F. Steen and L. Sorgard, *Private labels entry as a competitive force? An analysis of price responses in the Norwegian food sector*. Paper presented at the 12th EARIE conference, Madrid, Spain, August, 2002. Available at: <www.uib.no>

Galarza, A. F., 'Private labels and Article 82 EC.' In: A. Ezrachi and U. Bernitz (eds.) *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*, Oxford University Press, Oxford, 2009, pp. 125-136.

Gorrie, A., 'Retail competition: the use of ex-ante and ex-post remedies.'
In: A. Ezrachi and U. Bernitz (eds.) *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*. Oxford University Press, Oxford, 2009, pp. 297-320.

Grievink J.W., L. Josten and C. Valk. *State of the art in food: the changing face of the worldwide food industry*, Elsevier, 2002.

Györe, D., J. Popp, M. Stauder and V. Tunyoginé Nechay, 'Procurement and price formation strategies in the Hungarian grocery retail sector.' In: *Az élelmiszer-kiskereskedelem beszerzési és árképzési politikája*, AKI Papers in Agricultural Economics 2009/9, Budapest, p. 126 (under publishing), 2009.

Hassan, D. and S. Monier-Dilhan, 'National brands and store brands: competition through public quality labels.' In: *Agribusiness* 22 (2006) 1, pp. 21-30.

Hoch, S.J., 'How Should National Brands Think about Store Brands.' In: *Sloan Management Review* 37 (1996) 2, pp. 89-102.

Hoch, S.J. and S. Banerji, 'When Do Store Brands Succeed?' In: *Sloan Management Review* 34 (1993) 4, pp. 57-67.

Hoch, S.J., A.L. Montgomery and Y.H. Park. 'Why Private Labels Show Long-Term Growth Share Evolution.' In: *GSIA Working Paper* 2000-E18, 2002.

Horváth Á., 'Our food labels and health-conscious consumer behaviour'. In: *Marketing & Management* XXXI. Vol. 6., 1997, pp. 53-56.

Hosken, D. and D. Reiffen, 'Patterns of Retail Price Variation.' In: *Rand Journal of Economics* 35 (2004) 1, pp. 128-146.

Hungarian Association of Branded products Manufacturers, Mai Piac, October, 2002.

IfH/BBE, *Angebots- und Nachfragemacht: Zum Verhältnis von Industrie und Handel*. Köln, 2009.

ISMEA, *Gli acquisti alimentari in Italia: tendenze recenti e nuovi profili di consumo*. ISMEA, Roma, 2007.

Juhász, A., E. Darvasné Ördög and Gy. Jankuné Kürthy, 'Role of quality systems in the Hungarian food supply chain.' In: *Minőségi rendszerek szerepe a hazai élelmiszergazdaságban*, AKI Papers in Agricultural Economics 2010/1, Budapest, p. 178 (under publishing), 2010.

Juhász, A. and A. Kozak, 'Value added and rural development effect of POs in the fresh fruit and vegetable sector: lessons learned and future possibilities.' In: *Global Challenges, Local Solutions*, p. 18, 2009. IAMA 19th Annual World Forum and Symposium Budapest Hungary, June 20-23, 2009.

Kapronczai, I., M. Bojtárné Lukácsik, B.O. Felkai, V. Gáborné Boldog, E. Székelyné Raál, P. Tóth and P. Vágó, Situation of the food processing SME-s, economic and regional role. Az élelmiszerfeldolgozó kis- és középvállalkozások helyzete,

nemzetgazdasági és regionális szerepe. In: *AKI Papers in Agricultural Economics* 2009/8, Budapest, p. 122 (under publishing), 2009.

Kim, N. and P.M. Parker, Collusive conduct in private-label markets.' In: *International Journal of Research in Marketing* 16 (1999) 2, pp. 143-155.

Kocsis, E., *Kereskedelmi márkák - Figyelemre méltó növekedés*, Mai Piac, December, 2008.

Kumar, N. and J.E.M. Steenkamp, *Private Label Strategy: How to Meet the Store Brand Challenge*. Harvard University Press, Cambridge MA, 2007.

Lal, R., 'Price Promotions: Limiting Competitive Encroachment.' In: *Marketing Science* 9 (1990) 3, pp. 247-262.

Lamey, L., B. Deleersnyder, M.G. Dekimpe and J.E.M. Steenkamp, 'How Business Cycles Contribute to Private Label Success: Evidence from the United States and Europe.' In: *Journal of Marketing* 71 (2007) 1, pp. 1-15.

LEI, *Prijsvorming van voedingsproducten*. Nota 09-074. LEI Wageningen UR, Den Haag, 2009.

Lianos, I., 'The vertical/horizontal dichotomy in competition law: some reflections with regard to dual distribution and private labels.' In: A. Ezrachi and U. Bernitz (eds.) *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*. Oxford University Press, Oxford, pp. 161-186, 2009.

Lincoln, K. and L. Thomassen, *Private Label: Turning the Retail Brand into Your Biggest Opportunity*. Kogan Page, London, 2008.

Mészáros, K., *Retail strategies used by the Hungarian food retailers and expectations of potential customers.* Doctoral (Ph.D.) dissertation. University of West Hungary, Faculty of Economics.

Economic processes Doctoral School of Economic Theory and Practice Marketing Program, Sopron, 2007.

Meza, S. and K. Sudhir, *The Role of Strategic Pricing by Retailers in the Success of Store Brands*. Working Paper, 2005.

Meza, S. and K. Suhir, *Do Private Labels Increase Retailer Bargaining Power*. Working Paper, 2009.

Mills, D.E., 'Why retailers sell private labels.' In: *Journal of Economics and Management Strategy* 4 (1995), pp. 509-528.

Nagy, E., *The changing balance of power on markets of transition economies. Dealers and suppliers in the domestic food trade.* MTA Center for Regional Studies, Békéscsaba. Lecture on 'New trends in the trade.' Conference, Gödöllő, 27 March, 2009. <www.rgvi.gtk.szie.hu/upload_files/Nagy_Erika.pdf>

Nagy, J., *Food trends, private label brands - category management*. Corvinus University of Budapest. Institute of Enterprise Economy, Working Papers 58. January 17, 2005.

Narasimhan, C. and Ronald T. Wilcox, 'Store Brands and Channel Relationship: A Cross-Category Analysis.' In: *Journal of Business* 71 (1998) 4, pp. 573-600.

Nevihostényi, É., *Growing retailer brands - Building on functional advantages, Terjeszkednek a kereskedelmi márkák - Funkcionális előnyre építenek, Élelmiszer, március*, pp. 30-31, 2008.

NMA, *Besluit 6450/8 (Bakkersland - Quality Bakers)*. 22 September 2008.

NMA, *Prijsvorming in de agri-food sector*. Den Haag, 2009.

Olbrich, R., G. Gundula and R. Orenstrat, 'Private Labels, Product Variety, and Price Competition - Lessons from the German Grocery Sector.' In: A. Ezrachi and U. Bernitz (eds.) *Private Labels, Brands and*

Competition Policy: The Changing Landscape of Retail Competition, University Press. Oxford, pp. 235-257, 2009.

Orbán, Á., 'Large chunk from the cake. Nagyobb szelet a tortából.' In: *Mai Piac*, October 2009, pp. 10-12.

Orovicz, V., *Price war of pocket cutter brands*. Zsebbevágó márkák árháborúja Népszabadság, August 30, 2001.

Pauwels, K. and S. Srinivasan, 'Who benefits from store brand entry?' In: *Marketing Science* 23 (2004), pp. 364-390.

Pauwels, K. and S. Srinivasan, 'Pricing of National Brands versus Store Brands: Market Power Components, Findings and Research Opportunities.' In: V.R. Rao (ed.) *Handbook of Pricing Research in Marketing*. Edward Elgar, Cheltenham, pp. 258-282, 2009.

PLMA. *PLMA's 2009 international private label yearbook. A statistical guide to market share trends,* 2009.

Pénzes G., *Procurement and sales behaviour of retail food businesses operating in the Jász-Nagykun-Szolnok County. Élelmiszerkiskereskedelmi vállalkozások beszerzési és értékesítési politikája Jász-Nagykun-Szolnok megyében*. Doctorate (PhD) thesis, Szent István University, Gödöllő. 245 p., 2004.

Popp, J. ˙(ed.), N. Potori (ed.), G. Udovecz (ed.), K. Aliczki, I. Aradi, M. Csikai, F. Erdész, J. Fogarasi, R. Garay, E. Gáti, A. Kozak, L. Nyárs, G. Papp, E. Varga and E. Vőneki, 'Possibilities of increasing competitiveness in the Hungarian Agribusiness. Are we going to be the country to produce agricultural raw material or food products with higher value added? A versenyesélyek javításának lehetőségei a magyar élelmiszergazdaságban. Alapanyag-termelő vagy nagyobb hozzáadott-értékű termékeket előállító ország leszünk?' In: *AKI Papers in Agricultural Economics 2009 Special edition for the Hungarian Chamber of Agriculture*, p. 179, 2009.

Putsis, W.P., 'An Empirical Study of the Effect of Brand Proliferation and Private Label-National Brand Pricing Behavior.' In: *Review of Industrial Organisation* 12 (1997), pp. 355-371.

Rabobank. *The blue revolution in orange country: Part 2.* 12 January 2010, 36 pages.

Raju, J., R. Sethurman and K. Sanjay, 'The Introduction and Performance of Store Brands.' In: *Management Science* 41 (1995) 6, pp. 957-978.

Rekettye, G., 'The role of private label brands in the competition. A sajátmárkás termékek szerepe a versenyben.' In: *Hungarian Science* 06, 2009. <www.matud.iif.hu/09/jun/07.html>

Sárközy, I., 'The market of hypermarkets, A hipermarketek piaca.' In: *Mai Piac*, január-február, pp. 20-22, 2009.

Sayman, S., S.J. Hoch and J.S. Raju, 'Positioning of Store Brands.' In: *Marketing Science* 21 (2002) 4, pp. 378-397.

Sayman, S. and J.S. Raju, 'Investigating the Cross-Category Effects of Store Brands.' In: *Review of Industrial Organisation* 24 (2004) 2, pp. 129-141.

Sayman, S. and J.S. Raju, 'Store Brands: Back to the Future.' In: *Review of Marketing Research* 3 (2007), pp. 132-151.

Sckokai, P. and C. Soregaroli, 'Impact of private label development across retail formats: evidences from the dairy market in Italy.' In: *Review of Agricultural and Environmental Studies* 87 (2008), pp. 27-47.

Scott Morton, F. and F. Zettelmeyer, 'The Strategic Positioning of Store Brands in Retailer-Manufacturer Negotiations.' In: *Review of Industrial Organisation* 24 2004, pp. 61-194.

Sethuraman, R., 'Assessing the External Validity of Analytical Results from National Brand and Store Brand Competition Models.' In: *Marketing Science* 28 (2009) 4, pp. 759-781.

Smith, H., 'Supermarket choice and supermarket competition in market equilibrium.' In: *Review of Economic Studies* 71 (2004) 1, pp. 235-263.

Soberman, D. A. and P. Parker, 'Private labels: psychological versioning of typical consumer products.' In: *International Journal of Industrial Organisation* 22 (2004), pp. 849-861.

Soberman, D.A. and P.M. Parker, 'The economics of quality-equivalent store brands.' In: *International Journal of Marketing Research* 23 (2006), pp. 125-139.

SPF Economie. *Développements Récents dans l'Evolution des Prix et des Coûts de la Chaîne du Lait*, 2008.

Steiner, R.L., 'The Nature and Benefits of National Brand/Private Label Competition.' In: *Review of Industrial Organisation* 24 (2004) 2, pp. 105-127.

Steiner, R.L., 'Market Power in Consumer Goods Industries.' In: *Private Labels, Brands and Competition Policy: The Changing Landscape of Retail Competition*. A. Ezrachi and U. Bernitz (eds.), Oxford University Press, Oxford, pp. 73-98, 2009.

Sudhir, K., P. Chintagunta and V. Kadiyali, 'Time-Varying Competition.' In: *Marketing Science* 24 (2005) 1, pp. 96-109.

Sudhir, K. and D. Talukdar, 'Does Store Brand Patronage Image Store Patronage.' In: *Review of Industrial Organisation* 24 (2004) 2, pp. 143-160.

Thomassen, L., K. Lincoln and A. Aconis, *Retailization*. Kogan Page, London, 2006.

Szirmai, S., 'Now the price war of the retail chains goes at the expense of quality. Most már a minőség rovására terjed a kiskereskedelmi láncok árháborúja.' In: *Figyelő* March 30-April 5 (2006), pp. 58-59.

Vámosi, S., 'Contradictions and dilemmas. Panel of manufacturers. Meat, meat products. Ellentmondások és dillemák. Feldolgozói panelek. Hús és hústermékek.' In: *Progresszívmagazin* XVVII, 10 (2009), pp. 20-24.

Walters, R.G. and H.J. Rinne, 'An Empirical Investigation into the Impact of Price Promotions on Retail Store Performance.' In: *Journal of Retailing* 62 (1986) 3, pp. 237-266.

Ward, M.B., J.P. Shimshack, J.M. Perloff and J. Michael Harris, 'Effects of the Private-Label Invasion in Food Industries.' In: *American Journal of Agricultural Economics* 84 (2002) 4, pp. 961-973.

Wolinsky, A., 'Brand Names and Price Discrimination.' In: *Journal of Industrial Economics* 35 (1987) 3, pp. 255-268.