

ESADE COMPETITION SYMPOSIUM  
Opinion of 31 March 2015 on Buying Alliances in the Retail  
Sector

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# Outline

- Introduction : Context, Content and Objectives
- Assessment of Market Power
- Potential risks on downstream and upstream markets
- Assessment under the rules regarding Economic Dependence
- Conclusion : Recommendations/ Issues for consideration
- Q&As



# Context, Content and Objectives of the Opinion



## INTRODUCTION

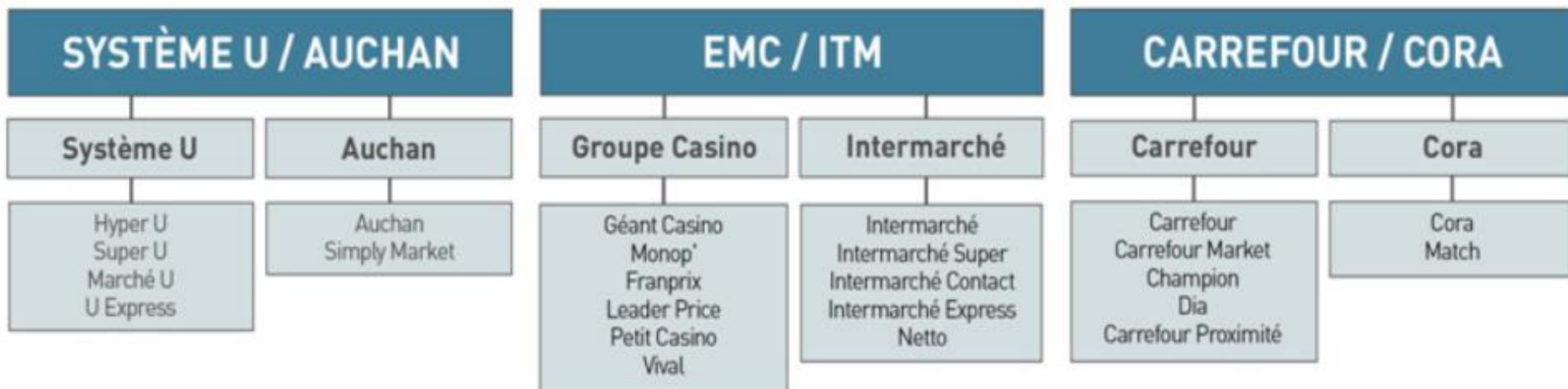
# Context (1/2)

- Price war/Reduced margins
- 3 co-operation agreements
  - Système U/Auchan
  - Groupe Casino/Intermarché
  - Carrefour/Cora
- 2 references
  - Minister for the Economy, Industry and Digital Affairs
  - Senate (Economic Affairs Committee)

# Context (2/2)



# Overview of the Agreements (1/2)



# Overview of the Agreements (2/2)

	Système U/Auchan	ITM/Casino	Carrefour/Cora
Motivation	<ul style="list-style-type: none"> <li>• Outsider position</li> <li>• Price war</li> <li>• Risk of loss of shops</li> </ul>	<ul style="list-style-type: none"> <li>• More competitiveness/profitability</li> <li>• Limit the risk of marginalization</li> </ul>	<ul style="list-style-type: none"> <li>• More price competitiveness</li> <li>• Increase competitive pressure on other actors in certain areas</li> </ul>
Form	Agency Agreement	Autonomous legal entity	Membership agreement
Scope (providers concerned/products concerned)	±300 providers (excl. SME)	±64 providers (excl. Economic dependance, MS >15 %)	±140 providers (excl. SME, agriculture)
Object	« Triple Net »	« Triple Net » and framewok agreement	« Triple Net » and framework agreement
Exclusivity	Yes	Yes	No

# Content and objectives of the Opinion

- Assessment grid for the retail sector
  - No individual assessment
  - Identification of *potential* risks
- Reflection on the effectiveness of the current system and recommendations



# Assessment of market power



## SECTION 1

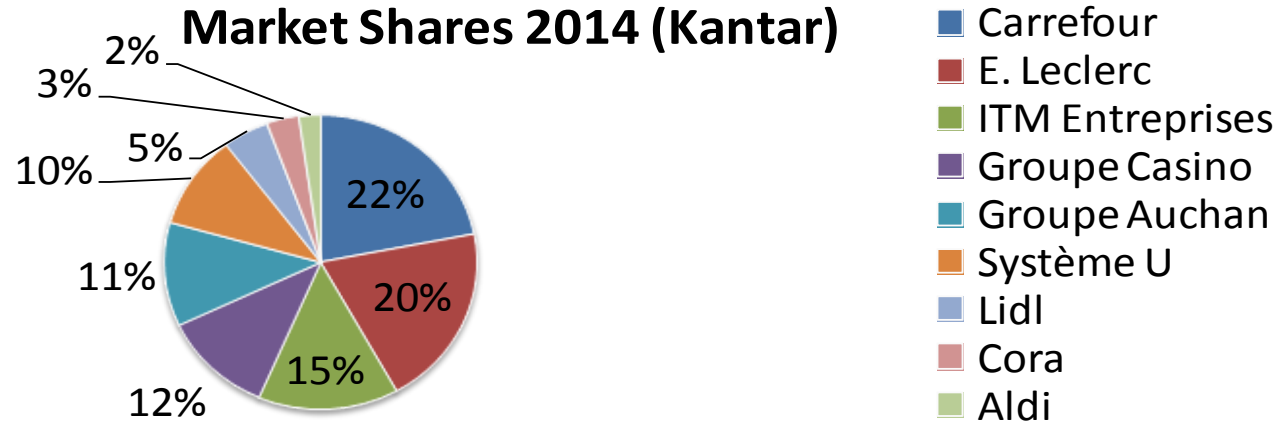
# Market Definition

- Upstream (assessment of buyer power)
  - 23 product categories
  - Possible sub-segmentation (by distribution channel, by brand)
- Downstream
  - « Traditionnal » product market definition (according to size, distance, service provided, etc.)
  - Local markets but need to take also into account situation at national level

# Upstream Market Power (Buying Power)

Product category	Auchan/Système U	Intermarché/Casi no	Carrefour/Co ra	Total
DIY	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Delicatessen	[<15 %]		[<15 %]	[<50 %]
Culture	[<15 %]		[<15 %]	[<50 %]
Drugstore	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Non perishable food	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Large Home appliances	[<15 %]			[<50 %]
Audio	[>15 %]			[<50 %]
Garden	[<15 %]		[<15 %]	[<50 %]
Toys	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Liquids	[<15 %]	[>15 %]	[>15 %]	[>50 %]
House	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Bread and Pastries	[<15 %]			[<50 %]
Parapharmaceutical products	[<15 %]			[<50 %]
Body-care products and cosmetics	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Small Home appliance s	[<15 %]	[>15 %]	[>15 %]	[<50 %]
Video	[<15 %]		[<15 %]	[<50 %]
Perishable products	[<15 %]	[>15 %]	[>15 %]	[>50 %]
Clothing/Shoes	[<15 %]	[<15 %]	[<15 %]	[<50 %]
TV/Video	[>15 %]			[<50 %]

# Downstream Market Power



**Market Shares following agreements (Estimate)**





# Potential risks on upstream and downstream markets



## SECTION 2

# Potential risks on *downstream* markets (1/2)

- Risks of exchanges of information
  - Product purchase price
  - Discounts and fees for commercial cooperation
  - Product assortment on display, launch of new products or promotional activities
- Could lead to
  - Price coordination on the downstream market
  - Coordination on the commercial counterparts provided by distributors to the benefit of suppliers

# Potential risks on *downstream* markets (2/2)

- Symmetry of purchasing conditions and increasing commonality of costs
- Reduction of inter-brand mobility
- But limited risk of « spiralling effect »

# Potential risks on *upstream* markets

- Guidelines on horizontal agreements :

*“If the parties have a significant degree of market power on the purchasing market (buying power) there is a risk that they may force suppliers to reduce the range or quality of products they produce, which may bring about restrictive effects on competition such as quality reductions, lessening of innovation efforts, or ultimately sub-optimal supply” (§197)*

- Limited number of studies on the issue
- Selection criteria should be objective and non-discriminatory
- Cumulative effect





## Efficiency gains



## SECTION 3

# Efficiency gains

- Potential gains according to the parties
  - Reduced purchasing costs
  - Limitation of risk of exclusion downstream (« spiraling effect »)
- Price decrease at consumer level uncertain in light of market situation
  - Concentration on local markets
  - Risk of exchanges of information

# Assessment under the rules on Economic Dependance

## SECTION 4

# Abuse of Economic Dependence

- Art. L.420-2 § 2 of the French Code of Commerce prohibits “[...] *the abuse of the state of economic dependence of a client or supplier by an undertaking or group of undertakings is also prohibited, if it is likely to affect the functioning or structure of competition. This abuse may include a refusal to sell, tie-in sales or discriminatory practices mentioned in I of Article L. 442-6 or in product range agreements*”

# State of Economic Dependance

- Review of case law : economic dependance rarely established
- Multiplicity of assessment criteria
- Importance of comparative analysis of « exit options » available to both suppliers and retailers (switch brand, export, etc.)
- Effectivity of replacement solution(s)

# Retailers' share in suppliers' turnover

	Average share	Range	Share of suppliers included in the range			
			[0-10 %]	]10-20 %]	]20-30 %]	]30-40 %]
Carrefour/Cora	<b>23,40%</b>	[14 % ; 31,1 %]	0%	29 %	62,5 %	8,5 %
Intermarché/Casino	<b>20,2 %</b>	[4,9 % ; 34,7 %]	8,5 %	33,5 %	54 %	4 %
Auchan/Système U	<b>19,30%</b>	[12,4 % ; 27,6 %]	0%	50 %	50 %	0 %
E. Leclerc	<b>15,60%</b>	[4 % ; 28,3 %]	16,5 %	66,5 %	16,5 %	0 %

# Suppliers' share in retailers' turnover

	Average share	Range		Average share	Range
Automobile	<b>8,80%</b>	[0,5 % ; 26,3 %]	Liquids	<b>2,4 %</b>	[0,2 % ; 10,3 %]
DIY	<b>4,1 %</b>	[2,0 % ; 7,5 %]	Home	<b>3,0 %</b>	[0,8 % ; 6,4 %]
Delicatessen	<b>5,7 %</b>	[0,2 % ; 19,0 %]	Parapharmaceutical	<b>2,4 %</b>	[0,03 % ; 13,2 %]
Culture	<b>1,0 %</b>	[0,4 % ; 2,1 %]	Bodycare and cosmetics	<b>4,3 %</b>	[0,8 % ; 12,6 %]
Drugstore	<b>7,7 %</b>	[1,9 % ; 16,0 %]	Small Home appliances	<b>12,8 %</b>	[1,7 % ; 32,4 %]
[Preserved food]	<b>1,3 %</b>	[0,02 % ; 11,2 %]	Photo/Cinema	<b>9,6 %</b>	[6,7 % ; 16,5 %]
Large home Appliance	<b>4,6 %</b>	[0,3 % ; 13,0 %]	Perishable goods	<b>1,4 %</b>	[0,01 % ; 7,1 %]
Hi-fi/Son	<b>1,7 %</b>	[0 ; 7,3 %]	Clothing & shoes	<b>2,4 %</b>	[1,5 % ; 6,0 %]
Garden	<b>3,9 %</b>	[1,7 % ; 7,4 %]	Bread & Pastries	<b>9,4 %</b>	[0,01 % ; 23,6 %]
Toys	<b>3,6 %</b>	[1,3 % ; 6,0 %]	TV/Vidéo	<b>5,1 %</b>	[0 ; 40,4 %]

# Abusive Practices

- A number of abusive practices referred, e.g.
  - Delisting practices
  - Demands for advantages without consideration in return (incl. « margin guarantees »)
- Concerns raised in relation to the generalisation of such practices (cumulative effect)
- Mid or long-term effects on competition not excluded





## Recommandations / Issues for consideration



# CONCLUSION

# Recommandations / issues for consideration

- Proposals for legislative amendments
  - Prior notification of new partnership agreements ✓
  - New definition of the state of economic dependance (new wording art. L. 420-2) ✗
- Action of Ministry and commercial jurisdictions /  
Action of the *Autorité*



# Q&As