Linklaters

Trends in Retail Competition:
Private labels, brands and competition policy

Defining markets where branded and private label products are present:

"How posh is your scotch?"

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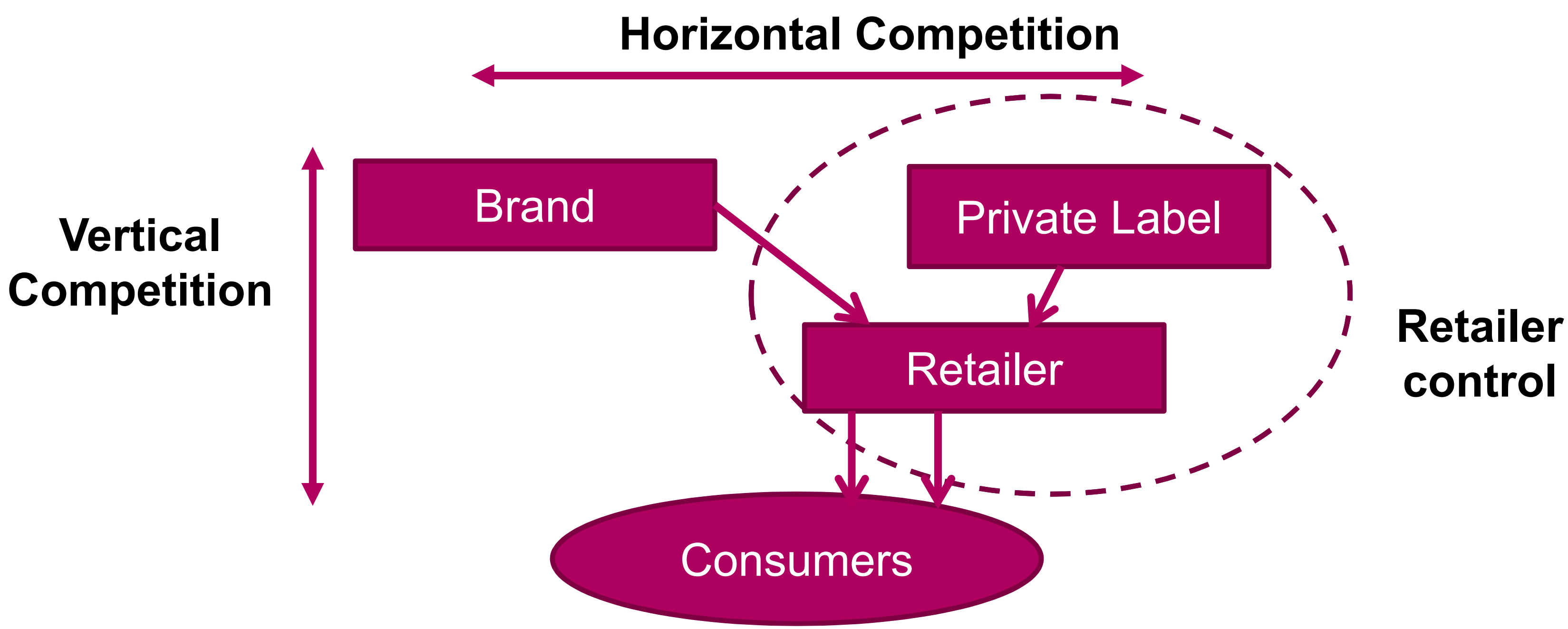
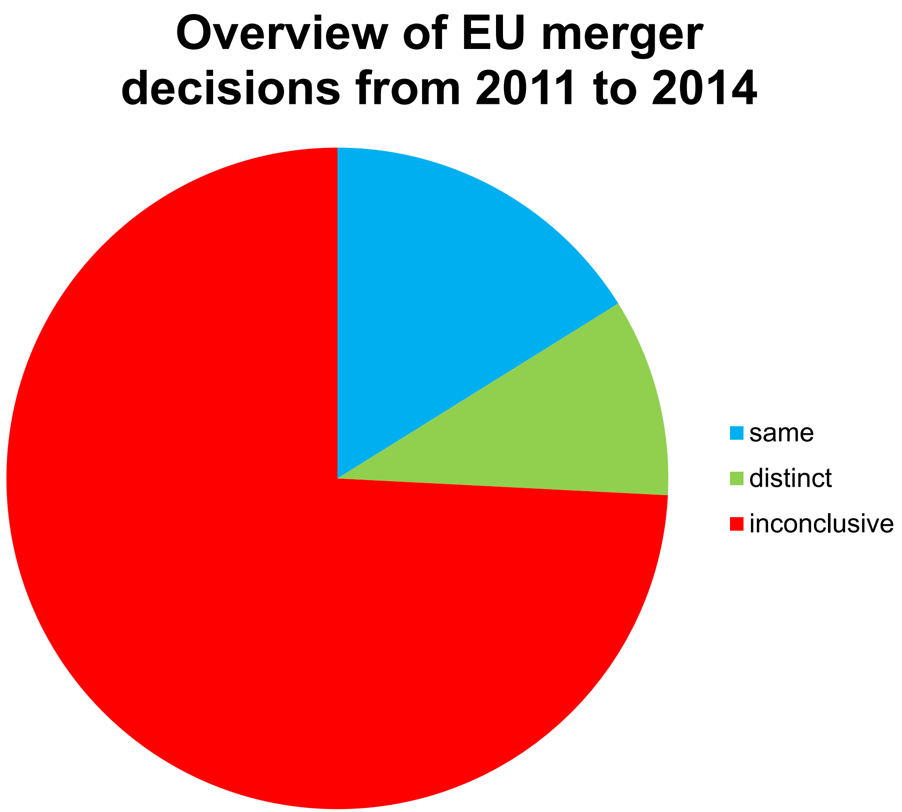
Why does market definition matter?

- Merger control / calculation of market shares
- Dominance / able to act independently of competitors?
- Other restrictions : horizontal v vertical analysis : do retailers and manufacturers compete at the same level?



Does it really matter in practice?

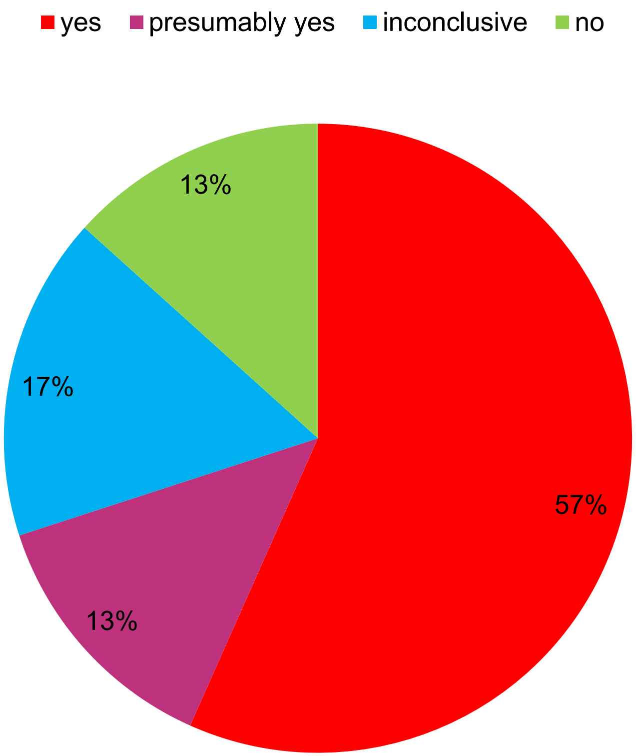
- Market definition is a means, not an end
- In majority of merger decisions market definition left open
- Authorities often assess on alternative / worst case bases
- Issues may be nuanced e.g.
  - Across different jurisdictions
  - As between premium / mid-range / value private label offerings
  - Branded and private label may be part of the same retail market but in distinct wholesale markets



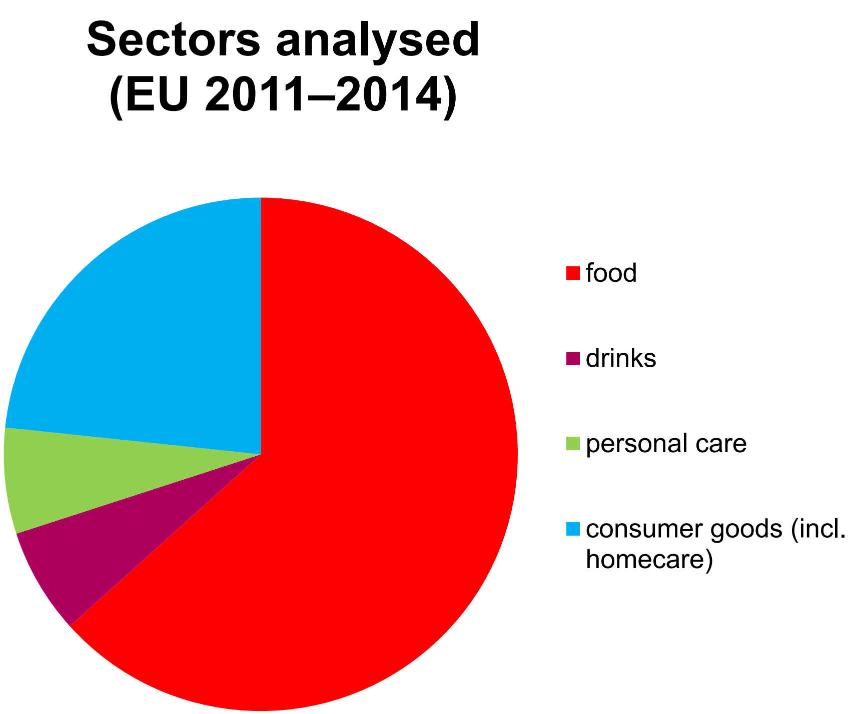
Constraints assessed at a later stage

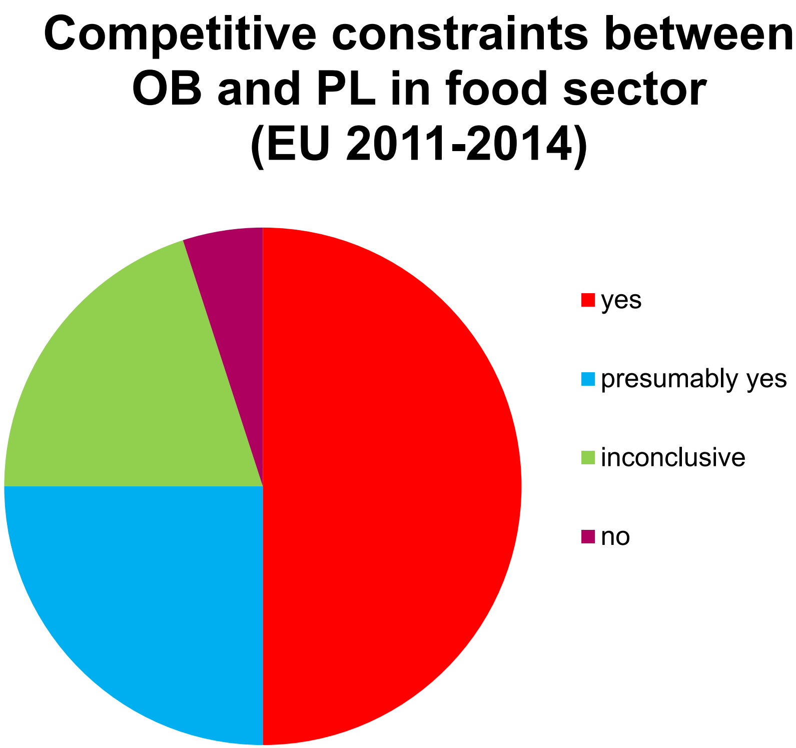
- Constraints usually considered during competitive assessment (regardless of outcome of market definition analysis)
- Majority of cases where interaction between branded and private label products considered have found some degree of constraint imposed by private label products.
- Ultimately it is a question of evidence

OB/OL competitive constraints



Focus on food





Factors which swing the balance

Key question: could branded good supplier introduce small but significant (e.g. 5% price increase) without losing sales to private label suppliers?

Retail level	Wholesale level
• Product characteristics – commoditised / sophisticated? • Product similarities / Demand side substitutability ('Must have'?) • Products displayed side by side? • Presence of premium / mid range / value PL products? • Price trends - overlapping price ranges? / is PL leader or follower? • Geographic differences?	• Barriers to entry for new PL products / suppliers • Same / distinct manufacturers? • Same / distinct procurement processes? • Ease of switching producers • Margins • Evidence of retailer power – e.g. delisting threats / reducing branded space

NB question is whether PL products <u>constrain</u>, not simply interact with branded goods.

Analytical tools

- Consumer evidence (e.g. market research / surveys, loyalty card data)
- Price correlation analysis
- Event analysis e.g. supply shock, promotion, delisting
- Margin data
- Bidding data / procurement trends

Branded vodka

Diageo

Roust

United Spirits

PL vodkas

Empirical evidence suggests there may be some substitutability between [PL] and branded vodka, at least for end-consumers [but]

[1] OFT [doubts this] end-user information is corroborative of the views of retailers.

[2] … some retailers noted their profit margins in [PL] vodka are lower than in branded … This may limit the extent that retailers can threaten to switch … to [PL] and therefore the constraint that [PL] places on the wholesale prices of branded vodka.

Taking all this into account, and particularly given

[3] the parties are active only in branded

the OFT … considers branded and [PL] separately … (OFT, *Diageo/United Spirits*, 58)

Blended bottled Scotch whisky to the off-trade

- For whisky (but not vodka) retailer preferences driven by consumer preferences. Off-trade customers pointed to a stronger constraint on PL from branded than the other way round. (OFT, *Diageo/United Spirits*, 30)

- On Nielsen data, 35-55% of Bell brand losses directly (W&M brand) or indirectly (to PL brands whose product is supplied to UK retailers by United) to United = close competitors

- Had the OFT defined separate markets for PL and branded, it would have concluded it only had half the story each time.

- Majority of retailers [argued] that W&M competes strongly with Bell's … also raised concerns due to the incremental impact [on] brand competition of W&M's strong presence in private label whisky. (at 58)

Questions?

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