Merger control in the food industry: what will e-commerce change?

EUI Florence Competition Programme and Assonime

Roundtable Discussion on Innovation and Market Power in the Food Supply Chain: Challenges for Competition Policy and Regulation

Roberto Alimonti
Senior Consultant

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Overview

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- different business models in the retail food industry: new challenges in merger assessment
- recent cases in the groceries and food delivery sectors

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- geographic considerations
- interaction between e-commerce and brick-and-mortar
- increased relevance of two-sided platforms and their impact

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- coordinated effects

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**Introduction**

Different business models in the retail food industry: new challenges in merger assessment

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<th>Growth of convenience stores</th>
<th>Online channels and hybrids</th>
<th>Pre-prepared</th>
<th>Hyper-fast deliveries</th>
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<td>importance of geographic location (catchment area analysis)</td>
<td>unclear degree of substitutability between online and brick-and-mortar</td>
<td>relevance of two-sided markets. Competition with brick-and-mortar supermarkets for ready meals?</td>
<td>closer competition between online players and convenience stores?</td>
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These considerations will be discussed in more detail in the rest of the presentation.
Recent cases in the grocery and food delivery sectors

- **Amazon/Wholefoods** Cleared USA, FTC June–August 2017
- **Just Eat/Hungryhouse** Cleared UK, CMA March–December 2017
- **ASDA/Sainsbury’s** Blocked UK, CMA May 2018–April 2019
- **Amazon/Deliveroo** Ongoing UK, CMA July 2019–
- **Just Eat/takeaway.com** Ongoing August 2019–

- **Other merger cases that have been reviewed:**
  - NBTY/Julian Graves 2009
  - Tesco/Booker, 2017
  - Coop/Nisa, 2018
  - Henderson/McColl 2018

- relevant market included food ordering marketplaces (e.g. the Parties) and services of ordering and logistics (e.g. Deliveroo, UberEATS, Amazon Restaurants) specialists
- vertically integrated food chains do not directly constrain the Parties
- online delivered groceries excluded from product market definition (only 0–5% of survey respondents would divert online)
- however, constraint considered within the competitive assessment
Part I
Market definition
Geographic considerations
The case of grocery stores

**Brick-and-mortar**

Dimensions of variation:
- prices, quality, range, services
- by: geography, store type, consumer, shopping mission

Competition at the local level, as consumers prefer closer stores

1 mile

e.g. ASDA/Sainsbury’s: catchment areas of 1 mile for convenience stores

**Online channel / hybrids**

One would expect markets to be less localised. However:

- potential local variation in:
  - delivery fees and speed
  - length and availability of delivery slots
- some areas may not be covered:
  - e.g. ASDA/Sainsbury’s—Ocado does not deliver to some areas
- potential personalised pricing
## Interaction between e-commerce and brick-and-mortar

**Supermarkets example**

### In the food industry

- online and offline have not yet been considered close enough substitutes to be defined in the same market

- is this still appropriate?

  would some mergers that were blocked (or required divestments) have been cleared (cleared with fewer remedies) if growth by online players had been considered?

### Lessons from other industries

**Fnac/Darty, 2016, ‘brown’ and ‘grey’ goods**

Authorité de la concurrence considered brick-and-mortar and online to be in the same market because…

- quick and low-cost delivery
- consumers considering both channels equally
- merging parties considered online competitors in their commercial and pricing strategies
Increased relevance of two-sided platforms for ready-made food delivery

Restaurant A  Restaurant B  Restaurant C  Supermarket?

Restaurant side

Just Eat  Hungryhouse  Deliveroo

Consumer side

Just Eat single-homing consumer group  Multi-homing consumers  Hungryhouse single-homing consumer group  Deliveroo single-homing consumer group
Two potential implications of platforms

1. Indirect network effects in platforms → higher price elasticity for platforms than traditional markets → SSNIP test may lead to wider market definition than elsewhere

2. 2 sides, 2 markets vs. 2 sides, 1 market
Part II
Assessment of market power
A richer methodological toolbox?

- Consumer surveys are the traditional source of data (e.g. Just Eat/Hungryhouse; ASDA/Sainsbury’s).
- Online experiments (using lessons from behavioural economics) may also be relevant.
- Online players may hold more consumer data, which could be used for econometric analysis.
Increased assessment of coordinated effects

• mergers are assessed for two types of anticompetitive effects:
  - Unilateral effects
  - Coordinated effects

• mergers resulting in possible coordinated effects are more likely in online markets?

  - greater ease of tracking competitor prices
  - ability to offer best price guarantees

  e.g. ASDA/Sainsbury's found concerns on coordinated effects for online, but not offline, markets
Part III
Remedies and conclusions
Remedies

• remedies typically comprise:
  • structural remedies, e.g. divestiture
  • access remedies, e.g. infrastructure, IP
  • ‘firewall’ measures, e.g. data sharing
  • controlling outcomes, e.g. price caps
  • mergers where brick-and-mortar retailers have a geographic overlap are often cleared with divestments

What might remedies look like for online players?
  • might divestments become less relevant?
  • other remedies or new remedies might be used more often
Broader market definition?

Conclusions

Coordinated effects becoming more relevant to merger assessment?

Might divestitures become less relevant? Different remedies?
Further reading

- **Algorithmic pricing**

- **Two-sided markets**
  - Oxera (2019), ‘Competition in the presence of network effects: when fewer is more’, *Agenda*, March
  - Oxera (2018), ‘It’s what you know about who you know: market power in digital platforms’, *Agenda*, December

- **E-commerce and vertical mergers**