

出國報告（出國類別：出席國際會議）

出席本會與 OECD 在泰國曼谷共同
舉辦「第 10 屆競爭政策國際合作計
畫－零售業之競爭議題」研討會報告

服務機關：行政院公平交易委員會

姓名職稱：委員 謝易宏

處長 辛志中

科長 陳俊廷

視察 杜幸峰

專員 楊中琳

派赴國家：泰國

出國期間：97 年 7 月 9 日至 7 月 12 日

報告日期：97 年 8 月 11 日

出席本會與 OECD 在泰國曼谷共同舉辦「第 10 屆競爭政策國際合作計畫－零售業之競爭議題」研討會報告

一、目的：

本會與經濟合作發展組織（Organization for Economic Cooperation and Development, OECD）自民國 88 年起，即在東南亞地區舉辦「競爭政策國際合作計畫」（International Cooperation Program on the Competition Policy），以研討會（seminar）方式，針對特定競爭政策或競爭法主題進行研討，以協助推動東南亞各國對競爭政策之理解及競爭法之制訂與實施。研討會舉辦至去（96）年共歷 9 屆，研討會之會議形態主要由本會委員及 OECD 顧問 Mr. Terry Winslow 共同主持，OECD 邀請專家與會，本會邀請東南亞地區競爭法或相關主管機關官員參加，針對會議主題提出報告，與會人員共同就報告內容討論。過去 9 屆中，受邀請之國家或地區包括：香港、越南、泰國、馬來西亞、印尼、印度、巴基斯坦、蒙古、俄羅斯、新加坡，受邀之 OECD 專家則包括日本、韓國、澳洲、紐西蘭、美國、瑞典等會員國競爭法官，成效卓著，頗受東南亞地區國家之肯定，對東南亞各國競爭法之執行有相當之助益，而本項研討會亦為本會對 OECD 重要貢獻，更為本會在國際交流之重要活動之一。

在歷經九屆活動後，OECD 推廣組組長 Mr. Edward Whitehorn 去（96）年 11 月來台訪問時，曾就本項合作計畫未來之會議形態及內容與本會代表交換意見，雙方決定會議型態略作變革，並由本（97）年度起，OECD 將派遣原主持韓國區域競爭中心之資深經濟學者 Dr. Kenneth Danger 負責本項研討會。經持續與 D 氏聯繫討論後，雙方同意會議規劃內容如下（議程如附件 1）：

- （一） 會議日期：97 年 7 月 10-11 日。
- （二） 會議地點：泰國曼谷 Arnoma 飯店。
- （三） 會議主題：考量本研討會歷次討論已包含競爭法有關之獨占、結合、聯合行為及競爭政策等議題，此次擬以個別產業議題作為研討題目。衡酌目前東南亞國家甚為關切零售業衍生之競爭事項，本次主題訂為「零售業之競爭議題(Competition Issues in Retailing)」。
- （四） 會議型態：本次會議將由以往各參加國家提出報告後討論形式，改為：
 - 1、 先由本會對參加國寄發問卷，請參加國填列回覆，以彙整各國產業競爭法執法實況。
 - 2、 增列分組討論，由 OECD 邀請專家提出假設性案例，參與人員分組討論後提出報告。
 - 3、 由各參加國就零售業所遭遇之競爭問題及處理方式於會中提出討論分享。

二、過程

本會於 5 月中即對高棉、香港、印度、印尼、馬來西亞、巴基斯坦、菲律賓、新加坡、越南等國及地區寄出邀請函及發出問卷（附件 2），並請其於期限內報名及填具問卷。回函報名及填具問卷之地區及國家計有：高棉、香港、印尼、馬來西亞、蒙古、巴基斯坦、菲律賓、新加坡、泰國、越南及我國等國及地區（參加人員名單附件 3）代表計 22 位，惟高棉及菲律賓代表於開會前二天通知本會因故無法出席，但兩國代表皆請本會將其所填問卷資料提供會議討論(如附件 4)。

另 OECD 專家部分，則由 OECD 秘書處官員 Dr. Kenneth Danger 負責邀請，計有英國競爭委員會（Competition Commission）資深調查組組長（Senior Director of Inquiries）Mr. Andrew Taylor，澳洲競爭及消費者委員會（ACCC）國際科科長（Director of International Unit）Mr. Nicholas Heys，日本公平交易委員會(JFTC) 官房國際課課長輔佐(Deputy Director of International Affairs Division)Ms. Naoko TERANISHI 及事務總局經濟取引部取引調査室室長輔佐(Deputy Director of Trade Practices Research Office) Mr. Takuro IKEDA，韓國公平交易委員會企業競爭局轉包契約政策科科長(Director of Subcontract Policy Division, Competition Bureau)Mr. Sung Ha KIM 及加盟與零售科副科長(Deputy Director of Franchise & Tetail Division)Mr. Yung-Shin JANG，及本會辛處長志中（附件 5）。

研討會之主題為「零售業之競爭議題」，區分為二大主軸：「大型零售商之購買力 (Buying Power)」及「大型零售商之低於成本轉售行爲 (Resale Below Cost)」。Dr. Danger 於會前提供四份 OECD 背景文件，請本會傳給各國參加人於會前閱讀，分別為：「低於成本轉售(Resale Below Cost)」、「掠奪性定價前提要件(Predatory Foreclosure)」、「農業之競爭與管制：專買及聯賣 (Competition and Regulation in Agriculture: Monopsony Buying and Joint Selling)」、「多樣化商品零售商之購買力 (Buying Power of Multiproduct Retailers)」，並請各國代表就「零售商之購買力」及「低於成本轉售」兩大議題提供各國經驗於會中報告，每一報告約為 5 分鐘。D 氏並就各國問卷報告內容兩大議題提出問題，請各國代表事先準備，於會議中回答。

會議由本會謝委員易宏及 Dr. Danger 共同主持，7 月 10 日開幕儀式並邀請泰國商業部內貿廳廳長（Director General of Department of Internal Trade, Ministry of Commerce）Mr. Yangyong PHUANGRACH、我國駐泰國代表處曾副代表永光參加。會議首先由本會謝委員及 D 氏歡迎各國代表參加，接著由泰國競爭法主管機關首長商業部內貿廳廳長致詞（如附件 6 照片）。P 廳長表示，對本會與 OECD 所合辦之競爭政策研討會，在第一屆及第十屆皆能選在泰國曼谷舉行，感到十分榮幸。尤其本次所討論之題目為零售業者之競爭議題，對泰國內貿廳非常重要，泰國本土傳統零售業者目前正面臨國外大型超市及量販業者大量設立之競爭問題，本次研討會可提供該該廳執法方向之參考。P 廳長致詞時泰國平面及電子媒體皆來採訪。

如前所述，本次研討會型態由各國專題報告改為專題報告、分組討論及分組報告、各國報告等三大部分，茲分述如下：

(一) 專題報告：本次會議專題報告共有四篇，包括：

- 1、本會謝委員易宏所提「零售業之買方力量(Buyer Power in Retailing)」(附件 7)。
- 2、英國競爭委員會組長 Mr. Andrew Taylor 就該委員會過去 2 年對英國超級市場所做之調查提出「超級市場與競爭議題(Competition Issues and Supermarkets)」報告(附件 8)。
- 3、日本公平交易委員會代表 Mr. Takuro Ikeda 報告「大型零售業者之規範(Regulating Large Scale Retailers)」(附件 9)。
- 4、OECD 官員 Dr. Kenneth Danger 所提「檢視掠奪性問題 (Examining Predation Concerns)」報告(附件 10)。

(二) 分組討論：本次會議最主要變革即加入分組討論項目。各國參加人分為 3 組，由 OECD 邀請專家帶領，就假設性案例內容進行討論(分組討論情形如附件 11 照片)，並於討論後由各組代表提出其討論內容及討論結果。

- 1、買方力量：由澳洲專家負責撰擬假設性案例(附件 12)，問題主要在探討超商經營者以其買方力量，暗示其下游供貨廠商不得供貨給其競爭對手之行爲是否構成違反競爭法行爲。主要探討問題爲：市場範圍界定、買方力量是否構成違反競爭法之判斷，及政府是否該介入規範買方力量行爲。
- 2、低於成本銷售：由韓國專家負責撰擬假設性案例(附件 13)，問題主要探討超商經營者以低於成本之促銷價銷售某一商品(麵包)，是否構成違反競爭法。主要探討問題有：政府是否該規範低於成本銷售行爲？廠商是否具支配力？低於成本銷售行爲究竟係以低價吸引客人來店消費或掠奪性訂價？如何判定？營業額占有率之變化？執法目標是保護競爭或保護競爭者？

(三) 各國報告：各國代表所提之報告主要內容爲分享各國在處理買方力量及低於成本銷售議題之經驗(附件 14)。大多數國家代表表示，其對大型零售商之關切問題皆在對零售商以其優勢購買力對上游供貨商提出不當之要求。至零售商以其強大購買力，壓低購入商品成本，並以部分商品低於成本轉售之行爲，係有益於消費者且對競爭有正面助益，符合競爭法應以大多數消費者利益爲依歸之目標，競爭法主管機關不應過度干預或管制，而與會國家中僅泰國對低於成本銷售定有法令規範。Dr. Danger 並就各國所提報告內容提出質問(附件 15)，在會議中討論。

三、心得

(一) 本次會議從議題之擬定到問卷內容草擬，本會皆全程參與，並與 OECD

專家充分溝通討論，可提升本會在未來主辦國際會議制訂實質議題內容方面之能力。

- (二) 本次對產業議題定為零售業，東南亞國家而言，十分切合其實際需要。目前東南亞因服務業市場開放結果，各國皆面臨大型國際連鎖超商或量販業者進駐所產之競爭問題。此一研討會自然得到各國重視，討論十分熱絡。各國代表在會議休息時間或用餐時候，亦不斷交換意見及執法經驗，真正達到國際交流之效果，而各國代表對本會此次完善之準備，也表達感謝及稱讚之意。
- (三) 本次會議本會辛處長在分組討論時，能適切引導議題討論，楊專員中琳在我國經驗分享方面，皆能妥善說明並適切回應主持人及各國代表所提問題，表現稱職。
- (四) 本項會議因係在國外舉行，本會從議題之準備到會場之準備，須負完全責任，而各項準備工作上常須仰賴各駐外代表處之協助。本次會議承駐泰國代表處經濟組高組長振民及蕭商務秘書燕新全力協助，在勘察、訂定會議場地、及與舉辦地之競爭法主管機關全力溝通，使會議得以圓滿完成。

四、建議事項

- (一) 本會應加強語言訓練，並培訓出席國際會議人才，加強制訂議題、領導討論與會議主持能力，此一會議為本會與 OECD 共同合辦，確為本會培訓人才最佳時機場合，且會議場地在東南亞地區舉行，不致需用大量國外旅費，如能派遣更多同仁參與，必能有所助益。
- (二) 本次會議加入分組討論型式，讓參加代表充分融入課程學習，不再只有聽課與討論，學習效果提升，各國代表反應十分良好，而此一型式之會議在國際會議上已為潮流，並逐漸成為固定模式。本會未來出席國際會議代表須有能力參與討論，或甚至領導討論及假設性案例。
- (三) 議題之選定，亦為會議成功之關鍵。本會應更積極蒐集國際競爭法討論議題，配合東南亞國家共同關切之問題，才能吸引更多參與及討論，使會議更具成效。

OECD - Chinese Taipei FTC International Co-Operation Program on Competition Policy

Regional Seminar

on

Competition Issues in Retailing

**Arnoma Hotel, Bangkok, Thailand,
10-11 July 2008**

Seminar Overview

This seminar will explore competition issues related to buyer power, selling below cost and hypermarkets within the retailing context. Within these broad topics, experts and participants will examine in detail issues relating to market definition, the analysis of economic evidence, and determining when selling below cost is a sign of vigorous competition and when it is not. Experts from a variety of established competition authorities will give presentations and will also motivate the ideas within the broad topics through the use of mini hypothetical case studies.

Attending Experts and Participants

Australia, Cambodia, Hong Kong, India, Indonesia, Japan, Korea, Malaysia, Mongolia, OECD, Pakistan, Philippines, Singapore, Chinese Taipei, Thailand, the United Kingdom, and Vietnam

Seminar Agenda

Thursday, July 10th

8:50-9:15	Registration
9:15-9:35	Welcome and opening remarks: <i>Mr. Yanyong PHUANGRACH, Director General of Department of Internal Trade, Ministry of Commerce, Commissioner Yihong HSIEH, CTFTC and Dr. Kenneth DANGER, OECD</i>
9:35-9:45	Photo Session
9:45-11:00	<u>Buyer Power in Retailing</u> : <i>Commissioner Yihong HSIEH, CTFTC</i>
11:00-11:15	<i>Break</i>
11:15-12:30	Breakout Session: Hypothetical Case Study on Buyer Power Issues: <i>Mr. Nick HEYS, ACCC</i>
12:30-13:00	Discussion of Breakout groups' Conclusions: <i>Commissioner Yihong HSIEH and Dr. Kenneth DANGER, OECD</i>

- 13:00-14:30 *Lunch*
- 14:30-16:00 Competition Issues and Supermarkets: *Mr. Andrew TAYLOR, United Kingdom Competition Commission*
- 16:00-16:15 *Break*
- 16:15-17:30 Regulating Large Scale Retailers: *Ms. Naoko TERANISHI & Mr. Takuro IKEDA, JFTC*

Friday, July 11th

- 9:30-10:45 Roundtable Discussion of Country Experiences with Buyer Power in Retailing
- 10:45-11:00 *Break*
- 11:00-12:30 Competition and Below Cost Retailing: *Dr. Kenneth DANGER, OECD*
- 12:30-14:00 *Lunch*
- 14:00-15:15 Breakout Session: Hypothetical Case Study on Selling-side Issues in Retailing:
Director Sung Ha KIM, KFTC
- 15:15-15:30 *Break*
- 15:30-16:00 Discussion of Breakout groups' Conclusions: *Commissioner Yihong HSIEH and Dr. Kenneth DANGER, OECD*
- 16:00-17:00 Roundtable Discussion of Country Experiences on Below Cost Retailing or Other Selling Issues
- 17:00-17:30 Closing Remarks



May 15, 2008

Dear Sir/Madam:

On behalf of the Chinese Taipei Fair Trade Commission (CTFTC) and the OECD it is my great pleasure to invite the **Ministry of Commerce of Cambodia** to a seminar on “Competition Issues in Retailing.” This particular event marks the 10th anniversary of this long standing seminar series and on this occasion the event will be held in Bangkok, Thailand from 10-11 July 2008.

This seminar is designed for policy-making and working level officials from either new or developing agencies within the Asian region. Instead of focusing the discussion on the interaction of competition law and other economic policies as we have in previous years, the seminar series will now begin examining competition issues in specific sectors. Competition in retailing was chosen to lead off this seminar series because it has emerged as a significant issue in many Asian economies. As indicated in the attached agenda, the seminar will examine buyer power and selling side issues as well as issues that relate to hypermarkets. Hypothetical case studies and roundtable discussions will allow participants to come to grips with the practical side of cases and allow participants time to discuss retailing issues that relate to their own economy.

To help aid the roundtable discussion we kindly ask you to fill out the questionnaire on competition issues in the retailing sector and return it to us before 10 June, 2008. During the roundtable discussions, we would like a delegate from your country to make two presentations on buying and selling side concerns associated with retailing within your country. Each presentation should last no more than 5 minutes.

To help ease travel costs, the CTFTC is pleased to provide for the cost of a return economy class airfare ticket and will provide 3 nights of accommodation and meals **for 2 officials**. A detailed list of the expenses covered by those attending this seminar is attached to this invitation for your perusal.

The seminar will be held at the Arnoma Hotel, which is located in the center of Bangkok, Thailand. This superb venue provides not only excellent facilities for the seminar but also an opportunity to explore the beauty of Bangkok. In order to confirm your participation in the event, we kindly ask you to complete the enclosed registration form.

If you have any questions about this seminar, please do not hesitate to contact either Mr. Chen Chun-Ting at anabebe@ftc.gov.tw or Mr. Eric Tu at hftu@ftc.gov.tw. Both Mr. Chun-Ting and Mr. Tu can also be reached by FAX at (+886-2) 23975075.

Sincerely yours,

Kwang-Yu HU
Director
Department of Planning
Chinese Taipei Fair Trade Commission

Attachment A



ORGANISATION
FOR ECONOMIC
CO-OPERATION
AND DEVELOPMENT



General Information

International Co-Operation Program on Competition Policy Regional Seminar

on

Competition Issues in Retailing

July 10 & 11, 2008

Arnoma Hotel, Bangkok

Seminar details are as follows:

1. Venue

Arnoma Hotel, Bangkok

99 Rajdamri Road, Pathumwan, Bangkok, Thailand

Phone: (66 2) 255 3410 255 3444

Fax: (66 2) 1 701777

E-mail: sales@arnoma.com

Website: www.arnoma.com

2. Accommodation

The Arnoma Hotel, Bangkok is the conference hotel and the conference venue. CTFTC will book accommodation for all participants. Registration details (as contained in Attachment B) should be submitted prior to **June 10, 2008**.

3. Food and Drink

The Seminar participants will be served breakfasts, refreshments, luncheons and the seminar dinner on July 10, 11 and breakfast of July 12. Additional food expenses, including dinner on the evening of July 9, are to be borne by the participants. Basic refreshments such as soft drinks in the dinner will be provided, but all other beverages will be charged to the participant's personal account, which can be settled on departure.

4. Participation Expenses

Lodging expenses of all participants are to be provided by CTFTC for July 9 to 11. (3 nights, but other personal expenses for hotel services, such as telephone, fax, laundry, etc., are to be borne by the individuals.)

Attachment A

CTFTC will also cover a round-trip economy class airfare for all participants from the Capital to Bangkok, Thailand. Transportation costs between Bangkok Airport and the venue (US\$ 40) will be provided during the registration session. Please note that those shall be signed as proof of attendance. Other personal expenses, such as domestic transportation services, are to be borne by the individuals. Please contact Mr. Eric TU to get your electronic air tickets (round-trip economic class).

5. Participants

Two delegates will be invited from each visiting country, and four delegates will attend from Mongolia and the host country, Thailand.

6. Language

The program will be conducted in English.

7. Agenda

The OECD will invite speakers and experts from OECD member countries and other international organizations to provide their various national and international perspectives on the relevant issues. A draft agenda is attached for reference.

8. Questionnaires and presentation materials

Each delegation is requested to fill in the attached **questionnaires** and return along with the **two 5-minute presentation files** (buying and selling side concerns associated with retailing within your country, please see the invitation letter and the agenda) by email to Mr. Eric TU at hftu@ftc.gov.tw or Mr. Chun-Ting Chen at e-mail anabebe@ftc.gov.tw or at fax 886-2-23975075 before June 10, 2008.

9. Inquiries

Fair Trade Commission

Tel : 886-2-2397 5019 Fax : 886-2-23975075

Mr. Chun-Ting Chen, Section Chief E-mail : anabebe@ftc.gov.tw

Mr. Eric Tu, Senior Officer E-mail : hftu@ftc.gov.tw

Attachment B



International Cooperation Program on Competition Policy

Regional Seminar

On

Competition Issues in Retailing

July 10-11, 2008 Arnoma Hotel, Bangkok

Registration Form

Please return the registration form to the following address via fax or email before June 10, 2008

Eric TU

Senior Officer, Department of Planning

Fair Trade Commission

14th Fl., 2-2 Chi-Nan Road, Sec. 1, 100 Taipei, Taiwan

Fax: 886-2-2397-5075

Tel: 886-2-2397-5019

E-mail: hftu@ftc.gov.tw

Seminar Participant:

(Please Print Clearly)

Name (same as passport) : _____

Title: _____

Gender: _____

Organization: _____

Address: _____

Postal/Zip Code: _____

Country: _____

Tel: _____

Fax: _____

E-mail: _____

Dietary: _____

Date: _____ **Signature:** _____

ATTACHMENT C

Questionnaire on Competition Issues in Retailing

In this seminar, we will explore competition issues related to buying power, selling side concerns, and restrictive and unfair competition practices within the retailing context. A portion of this seminar will be devoted toward roundtable discussions. To help facilitate those discussions, we kindly ask you to fill out the enclosed questionnaire and return it by **10 June, 2008**. Please keep in mind that **a delegate from your country will be asked to make a presentation lasting no more than 5 minutes during each of the two roundtable discussion sessions**. You should feel free to cover issues that you feel are the most important to your authority during your presentation. That is, you do not need to answer all or even most of the questions outlined below during your presentation.

Please e-mail this completed questionnaire along with the two presentation files to Mr. Eric TU (hftu@ftc.gov.tw) before June 10, 2008.

General Questions

1. How has the retailing sector evolved in your country over the last 5-10 years? What trends have emerged?
2. What are the market shares of the major retailers? How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.
3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?
4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?
5. What retailing sector investigations have been initiated in the last 5 years?

ATTACHMENT C

What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

6. Does your country have any planning regulations that impact the retailing sector?
7. How has your country dealt with foreign investment in the retailing sector? Are there any rules or regulations that impact competition in regards to foreign investment?

Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?
2. Has your authority issued any statements or guidelines pertaining to buying power?

Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?
2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?
3. Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?
4. Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

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HONG KONG CONSUMER COUNCIL RESPONSE TO QUESTIONNAIRE ON COMPETITION ISSUES IN RETAILING IN ASIA

GENERAL QUESTIONS

Q1. The grocery retailing sector in Hong Kong evolved over last 5-10 years as follows:

1. From the United States Department of Agriculture 2005 Global Agriculture Information Report, it is noted that whilst the supermarket category constitutes a very small number of Hong Kong's total retail outlets, its share in terms of retail sales was significant, i.e., 44% of total sales in 1995, 45% in 1996, 44% in 1997, 54% in 1998, 1999 and 2000 and to 53% in 2004.
2. According to the Census and Statistics Department, the number of supermarket operators, including both conventional supermarkets and convenience stores in 1996 was about 132, with 9 operators, each of which had five or more outlets and 123 operators, each of which had less than five outlets. In comparison, the statistics in 2004 revealed a figure of 85 supermarket operators, with only 9 operators each of which had five or more outlets. The figures showed a substantial decline of small operators by approximately 42% within 9 years.
3. Moreover, statistics in 2004 indicated that supermarket operators that have either one or less than five outlets contribute very little floor space, less than 2%, to the total sector compared to larger operators. For example, the largest Park n Shop superstore in Hong Kong had a floor area of 72,000 square feet and sold over 20,000 product categories. The largest Wellcome superstore in 2001 had a floor area of 54,000 square feet.

Q2 Market shares of the major retailers and informal sector

4. In the Hong Kong Consumer Council (CC) 2001 survey also studied the number of monthly visits to supermarkets (Figure 1) and consumer expenditure of purchasing goods, including groceries and fresh food in supermarkets (Figure 2).

Figure 1: The Number of Monthly Visits to Supermarkets

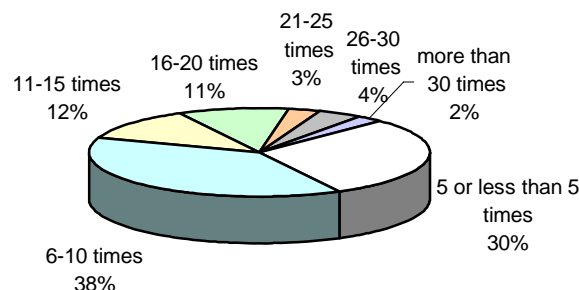
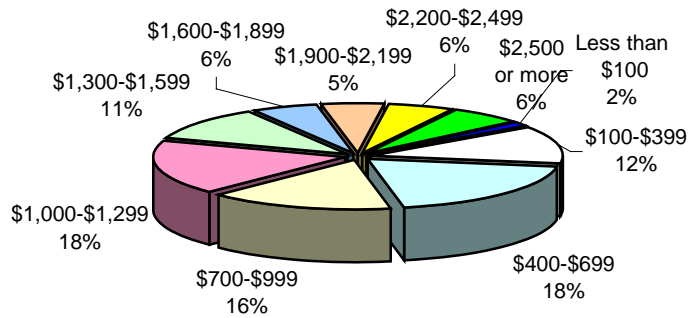
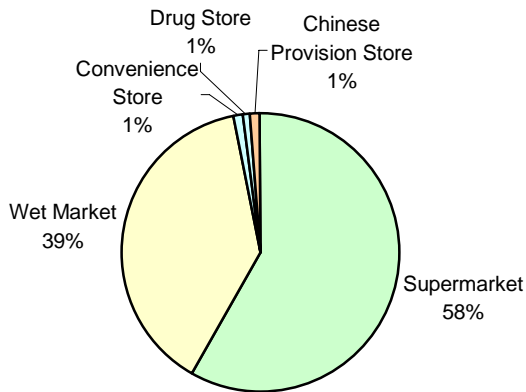


Figure 2: Consumer Expenditure of Purchasing Goods Including Grocery Goods and Fresh Food in Supermarkets



- It was noted that 32% of surveyed households have more than 10 trips per month to supermarkets for shopping. The majority of respondents, 38%, had 6 to 10 trips to supermarkets in a month. Concerning their monthly expenditure in supermarkets, more than half, 52% of the respondents, spent \$400 to \$1,299 in a supermarket a month.

Figure 1: Major Shopping Outlet for Grocery Items¹



- In the CC Report on Fresh Food market in 2003 updated its 1994 report, it found

“In the six years from 1996 to 2001, there has been a substantial decline of small supermarket operators by approximately 41%. From 1993 to 2003, the two major supermarket chains have grown 29% by number of retail outlets (31% for Wellcome and 28% for Park n Shop respectively). Having regard to a number of variables, such as the number of outlets and share of brand names (turnover), they can be considered at the threshold level of market concentration standards in guidelines

¹ Source: Study on Shopping Habits and Revision of HKPSG 1997, Figure 3.4

issued by overseas competition authorities that warrant further attention should any mergers or acquisitions occur in the sector.

7. All the major supermarket chains expanded their number of outlets after 1993.

Development of Key Supermarkets - Number of Outlets²

Supermarket	1993	2000	2001	2002	2003
Wellcome	185	235	250	247	242*
Park n Shop	165	189	210	207*	211*
CRC	37	66	70	78	79

8. In a 26 September 2006 *Trends and Insights* publication by AC Nielsen it was reported that in Hong Kong, Singapore and the Pacific Rim the ‘modern grocery trade’ accounts for more than 90% of packaged grocery sales and the markets are dominated by a limited number of retail chains. Supermarkets are the most frequently used channel for the vast majority of shoppers, typically visiting an outlet twice a week or more.

Q3 Concerns been raised as a result of the restructuring of the retail sector:

9. In CC 2003 study it examined the dynamics that exists in the foodstuffs and household necessities retailing sector and pointed to the gradual decline of the wet market sector. CC did not intend that success should be penalized in the supermarket sector, rather CC put forward a case that Hong Kong would benefit from a vibrant food retailing market with multiple operators where competitive choices will be available, and a win – win situation can be attained for all.
10. The CC identified the need for a paradigm shift by wet market operators. It supports government policy makers to adopt new policy objectives and strategies for wet market development, and where financially feasible, the re-engineering of wet market operation and retraining of the workforce. While dislocation of workforce as emerged from the study is not a consumer issue, the decline of the wet market industry will affect consumer interest in product choice, price and quality.
11. CC put forward recommendations and options on these and other issues with a view to stimulating public debate and emphasising that something needed to be done in 2003 if Hong Kong was truly concerned with competition within this sector; with the need to contain our unemployment problem; and in maintaining Hong Kong's competitiveness and truly unique characteristic as Asia's World City.

Q4 Types of Complaints

² Notes:

- 1993 figures are extracted from the Council's 1994 report, *Report on the Supermarket Industry in Hong Kong*.
- 2000 - 2001 figures are collected from the supermarket companies themselves and press reports.
- * are figures calculated from address lists of respective company's websites.
- KK closed all its 39 outlets in June 2001.

12. A survey conducted by the Chinese University of Hong Kong Marketing Department³ in 2006 found that 71% of 46 respondents (from a total of 121 suppliers surveyed) claimed to have exclusivity restraints placed on them⁴. The presence of exclusivity restraints would seriously restrain any attempt by new entrants to secure market share; and might be a factor in impeding the Supplier from finding alternative sources of retail. If suppliers' major retailers were supermarket-only, an overwhelming majority of them (65% - 84%) had been subjected to the demands of all but one of listed restricted operational practices (identified by CUHK) by the supermarkets.
13. Similarly, it was found that if suppliers were dependent on a single type of retailer, a greater proportion of them (80%-93%) were subjected to more restrictions and demands imposed by the retailers. A greater proportion (35.1% - 54.2%) of larger suppliers (i.e. suppliers with annual sales value of more than HK\$50,000,000 and medium suppliers, those with annual sales value between HK\$5,000,001 – HK\$50,000,000) were subjected to more restrictions and demands in comparison with the smaller suppliers (annual sales value of less than HK\$5,000,000) (8.9% - 20.3%)⁵. In other words, the presumably greater bargaining power of larger suppliers (*vis a vis* other smaller suppliers) “*did not provide them with an upper hand in the power and conflict balance with the retailers*”.
14. Another important factor in determining the extent of buyer power concerns is about the issue of listing fees. A 2005 US Department of Agriculture GAIN Report p 9 noted that almost all Hong Kong supermarkets require listing fees (defined as a fee charged to allow a new product to be put on their shelves). The listing fees are claimed to be extremely negotiable and vary greatly among different supermarket chains. The report notes:

“For example, Wellcome and Park n Shop, which have many branch stores, have expensive listing fees. A product with five SKU categories is expected to pay US\$26,000 to US\$39,000. On the other hand, Jusco, a supermarket in a Japanese department store, charges US\$150 for all its stores. The agent will not bear this cost, which is transferred to the principal. In short, all supermarkets require listing fees except those belonging to Japanese department stores. (Jusco is the only Japanese department store/food retailer that requires a listing fee.).....”

Q5 Retailing Sector Investigation in the last 5 years

15. There are two studies: one by CC “Wet Markets vs Supermarkets: Competition in the Retailing Sector” and other is commissioned by the HKSAR Government conducted by CC on a complaint against a supermarket operator on an anti-competitive practices.
16. The 2003 study was initiated by a number of complaints on the sector. On 26 June 1999, a new company, adMart, began retailing food products and household goods by way of direct sales. The attraction of its innovative strategy lay in aggressive pricing and offering delivery services. Its emergence triggered price competition by

³ The survey was undergone with the assistance of CC.

⁴ <http://www.cuhk.edu.hk/cpr/pressrelease/070314e.htm> Survey on Hong Kong's Retailing Industry Reveals that Unfair Practices Generally Exist in Supplier / Retailer Relationship

⁵ Op Cit CUHK Marketing Department Survey

the two major supermarket chains in Hong Kong. In August 1999, there were allegations publicized in the mass media that supermarket chains had exerted restrictive pressure on suppliers to withhold supply from adMart.

17. In October 1999, a chain store lodged a complaint with the Council that its trade orders for mooncakes were withheld by a moon cake supplier, under pressure from some supermarkets during the peak-selling weeks leading up to the Mid-Autumn Festival. The refusal to supply resulted from the chain store declining a request from the supplier to increase its selling price in line with the supermarket chains.
18. In mid-March 2000, a sign was put up on empty shelves of a supermarket's stores alleging that supplies of a popular brand of drink were being withheld by the supplier as a consequence of the supermarket's low retail price. The case caught media attention, and news articles appeared in late March 2000, followed by commentaries over radio.
19. In August 2006, a supplier ("the Supplier") lodged a complaint to the Government that a supermarket ("the Supermarket") had engaged in anti-competitive conduct. Specifically, the Supplier claimed that –
 - (a) the Supermarket had unilaterally raised the retail price of the Supplier's products above an agreed level; and
 - (b) after displaying the Supplier's products for only a few months, the Supermarket had removed them from its shelves upon the launch of similar products under its own brand name, despite the Supermarket's earlier indication that the fee paid by the Supplier covered a one-year period.

Q6 and Q7

20. There are some regulations on floor space of the retailing sectors regarding to the population but not on the types of retailing. There are specific rules or regulations that impact competition in regards to foreign investment.

BUYING SIDE CONCERNS

Q1 & Q2

21. In Hong Kong, there has no specific rule or regulation and any statement or guidelines pertaining to buying power that govern relationships between suppliers and retailers. However, the Hong Kong Retail Management Association (HKRMA) has in place a Code of Practices for the Supermarket Sector.

SELLING SIDE CONCERNS

Q1-Q5

22. Since Hong Kong does not have a comprehensive competition law, no regulation on resale price below cost but it is believed that loss leaders practices are common practices in Hong Kong retail grocery market.
23. There is no statement or guideline pertaining to other selling side issues associated with retailing such as slotting fees, private label and selling practices, etc.

Annex 1

Hong Kong Retail Management Association Code of Practices for the Supermarket Sector Sector-specific self- regulation of restrictive practices

In compliance with the HK Government's guidelines on restrictive practices as listed in the Statement on Competition Policy, the Supermarket Sector employs a Self-Regulated Code of Practices to Promote Competition, thereby benefiting consumer welfare.

The following practices should be adhered to by HKRMA members operating within the supermarket sector:

1. All reasonable efforts will be made to ensure that the consumer is provided with the optimal value and choice possible within the current market environment.
2. There will be no attempt to distort the normal operation of the market through any manipulation of pricing which may have the effect of restricting free trade or final consumer choice.
3. No actions will be undertaken which may restrict the supply of goods or services that may in turn result in the restricting of free trade or final consumer choice.
4. No agreement will be undertaken to divide or share any market based on geographical or socio economic basis which may have the result of restricting free trade or final consumer choice.
5. There will be no attempt to implement unfair or discriminatory standards with the purpose of denying any potential newcomers access to the market place.
6. There will be no discriminatory deprivation of supply or choice which may have the effect of restricting free trade or final consumer choice.
7. There will be no setting of artificial retail price minimums for products where there are no ready substitutes.
8. There will be no rental bid rigging that leads to lower rents than would be available under normal operation of the property market.
9. We will look to develop long term sustainable business relationships with all suppliers with the joint objective of providing optimal choice and value to the final consumer.
10. We commit to being both open and transparent in all dealings with all existing & potential suppliers.
11. No attempt will be made to mislead the customer by falsified advertising. We commit to ensuring that all press and TV advertising is an accurate reflection of in store pricing.
12. We commit to take a proactive approach in all managing all consumers' concerns and will provide timely and accurate responses to these concerns where necessary.

Questionnaire on Competition Issues in Retailing

The seminar will explore competition issues related to buying power, selling side concerns, and restrictive and unfair competition practices within the retailing context. A portion of the seminar will be devoted toward roundtable discussions. To help facilitate those discussions, please refer to completed questionnaire as follows.

General Questions

How has the retailing sector evolved in your country over the last 5-10 years? What trends have emerged?

Indonesian retail sector has developed rapidly for the past five years. This growth was dominated by traditional and modern market, notwithstanding traditional market was evolved gradually. This trend is express by numbers as follows:

Sector	2004	2005	2006
Traditional store	1.745.589	1.787.897	1.846.752
Convenience store	154	115	120
Supermarket	6.560	7.606	8.667
• sub-supermarket	956	1.141	1.311
• mini market	5.604	6.456	7.356
Large format store	90	107	131
• hypermarket	68	83	105
• warehouse clubs	22	24	26
Total	1.752.393	1.795.725	1.864.468

Source: AC Nielsen

What are the market shares of the major retailers? How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

Market Share for Hypermarket

(Based on retail value RSP excluding Sales Tax)

Hypermarket	in percentage			
	2004%	2005%	2006%	2007%
Carrefour Indonesia, Corp	49.6	56.4	53.2	54.5
Matahari Putra Prima, Corp	5.7	17.5	23.0	23.7
Hero Supermarket, Corp	22.5	23.9	23.1	21.3
Lucky Strategies, Corp				0.6
Mutiara Ritelinti Wira, Corp	6.0	2.2	0.7	
Alfa Retailindo, Corp	16.3			
Others	0.0	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0

Source: Euromonitor, 2008

This data shown that market share by modern retailer (especially hypermarket) has grown significantly, particularly for three major retailers, Carrefour, Hero, and Matahari.

Informal sector consumes quite number of individual sellers, although can not be defined separately. Small retailer such as informal sector is divided in two types, the street-side vendors (that considered as competitor for traditional market and often create barrier for consumer to enter a traditional market), and portable vegetable's vendors (PVV) as one of the main chain in vegetable's distribution for society. PVV is considering effective in distributing vegetables to the housing district.

What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

Retail sector is developing in the way of changes in society. In the past, the availability of goods became main indicator for a retail sector (traditional market in general) to be visited by the consumer. But today, consumer can not be trigger by this attraction. The existence of modern market, for Indonesian in one side will be an excitement by which they are being flawed with convenience shopping, security, variety of product, and quality of product provided, and (of course) cheaper products due to the existence of competition in the market. In the other side, modern retailer also could eradicate small retailer (mom and pop store) and increase degree of dependency of supplier to the modern retailer which will lead to the potency of abuse of superior bargaining position.

What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?

Complaints are mostly come from association of traditional vendors (who is being exterminated due to modern market development) and association of supplier for modern market (who is being exploited by modern retailer). Mostly these issues was related to unfair business practices, such as abuse of buying power which led to abuse of dominant position by modern retailer.

What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

Over the past five years, KPPU has investigated several issues on retail sector as follows:

- a. Case on extermination of traditional business actor by modern retailer (Case No. 03/KPPU-L/1/2000)
- b. Case on relation between supplier and modern retailer, the Carrefour case (Case No. 02/KPPU-L/2005)
- c. Acquisition of Alfa Retalindo, Corp by Carrefour, Corp. (two majors retailer in Indonesia)

Brief explanation on Case No. 02/KPPU-L/2005

In this case, Suppliers deemed that the trading terms was difficult to apply, particularly on items requiring listing fee and minus margin, because each year Carrefour always adds additional trading terms, increasing the cost and fee percentage. Minus margin was suppliers' guarantee to Carrefour that their product selling price was the lowest selling price. If Carrefour obtained written evidence that its competitor could sell the same product with cheaper price than Carrefour's purchasing price, Carrefour had a right to ask compensation from suppliers as amount as difference price between Carrefour's purchasing price with competitor's selling price.

Compensation obtained by Carrefour through applying minus margin sanction was suppliers' invoice deduction without giving a chance to suppliers to prove that suppliers did not conduct discrimination of selling price. Invoice deduction was calculated by multiplying price difference with amount of the suppliers' rest of product in Carrefour shop.

The facts founded in investigation, Carrefour used its bargaining power to push down suppliers in order to accept the addition of item trading terms, cost increase and percentage of fee trading terms. Form of pressure conducted such as : holding the payment in due, breaking the cooperation one side not to sell suppliers' products by not issuing purchase order, decreasing order amount of suppliers' product item.

Considering that Carrefour had market power in relevant market, the Commission Council stated that Carrefour in carrying out its business activity needs to pay closer attention to the following issues:

- every item of trading terms applied to suppliers should provide added value for both Carrefour and suppliers (partnership win-win solution);
- not doing a such difficulty to suppliers particularly small and medium business category when conducts negotiating;
- not applying excessive trading terms to suppliers.

Brief explanation on Case No. 03/KPPU-L/I/2000

This case was involved competition between modern retailer and traditional market. This case was begun by report from society in Sukabumi area that claimed most of small traditional retailer in that area was suffer from losses since the establishment of Indomaret, a chain convenience store. This was due to:

- a. lowest price strategy by Indomaret and continuous discount program;
- b. Indomaret armed with abilities to control the market, financial advantage, and distribution chain.

Based on examination, KPPU ordered Indomaret to stop their expansion that head to head with the traditional market and to involved society with a franchise system. KPPU also recommended the Government to enhance their regulations in zoning, opening hour, social responsibility, and empowerment of small and medium enterprises.

Brief explanation on acquisition of Alfa Retailindo, Corp. by Carrefour Indonesia, Corp.

Carrefour, Corp. was officially acquire 75% of Alfa Retailindo, Corp. Based on our statistic, Carrefour Indonesia, Corp. has Rp 7.2 trillion market sales and had became a market leader in Indonesia. Alfa was ranked at eight with total market sales of Rp 1.9 trillion. Alfa Retailindo has 29 (twenty nine) supermarkets all over Indonesia, as Carrefour obtained 37 (thirty seven) hypermarket's outlets. With this acquisition, Carrefour Indonesia, Corp. desires to vigor their position as a market leader in Indonesian food retailing. KPPU received reports from the Indonesian association for merchants that exterminated by rapid growth of modern market and from the Indonesian association for suppliers that asserted their weak position in facing the strong bargaining position by modern retailer.

Does your country have any planning regulations that impact the retailing sector?

Yes. Indonesian government was enacting the President Decree No. 112/2007 on Organization of Traditional Market, Department Store, and Modern Stores. The proposed regulation mostly dealt with protections for small retail business and small supplier.

How has your country dealt with foreign investment in the retailing sector? Are there any rules or regulations that impact competition in regards to foreign investment?

The Government policies related to foreign investment in retail sector pour into the President Decree No. 96/2000 and No. 118/2000 on Closed Investment and Open Investment under Certain Specification for Capital Investment. This regulation allowed foreign investment to enter investment for mall, supermarket, and department store. Furthermore, the President Decree No. 112/2007 stated that retail sales, such as supermarket with selling area less than 1,200 sqm, department store with selling area until 2,000 sqm, and convenience store with selling area until 400 sqm, can only be done by domestic investor and close for foreign investment. These regulations affected competition structure in retail sector, especially with the acquisition of Alfa (supermarket) by Carrefour (hypermarket).

Buying Side Concerns

Does your country have any rules or regulations that govern relationships between suppliers and retailers?

Yes. The Government through the President Decree No. 11/2007 standardized cooperation between suppliers and retailers that involving certain trading terms.

Has your authority issued any statements or guidelines pertaining to buying power?

Nowadays, KPPU is developing a guideline on buying power and abuse of dominant position.

Selling Side Concerns

Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

Based on the definition of resale below cost, Indonesia doesn't have any regulation on prohibition of resale below cost in retail sector.

Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Yes, the main dilemma on association between retailer and supplier is potency for abuse of dominant position by a dominant retailer to squeeze its retailer and used loss leader and resale below cost strategy which didn't gave benefit to supplier. Nowadays, there is no specific regulation on these issues.

Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?

We do not have any specific regulation in pertaining to predation.

Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

Not yet. Nevertheless, KPPU is going to formulate a guideline on buying power and potency for abuse of dominant position for retailer and supplier.

Answer

1. The distributive trade sector is one of the biggest sector in the Malaysian market. Malaysia is facing strong demand on the retailing sector especially from the foreign participation that operates in the form of hypermarkets. For the past 5 to 10 years, the new concept of retailing has evolved in this complex sector whereby varieties of options are widely available to the consumers and the market as a whole. Those new concept of retailing in Malaysia includes *Hypermarket, superstore, departmental store, mini market, mom and pop stores, night market, wet market and agro market.*

2. Due to the attractive and conducive climate, the retailing which includes the opening of hypermarkets indicates a positive growth.

Hypermarkets	In operation	Not in operation	Total
Foreign	62	37	99
Locals	9	4	13
			112

Till to date, there are 112 approved applications with 71 of the total approvals given is still in operation.

Hypermarkets	In operation	Not in operation	Total
Carrefour	13	9	22
Giant	30	11	41
Tesco	19	17	36
Pacific	5	2	7
Mydin	4	2	6
	71	41	112

3. n/a
4. n/a
5. n/a
6. Malaysia had conducted several studies and economic need test to seek the balance between the growth of foreign and local retailers. These studies are the outcome of the current Guidelines for Foreign Participation in Distributive Trade Sector.
7. Yes, Guidelines on Foreign Participation in the Distributive Trade Sector
8. Yes, for retailing sector, the Foreigners must comply with the condition set forth in the guidelines.

Buying Side Concerns

1. Besides Contracts Act, there are no regulations as to date
2. No

Selling Side Concerns

1. No
2. Yes, there are practices of loss leader. But there are no current regulations to govern these activities.
3. No.
4. Trade Descriptive Act which ensures retailers to publish price for transparency in transaction.

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Questionnaire on Competition Issues in Retailing

General Questions

1. How has the retailing sector evolved in your country over the last 5-10 years? What trends have emerged?

In connection with rapid economic growth within our own country and regional development, many sectors including agriculture, mining, construction, and food underwent a dramatic transformation period.

The result has been a massive increase in the number of retail stores and types of them.

While before 1990 retailing store types were limited to only few varieties such as Department store, commodity store and kiosk, nowadays according to 2007 revised standards for trade place, service and general requirements MNS 5021:2007 by Mongolian national committee for standardization and metrology following 5 general types of retail stores have been reported:

-Hypermarket and Container sale

-Department store

-Supermarket

-Mini market

-Kiosks

It shows a constant increase in amount of income of retail in comparison with overall trade: 2004-304.2, 2005-353.8, 2006-546.1, 2007-635.2

Number of enterprises in retailing sector is growing versus last years: It has reached 5338 in 2007 which shows an increase of 6% versus 2003 (2003 5026, 2004 4545, 2005 4717, 2006 5186).

Moreover, retail represents from 44 up to 50% of total annual sales revenue.

2. What are the market shares of the major retailers? How important is the informal sector?

When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

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3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

In 1990-ies in transition period, where state owned enterprises began to be privatized, totally different sector policy was to be carried out; private ownerships started developing. In the beginning it affected buying capacity of consumers massively. They were devastated because the value of currency (Tugrug) dropped immediately due to inflation. Buying power was equally low.

4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?

Recently, price increase of fuel, and diesel products, and other consumer goods raised number of issues in the societies.

Due to conditions emerged in respective markets, UCRA are conducting series of researches on our initiatives.

Since the establishment, UCRA has worked on over 55 cases and it is still hard to classify complaints for they covers number of different problems.

5. What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

In 2007 UCRA conducted an investigation in order to find out whether fuel enterprises breach law on 'prohibiting unfair competition' by increasing their product and service price. There were 7 enterprises included in the investigation.

As a result of the investigation certain issues that can be considered unlawful have been identified: for instance, product and service end price of both 'Altjin' Co.Ltd and 'Petrovis' Co.Ltd was set on the basis of mutual negotiation. Moreover, the fact that they raised their product and service price on same day, at same time period without considering actual facts such as import amount, time, relevant expenditures, price of importing materials and its reserve is an illegal action.

Therefore, UCRA believes that those enterprises were engaged in unlawful conducts by providing wrong and misleading information to consumers in

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relation to products, market conditions, reasons for price increase and services. Those actions violate articles 7, 1, 1 and 10, 1, 2 of 'law on prohibiting unfair competition'.

Moreover, in 2007-2008 in relation to a sudden price increase of some consumer goods such as vegetable oil, wheat and flour UCRA conducted joint investigations with Mongolian Professional inspection agency, Ministry for Food and Agriculture and Consumer Protection Union. During the investigations none of over 10 enterprises (note duplicated number) included the investigation was proved to be guilty of violating Law on prohibiting unfair competition.

6. Does your country have any planning regulations that impact the retailing sector?

We don't have any specific planning regulations that impact the retailing sector. Our Government carries out a rather short term policies only when it's required. In recent years price of fuel, wheat, wheat flour, and bread, consumer goods is constantly rising. Therefore, certain regulations have been through subsidies, tax reduction, exemption from tax and exemption from value added tax.

7. How has your country dealt with foreign investment in the retailing sector? Are there any rules or regulations that impact competition in regards to foreign investment?

Basically, retailing sector is free of any governmental 'intervention'. However, depending on the conditions the market exists in Government take necessary actions such as tax reduction or subsidies for any enterprises regardless of the origin (which country or company invested in the business) of the enterprise.

Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?

There is no specific regulation to govern retail, even trade relationships in general. Even though, a draft of trade law is currently being developed by the Ministry of Industry and Trade. This law is in discussion among legislative bodies. Despite the fact that there is no particular trade law regulating retailing,

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we have other regulations to govern such relationships including:

- Civil law
- Criminal law
- Tax law for individuals ...
- Consumer protection law
- Advertisement law
- Geographic
- And other sector regulations

2. Has your authority issued any statements or guidelines pertaining to buying power?

There are certain regulations governing relations between consumer/ buyer and supplier; for instance, Consumer protection law. Nevertheless, UCRA has not passed any regulations relating to consumer buying power.

Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

There are provisions regulating resale below cost in the 'law on prohibiting unfair Competition'. However, these provisions apply solely to monopolies who try to drive competitors out of business unfairly (through predation) and who purposely create entry barrier for others. Besides, no method or measure for calculating product cost benchmark is specified in the law. Until now, we haven't faced such case.

I have to note that our law is under revision. New law draft might be considered in the State Great Khural/ Parliament meeting in the upcoming session. With this new law it is expected that our work scale, right and responsibilities will extend. Moreover, definition of monopoly might be rewritten.

2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Such practices are common in life. Here, in Mongolia this would be regulated by Mongolian Civil Code or agreement between parties that is supposed to contain all the necessary conditions agreed on the basis of mutual

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understanding. There are no limitations to what the parties might want to specify in the agreement. If agreement is believed to be broken, a party can go to court.

3. Has your authority issued any statements or guidelines pertaining to predation?

If so, please describe them in more detail?

As mentioned above, we have articles pertaining to predation in *law on prohibiting unfair competition which however apply to monopolies*. At the moment, we haven't developed any statement or guidelines to predation yet. Predation however is not common in our economy; at least it has not been reported yet. Therefore, this issue is for the moment not in centre of our attention.

4. Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

Although there is no Trade law or Commercial code as such, issues related to selling side are regulated under Mongolian Civil Code or agreement/ contract. If agreement is believed to be broken by any party, a party can go to court.

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Questionnaire on Competition Issues in Retailing

General Questions

1. How has the retailing sector evolved in your country over the last 5-10 years?
What trends have emerged?

The retailing sector has seen complete transformation over the past decade. Large hyper markets like Metro, Makro, Carrefour and IKEA, Spinnies have made in-roads putting a lot of pressure on wholesalers. This will in years to come change the dynamics of the retail market. Franchising of brand stores is another phenomenon that has changed the buying patterns; levis, hangten, bata, servis, body shop etc.

Concept of retail chains is still new in Pakistan some local companies such as Bonanza, Cambridge, Chen one, Labels and Bareeze etc have open some outlets. The western food chain such as McDonald, KFC and Pizza Hut, etc., too have opened their shops in major cities. The government outlets such as the Utility Stores Corporation must be the largest chain boasting some 13,471 stores all over the country. But that is about all.

Fast Moving Consumer Goods (the “FMCGs”) focus on merchandising activities has intensified the competition for shelf space. The retailers have also started charging for shelf space for the activities undertaken by FMCGs. The retail and wholesale business accounts for over 25 per cent of the GDP with the share of trading even bigger than the manufacturing sector. According to the latest Pakistan Economic Survey, the sector is growing at the rate of 9.9 per cent.

2. What are the market shares of the major retailers? How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

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A survey reveals that Super market, which are approx. 500-600 in number account for only 3-4% of total retail sales. Modern General Store (MGS) and Traditional General Store (TGS) account for more than 50% of retail sale. There are approx. 650,000 stores in this category. Beverage Street Vendor, Corner store, Pan shops, and Medical Stores account for another 20%. Retail sale is made in more than two million tiny stores, mostly on an area less than 40 square meters. Most of these shops are managed by a family. There is no data available on the actual number of such shops in the country.

The informal sector is the major player so far. All the stores mentioned above other than MGS will fall in this sector.

3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

Consumer will be the biggest beneficiary both in terms of cost and time saving. This will also see a trend in an increase in the propensity to consume.

4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?

Price discrimination, quality control, availability of items are some of the concerns.

We have not received any complaint so far.

5. What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

None

6. Does your country have any planning regulations that impact the retailing sector?

7. How has your country dealt with foreign investment in the retailing sector?

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Are there any rules or regulations that impact competition in regards to foreign investment?

Pakistan is open to foreign direct investment and has no restriction on foreign companies owning and operating retail outlets in Pakistan. Moreover, given the fragmented structure of the retailing industry there is no strong and organized lobbying against such inward investment. However, despite this open outlook, companies tend to enter the market through joint ventures with local firms, rather than entering fully fledged, as the risks are perceived as being too big given the uncertain outlook of the region.

Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?

2.

Suppliers and retailers would generally be governed by The Sale of Goods Act, 1930 or the contract Act, 1872 (IX of 1872).

3. Has your authority issued any statements or guidelines pertaining to buying power?

No

Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

No, however, predatory pricing is prohibited (under abuse of dominant position) in terms of Section 3 of the Competition Ordinance, 2007 (Promulgated on 2nd October, 2007)

2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Not exactly so, but the concept of traffic builder is certainly there. These are

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products that generate higher traffic but leave little margin. Traffic builders attract consumers resulting in sales of other items available on shelf.

3. Has your authority issued any statements or guidelines pertaining to predation?
If so, please describe them in more detail?

No

4. Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

No.

ANSWERS TO QUESTIONNAIRES FOR DTI CONCERN ON COMPETITION ISSUES IN RETAILING

On General Questions:

1. How has the retailing sector evolved in your country over the last 5-10 years? What trends have emerged?
 - ✗ The Philippines' retail trade was once again opened to foreigners with the enactment of the Retail Trade Liberalization Act (Republic Act 8762)
 - ✗ More shopping malls are being opened outside the Metro Manila capital region but experience has shown that provincial markets prefer sites that are close to the central commercial district rather than suburban locations.
 - ✗ New shopping center projects in Metro Manila are being sharply focused on upper income class markets.
 - ✗ More retailers are choosing to locate in shopping malls to do business because of the perceived benefits such as location confers to their business.
 - ✗ The entry of business process outsourcing companies from overseas, especially call centers, has increased the demand for stores that operate around the clock. As a result, 24-hour convenience stores have surged in popularity.
 - ✗ More franchise retail concepts are being introduced in the Philippines, in the same manner that quite a few established Philippine retail brands have either made the leap and gone overseas or are seriously thinking of doing so.
 - ✗ Hypermarkets are being introduced in the Philippines not by foreigners but by domestic investors.
2. What are the market shares of the major retailers? How important is the informal sector?
 - ✗ Some of the major retailers in the Philippines include SM Shoemart (department stores, supermarkets, hypermarkets, appliance stores), Robinsons (department stores, supermarkets), Rustans (department stores, supermarkets, hypermarkets), Mercury Drug

(drug stores), National Book Store (book, school, and office supplies store), among others.

- ✘ The informal retail sector is still very important because these stores operate even in economically depressed communities and remote locations, making available to them a diverse assortment of goods in a way that a formal retailing organization cannot. As a result, research has shown that sari-sari stores and traditional wet markets account for ninety percent (90%) of the Philippines' food retail business.
3. What concerns have been raised as a result of the restructuring of the retail trade, if any. What effects has this restructuring had on consumers?
 - ✘ The one major concern that retailers faced was the entry of foreigners in the retail trade and their effect on competition but that their impact was not as great as originally thought. So far foreign investment in the retail trade has been limited to the sale of luxury goods as well as in petroleum retailing.
 4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem warrant investigations?
 - ✘ The Department of Trade and Industry (DTI) receives complaints mostly from the purchase of products by consumers from retailers stemming from consumer products and service warranties, product quality and safety, deceptive, unfair and unconscionable sales acts and practices to hoarding and profiteering. In sum, the complaint covers the relationship between the consumer and retailer with respect to the product purchased and trade practices.
 5. What sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?
 - ✘ In the last five (5) years, the sector investigations initiated by the DTI usually on matters pertaining to violations of consumer protection-related laws and standards laws.
 6. Does your country have any planning regulations that impact the retailing sector?

- ✘ Retail developments must typically conform to the zoning ordinances of the local government unit where it is located. It must also be consistent with the environmental (especially with waste water disposal) and land-use regulations in force in that locality, as well as comply with existing building codes. Other than these, there are little, if any planning regulations that have a significant impact on Philippine retailing.
7. How has your country dealt with foreign investment in the retailing sector? Are there any rules and regulations that impact competition in regards to foreign investment?
- ✘ Foreign investment in the Philippines' retailing sector is primarily regulated by the Retail Trade Liberalization Act and by the Foreign Investments Act.

On Buying Side Concerns:

1. Has your authority issued any statements or guidelines pertaining to buying power?
- ✘ The DTI has not issued any statements or guidelines relative to buying power.

On Selling Side Concerns:

1. Does your country have any law prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact has those laws has in your opinion?
- ✘ There are no express and direct provisions on resale below cost. However, Article 189 of Act No. 3815 or An Act Revising the Penal Code and Other Penal Laws penalizes monopolies and combinations in restraint of trade which is broad enough that may cover the subject matter under consideration.
2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules and regulations that prohibit such conduct?
- ✘ While it is likely that some Philippine retailers have used loss leaders to attract customers into their stores, there are no officially documented incidents to prove if this is true.

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Questionnaire on Competition Issues in Retailing

In this seminar, we will explore competition issues related to buying power, selling side concerns, and restrictive and unfair competition practices within the retailing context. A portion of this seminar will be devoted toward roundtable discussions. To help facilitate those discussions, we kindly ask you to fill out the enclosed questionnaire and return it by **10 June, 2008**. Please keep in mind that **a delegate from your country will be asked to make a presentation lasting no more than 5 minutes during each of the two roundtable discussion sessions**. You should feel free to cover issues that you feel are the most important to your authority during your presentation. That is, you do not need to answer all or even most of the questions outlined below during your presentation.

Please e-mail this completed questionnaire along with the two presentation files to Mr. Eric TU (hftu@ftc.gov.tw) before June 10, 2008.

General Questions

1. How has the retailing sector evolved in your country over the last 5-10 years? What trends have emerged?

Singapore is an urbanized city state with a small open economy, where foreign and domestic firms can invest and grow their businesses. Being a small country, Singapore relies heavily on imports for most goods and products to meet its own needs. To further enhance Singapore's economic growth, Singapore pursues bilateral (or multilateral) trade agreements with other countries and has minimal import tariffs.

In the retailing scene, Singapore has, in recent years, made significant, tangible and intangible investments in positioning itself as a destination of choice for shoppers in the region looking for consumer goods. More land has been set aside for retail purposes, such as setting up warehouse retailing concept in suburban locations. More brands, both local and foreign, have entered into the retailing sector in recent years to suit different consumers' preferences and provide them with more shopping choice. Singapore has

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also been holding nationwide mega-sale events for the past few years to further boost the retail scene.

Landlords have been setting up Real Estate Investment Trusts (REITs) and undertaking a professional management approach to add value to their retail properties, to the benefit of the owners and shoppers alike. With strong demand for retail space from prospective tenants, rentals have inevitably been increasing for the past few years.

The above development has resulted in a more competitive retailing scene where tenants will compete for retail space and shoppers. Consumers have reaped benefits from the increased competition through more choices, better services and competitive prices.

2. What are the market shares of the major retailers? How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

In Singapore, businesses involved in the retail sector would need to get the necessary licences and register with the relevant government agency (depending on the type of retail activities being carried out) before starting businesses. Total retail sales value in the month of April 2008 is estimated at S\$2.8 billion. The CCS does not have details of the market shares of the major retailers. The size of the informal retail sector is likely to be insignificant. The size of the informal sector is estimated to be 2.3% of nominal GDP¹, a low figure when compared to other Asia Pacific economies.

¹ Figure is provided by the Singapore Department of Statistics, for the year 2000, and includes hawkers, real estate agents, driving instructors, private tutors, tourist guides, taxi drivers, remisiers etc. This figure is approximately S\$3.7 billion, out of the 2000 GDP figure of S\$159.8 billion.

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3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

We understand that there have been concern across all sectors of retailing over the increasing rentals for retail space in recent years, and whether such a trend arose from the emergence of retail REITs, which have been perceived as good investment opportunities by investors. However, increased rentals are largely a function of demand and supply. More supply of retail space is expected within the next 3 to 4 years to cater to the demand.

Nonetheless, Singapore has continued its efforts to ensure that the retailing sector remains relevant, buoyant and attractive to both retailers and shoppers. Such efforts include setting aside industrial land for the warehouse retail scheme, themed retail developments, the remaking of Orchard Road (the main shopping belt in Singapore), the establishment of niche retail enclaves and attracting flagship stores. All these efforts have led to consumers enjoying more choices, competitive prices and better shopping experiences.

4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?

The most commonly received complaints associated with retailing usually relate to possible price fixing amongst undertakings; as well as price increases by undertakings selling essential goods or those with substantial market power. Another common complaint is regarding increasing rentals from landlords. However, the CCS is not a price regulator and will generally only deal with cases, which involve collusion amongst competitors (such as price-fixing) or abuse of dominance.

5. What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

The caseload of the CCS, since the Competition Act came into effect in 2006,

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has included enquiries and investigations into anti-competitive activities, such as price-fixing, bid-rigging and abuse of dominance.

The cases include an investigation into price-fixing by the 4 largest manufacturers of a particular type of local cake to jointly increase the prices of their cakes by a uniform amount. The CCS met the manufacturers before the date of the intended price increase, cautioned them and secured an assurance from them that they would put an end to their agreement. Although the CCS could have proceeded with investigation and possibly imposed penalties, it did not do so, because it was able to stop the price-fixing agreement before it took effect. This case demonstrates one aspect of CCS' enforcement approach, which is aimed at curbing anti-competitive activity, whilst taking the opportunity to increase business awareness of competition law, especially amongst small and medium sized enterprises.

Another case example is abuse of dominance by a supplier, which entered into exclusive dealing contracts with its retailers.

6. Does your country have any planning regulations that impact the retailing sector?

Any planning regulations that may affect the retailing sector are generally dealt with by other government agencies such as Urban Redevelopment Authority (Singapore's national land use planning authority) and Singapore Tourism Board (responsible for promoting Singapore as a top tourism destination). Most of these planning initiatives or regulations are generally pro-business, for example having no restraints on the operating hours for most businesses.

How has your country dealt with foreign investment in the retailing sector? Are there any rules or regulations that impact competition in regards to foreign investment?

The CCS is unaware of any rules or regulations that impact competition in regards to foreign investment in the retailing sector, or limit investment by foreign firms in the retailing sector. The favourable overall investment

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climate and open economy have attracted foreign investments to enter into Singapore, including its retailing scene.

Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?

In Singapore, some aspects of the relationship between suppliers and retailers are governed by the Sales of Goods Act 1979, the Unfair Contract Terms Act 1977 and the Misrepresentation Act 1967. The Sales of Goods Act contains provisions on the transfer of title, delivery, implied terms, warranties and performance of the parties under the contract as well as the remedies for breach of contract. The Unfair Contract Terms Act governs the legal obligations and liabilities of the parties to a contract to ensure that unfair terms which are imposed in a contract will have no effect in law. The Misrepresentation Act contains provisions on the various forms of misrepresentations covered by the Act and the remedies. On an ex post basis, the CCS deals with competition issues/concerns over the vertical relationship between suppliers and retailers under the Competition Act, especially on abusive conduct by dominant firms.

2. Has your authority issued any statements or guidelines pertaining to buying power?

The CCS has no specific guidelines pertaining to buying power. However, our guidelines on the section 47 provision against abuse of dominance states that countervailing buyer power is one of the various factors in our assessment of a firm's market power.

Section 47 of our Act is concerned with exclusionary abuses by a dominant party. As such, both dominance and exclusionary effect must be proven in order to find an infringement. The concept of "Abuse of superior bargaining position" as the concept is used in other countries, is not provided for in our Act.

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Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

The Competition Act (Cap. 50B) prohibits a dominant undertaking from predatory pricing, i.e. pricing below average variable cost (AVC), unless there is an objective justification for doing so. Pricing above AVC but below average total cost may be evidence of predation although the CCS will need to consider other evidences to determine whether the conduct is intended to harm competition.

2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

“Loss leadership” is indeed a very common business practice. Under most circumstances, such practices are pro-competitive. The Competition Act does not prohibit loss leadership unless it involves tying by a dominant firm.

3. Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?

Predatory pricing by a dominant undertaking is an abuse of dominance that infringes section 47 of the Competition Act (Cap. 50B). The *CCS Guidelines on the Section 47 Prohibition* states that factors relevant to an assessment of whether predation has taken place include pricing below average variable cost, the intention to eliminate a competitor, and the feasibility of recouping losses.

The CCS may however, consider the following practices as objective justifications should a dominant undertaking be found to be predating:

- A) Short-run promotions – which involves selling below AVC for a limited period, especially where a new product is introduced to a market; or
- B) Option value – where in response to an unexpected fall in demand, an undertaking incurs short-run losses so as to maintain a presence in the market, in case demand returns to profitable levels.

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4. Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

The *CCS Guidelines on the Section 47 Prohibition* states that a supplier may be abusing its dominance should it require its retailers to enter into an exclusive purchasing requirement (e.g. quantity forcing). Vertical restraints such as tying and full-line forcing may also constitute an infringement of the section 47 prohibition.

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Questionnaire on Competition Issues in Retailing

General Questions

1. How has the retailing sector evolved in your country over the last 5-10 years?
What trends have emerged?

Retailing sector has expanded rapidly over the last two decades (see table 1) that Chinese Taipei probably has the highest density of grocery stores in Asia (2528 and 206847 persons per store in the convenience store sector and hypermarket sector respectively). Nowadays, the retail sector is full-fledged (in mature stage): the incumbent retailers slow down the speed of opening new stores, and there is less incentive for new entrants to enter to the market. However different retailing sectors do substitute, more or less, that the market remains highly competitive.

During the last couple of years, the retail sectors become more and more concentrated, especially in the convenience store sector (the number of firms has decreased in half within 4 years). Moreover, it generates positive feedback that the big one tends to get bigger, leaving the smaller one in the fringe of been expelled. Since the retailers compete vigorously, retailers are motivated to provide variety of products and service (horizontal alliance such as bills-paid, purchasing in advance, promotion, coupon, collection of magnets or toy collectibles). Finally, the latest trend is the emerging of private label products (vs. manufacturer's strong brand products), and the increased competition from non-store retailer sector.

Table 1: the Market Structure in Retailing

Year	Department Store	Hypermarket	Supermarket	Convenient Store	Other Retail Store	Non-store retailer
<i>Sales (\$ million)</i>						
1999	4 417	3 562	2 402	3 398	3 098	1,498
2000	4 801	4 165	2 402	3 713	3 292	1,741
2001	4 992	4 409	2 483	4 132	3 106	1,582
2002	5 562	4 570	2 447	4 573	2 939	1,674
2003	5 660	4 614	2 576	4 961	3 187	1,787
2004	6 388	4 506	2 746	5 283	3 557	1,997
2005	6 716	4 512	2 801	5 752	3 370	2,294
2006	6 660	4 584	2 855	6 261	3 478	2,218
2007	7 087	4 753	3 076	6 388	3 587	2,484
<i>Annual Growth Rate (%)</i>						
1999	-	-	-	-	-	-

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Year	Department Store	Hypermarket	Supermarket	Convenient Store	Other Retail Store	Non-store retailer
2000	8.69	16.93	-0.02	9.27	6.24	16.19
2001	3.97	5.85	3.39	11.27	-5.64	-9.13
2002	11.42	3.66	-1.46	10.69	-5.38	5.80
2003	1.78	0.96	5.25	8.48	8.43	6.77
2004	12.85	-2.34	6.63	6.48	11.62	11.76
2005	5.14	0.13	2.01	8.88	-5.25	14.85
2006	-0.84	1.59	1.93	8.85	3.20	-3.29
2007	6.42	3.69	7.72	2.03	3.13	11.95
Stores						
2003		96	837	7539		
2004		109	848	8089		
2005		110	863	8664		
2006		109	915	9029		
2007		111	1062	9071		
Market Concentration (HHI or CR3)						
2003	CR3: 51%	1890 CR3: 69%	CR3: 53%	2796 CR3: 75%		
2004	CR3: 51%	1773 CR3: 64%	CR3: 58%	2811 CR3: 75%		
2005	CR3: 53%	1878 CR3: 67%	CR3: 59%	2897 CR3: 78 %		
2006	CR3: 58%	2576 CR3: 77%	CR3: 61%	3112 CR3: 76%		
2007	CR3: 64%	2575 CR3: 77%	CR3: 62%	3535 CR3: 78%		

Source: Ministry of Economics Affairs (Department of Statistic), 2008, and report on retail industry by Taiwan Institute of Economic Research, 2008, as well as TFTC investigation and report on convenience store sector, 2008.

Note: The department store includes shopping mall. The other retail store refers to traditional grocery store (such as pop and mom store) and cooperative store (offered only to certain people such as public servant). Non-store retailer includes e-commerce, t-commerce and direct selling (multi-level marketing).

2. What are the market shares of the major retailers? How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

The concentration ratio of the top three retailers, regardless the informal sector, accounts for more than 55% of retail sales, which demonstrates a highly

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concentrated market. For further detail, see table 2.

Surprisingly, the traditional grocery sector, with its niche of convenient location and friendly service, is performing well. The large volume retailer does not eliminate the small local retailers. And as the technology has gradually transformed our shopping habits, the non-store retail sector (such as e-commerce, t-commerce) is becoming more and more important.

Table 2: The Market Share of the Main Retailers

Retailer	2003	2004	2005	2006	2007
(%)					
<i>Department Store</i>					
Shin Kong Mitsukoshi	25.89	27.65	29.36	30.11	27.71
Pacific Sogo	14.65	14.58	14.65	14.19	15.93
Far Eastern	10.12	8.67	8.75	9.06	12
Sum	50.66	50.9	52.76	53.36	55.64
<i>Hypermarket</i>					
Carrefour	32.29	31.19	33.64	43.12	43.24
RT-Mart	22.92	21.1	20.91	21.1	20.72
Géant	13.54	11.93	12.73	12.84	12.61
Sum	68.75	64.22	67.28	77.06	76.57
<i>Supermarket</i>					
PX Mart	24.61	29.48	31.63	34.43	35.69
Welcome	18.40	19.46	19.24	19.02	19.11
Matsusei	9.68	9.43	8.34	7.65	6.78
Sum	52.69	58.37	59.21	61.1	61.58
<i>Convenient Store</i>					
Seven-eleven	50.48	49.43	52.53	51.51	51.69
Family Mart	15.88	16.71	16.65	15.86	16.87
Hi Life	8.53	9.35	9.27	9	8.98
Sum	74.89	75.49	78.45	76.37	77.54

Source: report on retail industry by Taiwan Institute of Economic Research, 2008, and TFTC report on convenience store sector, 2008.

Note: Far Eastern merged with Pacific Sogo in September 2002.

3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

As the modern and well-organized grocery stores arose, they not only serve as

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the main selling channels, but also transformed consumer's shopping pattern from daily shopping to one-stop-shop. Both the manufacturers and consumers are heavily relied upon them. These retailers can offer low-cost commodity and diversified services that the traditional grocery stores cannot provide.

Nevertheless, retailers do compete fiercely that they have to find every possible way to low down their costs and squeeze as much as profit they could. TFTC's main concern is whether the retailers have abused their market power to transfer their cost to the suppliers or exclude the new entrant.

4. What types of complaints associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?

Complaints pertaining to false or misleading advertisements still remain the top issue reported to TFTC. Although couple years ago suppliers complained angrily with the additional fees that the retailer improperly charged to them, recently the investigation that TFTC has launched is the issue that related to excluding new entrant.

Since TFTC has not built case screening criteria (known as case selection criteria or threshold investigation), any complaints that in nature could possible be in breach of Fair Trade Act, TFTC, by law, has to launch an investigation.

5. What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?

Besides the false or misleading advertisement issues, over the last 5 years the types of complaints that TFTC has initiated could simply categorize as follows:

- Illegal Merger: Far Eastern Department Store, Co. Ltd. merged with Pacific Sogo Department Store, Co. Ltd. without reporting to TFTC in advance. Far Eastern acquired 55% shares of the holding company of Pacific Sogo in 2002, thus Far Eastern indirectly control the business and personnel of Pacific Sogo. TFTC requested Far Eastern to file merger application in order to review, and fined \$33,000.
- Exclude the new entrant: 1. Exclusive Deal: Pacific Sogo, in attempt to drive out new entrant, required the branded product suppliers not to offer the same products or service within a radius of 2 kilometers of its store. Pacific Sogo was fined with \$80,000. 2. Boycott: Shin Kong Mitsukoshi is an incumbent firm; enjoying 33% share of the

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department store market in 2001. Shin Kong Mitsukoshi demanded the branded product suppliers not to deal with the new entrant, and was fined with \$26,000. 3. Covenant: Tesco, a large volume retailer with less than 1% of market share in 2001, bought a land and asked the landlord to guarantee that his other land would never exist any other large volume outlets. As a result, the landlord was bound by the enormous penalties that the land cannot be sufficiently offered to the other retailer. The final decision has not been done whether the covenant cause a barrier of entry. 4. Raising rival's cost: PX Mart is an incumbent supermarket firm, has complained to its suppliers that the Mercuries store, a new entrant with 86 m², has the lowest sale price as PX Mart does and might imply indirectly to the suppliers by demanding the suppliers to solve this problem. The suppliers, in order to provide the lowest price to PX Mart and maintain the dealing with PX Mart, were forced to raise the price to the new entrant or change the product standard. PX Mart was alleged to violate Fair Trade Act and the case is still under investigation.

- Additional fees disputes: Grocery retailers (hypermarket, supermarket and convenience store) improperly charged additional fees, such as double charging, irrelevance to promoting the sale (pocket money), and unduly paid. Fine range is around \$20,000 to 160,000.

6. Does your country have any planning regulations that impact the retailing sector?

Land use restriction (zoning), though, serves valuable social purposes, it sometimes obstruct the retailer finding location to open a new store, thus causing a barrier to entry. Chinese Taipei government has declared decrees to deregulate the land use restriction. However, the retail sector, at this moment, does not confront with any regulations that would seriously impact the market.

7. How has your country dealt with foreign investment in the retailing sector? Are there any rules or regulations that impact competition in regards to foreign investment?

No. There is no preference to domestic firms. The major retailers in Chinese Taipei are cooperated with the foreign firms. In the hypermarket sector, most of the domestic firms chose to collaborate with the European companies (such as Carrefour, Auchon, Géant, Tesco, Makro), whereas in the remaining sectors, domestic firms tend to work with Japanese enterprises.

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Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?

TFTC has passed three regulations as follows:

- Fair Trade Commission Policy in Distribution Industry: It is a general guideline that regulates the commonly encountered anti-competitive conducts, such as vertical restraints.
- Fair Trade Commission for Cases Concerning Additional Fees Charged by Distribution Businesses: It is specified in handling cases pertaining to the additional fees (known as slotting allowances or shelf allowances of listing fees).
- Fair Trade Commission Guidelines on Trade Practices Between Department Stores and Branded Products Suppliers: It focuses upon the trading relations of the department store and its suppliers.

2. Has your authority issued any statements or guidelines pertaining to buying power?

As long as the retail sector remains sufficiently competitive, profit maximizing retailers would offer low price products and try to reduce their costs at the expense of transferring to the suppliers rather than raising the price, which tend to benefit consumers. Thus, the impact of retailers exerting buyer power to negotiate with the suppliers is ambiguous, and competition authority needs to deal it with nuanced approach. If retailer charges the additional fees that are relative (increase in sales) and proportional (between fees and profit), TFTC would not challenge it.

Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

The three main types of regulatory restrictions on resale prices are resale-below-cost, predatory foreclosure and mandatory minimum resale price maintenance. Fair Trade Act does not articulately prohibit the resale-below-cost; however mandatory minimum resale price maintenance is forbidden per se. As for the predatory price, only the predator is a monopolist,

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in an attempt of driving out the competitor, and could recoup its loss in the future that would be considered contravene Fair Trade Act.

2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Since consumers are extremely sensitive to price, we believe, retailers, from time to time, might use loss leaders as a means to promote goods and draw consumers over to purchase other items. Anyhow, this kind of marketing tool might do more harm to the sacrificed items than the normal products, thus it also seems to result in unfair competition (been regarded as cheap product or low quality). However, the pro-competitive merits could overcome the anti-competitive effects. At this moment, TFTC does not regulate loss leader.

3. Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?

No. Predatory price set by a monopolist could be regarded as a type of abusing its monopolistic power; however TFTC has not issued any statements or guidelines pertaining to predation.

4. Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

Yes, we do. Please refer to the answer above (Buying Side Concerns).

Thailand

A Response to the Questionnaire on Competition Issues in Retailing

General Questions

1. Question How has the retail sector evolved in your country over the last 5-10 years? What trends have emerged?

Answer The retail sector plays an important role in Thai economy. It is the second important sector after the industrial sector. The trade value of the retail sector in 2007 is about 1.23 trillion Baht which is about 14.36% of GDP. It creates the employment of about 16% of the country employment. The growth rate of the retail sector is about 6.53% a year. The trend merged is the growth rate of modern trade in retail sector is about 25% a year greater than the growth rate of the whole retail sector.

2. Question What are the market shares of the major retailers?

Answer The market shares of the major retailers is about 50%.

Question How important is the informal sector? When businesses are not located in physical buildings they may be part of the informal sector. For example, you may see a man or woman selling vegetables on the street corner out of the back of a truck or on the side of the street in a stand. These businesses are part of the informal sector.

Answer For the informal sector, the challenge is the record of number of informal sector is not available but it is also part of retailing sector. In Thailand, most of them sell fresh food which is not consumer goods.

3. Question What concerns have been raised as a result of the restructuring of the retail sector, if any?

Answer The restructuring of retail sector cause the rapidly increase of proportion between the modern trade and the traditional trade which is from 25 : 75 to 70 : 30 during the past ten years. This will raise the structural problem where there are only 4 or 5 major retailers with 72% market shares.

Question What effects has this restructuring had on consumers?

Answer The restructuring will increase consumer choice and will provide consumers more convenience with a one-stop-shopping. On the other hand, it will change the consumer behavior to overconsumption.

4. Question What types of complaints associated with retailing do you most commonly receive?

Answer There are complaints from both suppliers and small retailers. From supplier side, it is about misconduct of large retailers by abusing its bargaining power such as collect unreasonable fee or discounts, set unfair trading conditions to its suppliers. From retailer side, it is about structure of large retailers by downsizing its stores to the form of “Convenience Stores” or “Express Stores” under the trade name of business chains and directly competes with the small retailers in the communities.

Question What types of complaints seem to warrant investigations?

Answer 1) Sale below cost 2) rebate

5. Question What retailing sector investigations have been initiated in the last 5 years? What types of competition issues are involved in those cases? What outcome has reached as a result of your investigations?

Answer In the last 5 years, Thailand conducts the pre-investigation procedure by preliminary examination on sales below cost and rebate in the retail sector before.

6. Question Does your country have any planning regulations that impact the retailing sector?

Answer Yes. We are in the process of drafting the Retail Law.

7. Question How has your country dealt with foreign investment in the retailing sector?

Answer The foreign investment in retailing sector in Thailand is under the Alien Business Law of 1999 (Category C) which allows for capital investment of more than 100 million baht. And each shop must invest more than 20 million baht.

Buying Side Concerns

1. Question Does your country have any rules or regulations that govern relationships between suppliers and retailers?

Answer Yes, the rules that govern the relationship between suppliers and retailers in Thailand is the Guidelines for unfair trade practices in the wholesale and retail business.

2. Question Has your authority issued any statements or guidelines pertaining to buying power?

Answer Yes, the Guidelines for unfair trade practices in the wholesale and retail business contains rules pertaining to buying power.

Selling Side Concerns

1. Question Does your country have any laws prohibiting resale below cost?

Answer Yes. Section 25 (1) of the Trade Competition Act prohibits the dominant player to unreasonable fix selling prices of goods or fees for services. Besides the guidelines for unfair trade practices in the wholesale and retail business, which provides a framework for unfair trade practices under Section 29 of the Trade Competition Act, mentioned that sales are made at a price lower than cost is unfair trade practices, unless there is a reasonably necessary in the business such as the product is about to be expired, or the product is seasonally used and obsolete.

Question If so, what cost benchmark measure is specified in the law?

Answer The Trade Competition Act itself does not specify the cost benchmark measure. However, the Trade Competition Commission has prescribed the criteria as cost benchmark measure which is cost equals to purchasing cost deduct rebates and discounts. Thus, Sales below cost is selling price below purchasing price plus administrative cost.

Question What impact have those laws had in your opinion?

Answer The above mentioned law and guidelines will protect competition mechanism in retailing sector.

2. Question Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Answer Yes.

3. Question Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?

Answer No. We does not have, we do have just only the provision under Trade Competition Act prohibit Section 25 .

4. Question Has your authority issued any statements or guidelines pertaining to other selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

Answer Yes. It is in the Guidelines for unfair trade practices in the wholesale and retail business.

QUESTIONNAIRE:

General questions:

1. How has the retailing sector evolved in your country over the last 5-10 years?

Vietnam's distribution services system is changing quickly. It is being progressively opened in accordance with Vietnam's WTO commitments. The total sales of retail sector has grown significantly from 11% a year in the 1996-2000 period to 18% in the 2001-2005 period, double the growth figures of the gross domestic product, the total value of all the goods and services produced by a country in one year. In 2004, about 54000 non State businesses, over 1000 businesses with a State stake, 15 foreign investor and 1,2 million out of the nation's 2,9 million household businesses were working in the domestic distribution business. Vietnam's retail market was worth US\$ 37 billion per annum. . According to the newest assessment in 2008 by AT Kearney, Vietnam's leap from fourth in the 2007 The Global Retail Development Index (GRDI) to first place in 2008 become the most attractive retail opportunity in the world.

What trends have emerged?

Data from the General Statistics Office between 1996 and 2006 demonstrates the following trends:

- Total retail sales of goods reached VND 220,410 billion;
- Annual average growth of 11%; and
- Total retail sales of VND 480,300 billion with 18,3 % representing annual average growth.

Strong growth in foreign investment and privatization of several state-owned enterprises has made the distribution services sector more competitive. The sector has been transferred from solely state-owned to multi-owned. Retail sales in the private sector are not only much greater than in the state sector, but have been growing much faster. The annual growth rate of retail sales has been strong and rising, but the share of GDP has fallen slightly. This suggests that productivity in the sector has been rising; and foreign investment in the sector has been rising very fast.

2. What are the market shares of the major retailers?

Most recently, four leading distribution companies in Vietnam, Satra, Hapro, Saigon Co-op and Phu Thai Group, have decided to join forces to form up the Vietnam Distribution Network Investment and Development Company (VDA). VDA will be

the groups with the motive force, which will help stimulate the development of the domestic distribution network. VDA will gather the strengths of four parties in the joint venture. Saigon Co-op is powerful in retailing, accounting for 50% of the HCM City market share. Hapro and Satra have experiences of several tens of years of operation, and have set up wide networks in both the North and the South. Phu Thai Group has the advantage of 100 super marts, nearly 5,000 wholesale agents and 50,000 retail shops nation wide. Having the investment capital of VND1,500bil (\$93.75mil) in the first period of investment (March 2007-October 2008) and VND3-6,000bil (\$187.5mil-375mil) in the second (November 2008-October 2011), VDA will focus on the development of modern trade centers, supermarkets and hypermarkets, which will hold a big share in the distribution market

How important is the informal sector?

Informal sector plays an important role in Vietnam. Almost Vietnamese are still having habit to shopping at market for their daily consumption, especially in small cities and provinces. At the beginning of 2006, Vietnam was home of 9,063 traditional markets, including 165 regional or provincial wholesale markets. The rural area had the lion's share with 6,788 markets account for around 75% of all markets in Vietnam. Ninety percent of Vietnam's domestic retail sales still belong to neighbourhood markets.

3. What concerns have been raised as a result of the restructuring of the retail sector, if any? What effects has this restructuring had on consumers?

Implementing Vietnam's WTO commitments will drive structural change in the distribution services market in Vietnam. That process poses challenges and opportunities for the smaller distribution outlets. However, it raises a lot of concerns. Firstly, lack of cooperation is a prominent weakness of Vietnamese retail businesses. Economists said that if businesses can cooperate well with each other they can promote their strength as well as reduce unnecessary expenditure such as warehousing. However, not all businesses have a full awareness of the potential for cooperation. Secondly, the relationship between retail businesses and producers is also a matter of concern. Despite of efforts being made between the producers and retail businesses, certain snags still remain. Retail businesses tend to control the producers while the producers strive to surpass retailers. In addition, the supermarket system in Vietnam has not developed properly while the quality of many products fails to meet required standards.

The consumer trend in Vietnam has shifted from "eating enough food and wearing warm clothes" in the recent past to "eating good food and wearing fashionable clothes". Young Vietnamese in big cities are catching up with their peers in the world

as far as consumer trends are concerned. With the structural change in the distribution services market, it has also created many opportunities and advantages for consumers in terms of the quality of goods available. Vietnamese consumers will be secured better quality products at more competitive prices.

4. *What types of complains associated with retailing do you most commonly receive? What types of complaints seem to warrant investigations?*

Until now, we received two complains associated with retailing. 1 cases related to disturbing business activities of other enterprises and one related to act of resale below aggregate cost aimed at excluding competitors.

Any complains dossiers which have clearly evidences and enough documents will be warranted investigation.

5. *What retailing sector investigations have been initiated in the last 5 years? What types of competition issues were involved in those cases? What outcome was reached as a result of your investigations?*

For the case of resale below aggregate cost aimed at excluding competitors, the complainant was unable to fulfill its tasks. Particularly, it did not submit enough information to prove that the case occurred in practice and that the plaintiff occupied dominant position. According to Law on Competition, the complainant failed to meet requirements of providing evidence. As a result, General Director of VCAD issued Decision on returning complaining dossiers to the complainant.

We have just initiated investigation for the case related to disturbing business activities of other enterprises. Company A is a manufacturer of cosmetic products: shampoo, bath foam, gel etc. Company B is a distributor for Company A's products. Due to some reasons, A and B terminated a distribution contract. Company B refused to sell inventory goods for Company A as requested. Instead, Company B sold the inventory goods in some supermarkets with the price lower 30% than list price which caused bad effected to Company A's business activities. In addition, Company B threated Company A when company A purchased their products which were sold at lower price at supermarkets. The case is on preliminary investigation stage.

6. *Does your country have any planning regulations that impact the retailing sector?*

Yes. At present, many of the relevant laws and decrees require clarification. A set of regulations that are designed to merely comply with the WTO obligations will not be the same as a set of regulations designed to maximize the benefits from fully liberalised arrangements. Vietnam thinks carefully about what it wants from giving

effect to its WTO commitments: to comply with the letter of the WTO law, or introduce a set of regulations that maximize the economic benefits to Vietnam from a modern, dynamic and efficient distribution services sector.

7. *How has your country dealt with foreign investment in the retailing sector?*

WTO commitments define distribution services as such activities as wholesaling, retailing, agency for sale purchase of goods, and franchising. Joint ventures with domestic partners are currently the only form in which foreign investors may participate in distribution services, at least until January 1, 2009 — although no restriction on foreign equity in the joint venture will be applicable from the beginning of 2008. As it stands, foreign investors from countries or territories which have signed an international agreement with Viet Nam on market access may participate in a joint venture in this area, and there is a 49-per-cent cap imposed on the foreign investor's share of ownership. The distribution right is associated with the setting up of an initial retail outlet. The establishment of outlets beyond the first one shall be approved on the basis of the so-called Economic Needs Test (ENT). The foreign invested company must apply for a licence for each subsequent outlet, with approvals made on a case-by-case basis based on three criteria: the number of existing service suppliers in a particular geographic area; the stability of market; and geographic scale. The aim is to control the rapid spread of foreign retail franchises. Therefore, Circular 09 introduces even stricter criteria for opening additional retail outlets, requiring authorities to examine not only the number of existing outlets in a particular geographic area, but also the population density in such area and the conformity of the investment project with the planning of that area. All this makes it extremely difficult for foreign investors to satisfy the ENT, not only because of the subjective nature of the criteria, but also due to the competency of the agencies which apply the criteria.

Are there any rules or regulations that impact competition in regards to foreign investment?

Yes. Article 2, Vietnam Competition Law 2004:

Subjects of application:

This Law shall apply to:

1. Business organizations and individuals (hereinafter referred collectively to as enterprises), including also enterprises producing, supplying products, providing public-utility services, enterprises operating in the State-monopolized sectors and domains, and foreign enterprises operating in Vietnam.

2. Professional associations operating in Vietnam.

Therefore, foreign investors would be subjected on Vietnam Competition Law. Law on Competition and the Ordinance on Pricing help to establish a legal framework for the distribution system's operation. Vietnam Competition Law 2004 regulate the competition, acquisition, and merger activities of distribution companies as well as the role of government is ensuring a healthy environment for competition. Vietnam is committed to opening its market for foreign investors by January 1 2009. From that date, foreign distribution services companies with 100% foreign capital can be established in Vietnam. Laws governing the distribution services market should deliver certainty, clarity and a competitive environment. Such laws are needed to ensure that Vietnam maximizes the economic benefits from opening its distribution services market.

Buying Side Concerns

1. Does your country have any rules or regulations that govern relationships between suppliers and retailers?

In Vietnam, the government does not control the relationships between suppliers and retailers directly. However, the relationships fall in the governing scope of two laws including: Law on Competition and Law on Commerce. Particularly, these two laws regulate the relationships between buying side and selling side in several aspects related to trading activities.

2. Has your authority issued any statements or guidelines pertaining to buying power?

Under the scope of regulation of Law on Competition, there are provisions dealing with competition restricting-acts related to buying power. The provisions include acts of competition restriction agreement, abusing the dominant position and abusing the monopoly position on the market. In those cases, the law prohibits enterprise(s) or a group of enterprises abuse market power (including buying power) to reduce, distort and prevent competition on the market.

Selling Side Concerns

1. Does your country have any laws prohibiting resale below cost? If so, what cost benchmark measure is specified in the law? What impact have those laws had in your opinion?

- In Vietnam, Law on Competition prohibits enterprises which hold dominant position and monopoly position from selling goods, providing services at prices lower than the aggregate costs aimed at excluding competitors.

- The cost benchmark measure is provided in the guiding decree of Law on Competition. The mentioned aggregate costs includes costs making up the prime cost of producing products and services or (making up) the purchase price of goods for resale and costs of circulating goods and services.

The prime cost of producing products and services shall comprise the following direct expenses: direct cost of materials, direct manpower costs and General manufacturing costs.

Costs of circulating goods and [of providing] services comprise expenses arising during the process of sale of goods or provision of services.

- As far as I am concerned, Law on Competition has contributed to creating a fair business environment in Vietnam. It is undeniable that dominant enterprises are able to abuse their market power to sell goods, provide services at price below cost. As a result, other competitors and end-consumer as well may be affected adversely. So, the provisions governing the issue are essential to prevent enterprises in general and retailers in particular from selling goods, providing services at price below cost aimed at excluding competitors.

2. Do retailers use loss leaders? That is, stores at times will sell products below cost in order to attract customers into the store to buy other items. Are there any rules or regulations that prohibit such conduct?

Subjects of application of Vietnam's Law on Competition comprise business organizations and individuals including also enterprises producing, supplying products, providing public-utility services, enterprises operating in the state-monopolized sectors and domains, and foreign enterprises operating in Vietnam and professional associations operating in Vietnam. Thus, Law on Competition also applies to retailers. As a result, they are prohibited from selling goods, providing services at prices lower than the aggregate costs aimed at excluding competitors if they hold dominant or monopoly position on the relevant market.

However, Law on Competition provides exemptions regarding to sell below aggregate cost in the following cases:

- Reducing selling prices of goods being fresh foods;
- Reducing selling prices of goods in stock due to reduced quality, old-fashioned form or because the goods are now inappropriate to the taste of consumers;
- Reducing selling prices of goods out of season;
- Reducing selling prices of goods in accordance with a promotional campaign pursuant to law;
- Reducing selling prices of goods in cases of bankruptcy, dissolution, termination of manufacturing or business operation, change of location or change in the policy on manufacturing or business.

3. Has your authority issued any statements or guidelines pertaining to predation? If so, please describe them in more detail?

Law on Competition of Vietnam prohibits enterprises which hold dominant and monopoly position from selling goods, providing services at prices lower than the aggregate costs aimed at excluding competitors that is considered as one kind of predation.

4. Has your authority issued any statements or guidelines pertaining to other

selling side issues associated with retailing such as slotting fees, private label selling practices, etc?

Vietnam's Law on Commerce regulates trading activities in general, so, it can be said that there is no statements or guidelines applying to selling side issues with retailing such as the mentioned issues in the Question.

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泰國內貿廳廳長 Mr. Yangyong PHUANGRACH
致開幕詞

Buyer Power in Retailing

*OECD Chinese-Taipei FTC International Cooperation
Program on Competition Policy, Bangkok*

10 July 2008

Yihong Hsieh

Commissioner, Fair Trade Commission, Chinese Taipei



When...

*I was on the way to **Sapporo** of Japan
in February...*

Food Manufacturing Scandal

Confectioner Ishiya Trading Co. falsifies expiration dates of its mainstay Shiroi Koibito cookies (White Beloved Ones) for the past 10 years

2007.4.24.

An Ishiya executive Michiyuki Ito decided to extend the expiration date by one month of Aug. 31 to Sept. 30 when repackaged 3328 boxes of cookies as a “limited products” for its 30th anniversary campaign

2007.6.

E-mail messages accusing the falsification appeared on the company’s home page, but not being reported to management

2007.8.14

- After the unethical practice came to light, a televised apology was given by President Isao Ishimizu in news conference “I apologize for betraying consumers”
- Ishiya said it will recall the products and freeze production for 4 days starting 8.16.

Food Manufacturing Scandal

2007.8.15

- Local authority in Hokkaido conducted inspections on Ishiya by checking the production lines and the shipment documentation after the confectioner announced
- All Shiroi Koibito cookies were removed from store shelves



2007.8.16

- President Isao Ishimizu admitted knowing that the company had repeatedly extended the expiration dates by one or two months on 20 to 30 percents of the cookies during times of having excessive stocks since 1996
- Production suspended due to violating the food sanitation law



2007.8.17

President Isao Ishimizu resign

Food Manufacturing Scandal

2007.8-
2007.11

Newly selected president Shumpei Shimada renewed its board members.

Invested ¥1 billion to sanitize its factory

Print the expiration date on each individual packet of cookies in every box

Brought in an external team to avoid further malpractice

Filed 6 reports to Sapporo health authorities

2007.11.13

Ishiya's production lines and package management were duly inspected by Sapporo health authorities

2007.11.15

Restarted production at a pace of around 400,000 pieces per day

2007.11.22

Resumed sales at about 400 stores in the Hokkaido prefecture, including stores at New Chitose airport and department stores



Shiroi Koibito cookies (White Beloved Ones)



Hokkaido official instructs President Isao Ishimizu to improve his company's practices



Factory (1)



Factory (2)

Food Poisoning Scandal (June 2000)

- Snow Brand Milk Products' low-fat milk caused Japan's worst-ever outbreak of food poisoning, sickened more than 14,000 people.
- Bacteria (staphylococcus) was found to be located in a contaminated valve on the production line of its Osaka factory.
- Company tried to downplay the incident by attempting to limit the extent of the product recalled and covering up the information that the valve was rarely used which in fact was used almost every day, and not being cleaned more than three weeks which should be cleaned on a weekly basis.
- President Tetsuro Ishikawa and 7 executives resigned.

Falsifying Expiry Date (February 2002)

- Snow Brand Milk Products Co., admitted using out-of-date frozen butter in processed milk and dairy products since March 2001.
- The company had excessive inventories of butter as a result of food poisoning scandal in June 2000, and decided to collect some 2,300 tons of butter and extended the expiration date by one year beyond its original 18-month limit.
- Hideki Takenouchi, Snow Brand Milk Managing Director, said that the company extended the expiry date after scientific data confirmed the quality of the butter could be maintained for four years after it had been produced.”But we have now suspended using the expired butter” he said.
- Officials of the prefectural government instructed the company that rewriting the expiry dates can only be done based on scientific data.



President Tetsuro Ishikawa
apologize



Snow brand low-fat milk

お菓子は大地の恵みです

六花亭

ROKKATEI

maruseibatando



What if....



Market Power v. Consumer Welfare



Retailer

- ★ *in a better position to know market information ?*
- ★ *Buy power threatens injures to customers ?*
- ★ *CSB Cost of Switching Brands v. CSS Cost of Switching Stores*

Arguments

- ★ *How to define “relevant market” ?*
- ★ *How to determine “market share” ?*
- ★ *discrimination v. monopsony*
- ★ *Abuse of Market Power ?*

Quasi Arguments

Exorbitant Conditions ?

Exclusive Supply Contracts ?

Tying and Full-line Forcing ?



Efficiency Rationales

Effects on Buyer Power



Sell-side Agreement

Non-Price Discrimination ?



Buy-side Agreement

Allocative Inefficiency ?



Should this deserve serious attention ?



Legal Remedies
v.
Compliance Cost



It's really nice to have you here !





The UK Competition Commission's groceries market investigation

Presentation to OECD Chinese-Taipei FTC International Cooperation Program on Competition Policy, Bangkok, 10-11 July 2008

Andrew Taylor
Senior Director, Inquiries, UK Competition Commission



Overview

- Context
 - Background to the CC's 2006/08 investigation into grocery retailing
 - CC market investigations – the framework for our investigation
- Findings from the CC investigation and the policy response
 - Distortions in competition between large grocery retailers and small stores
 - Local market concentration and barriers to entry
 - Supply chain issues



Context - background to the investigation

- Leading up to the CC investigation, concerns were expressed in public debate about:
 - the effect of supermarkets on convenience stores and other small stores (eg butchers, bakers, greengrocers)
 - the expansion of large grocery retail chains into convenience store sector
 - the relationships between large grocery retail chains and their suppliers, including the effectiveness of the Code of Practice that governs these relationships
 - the strong market position of Tesco, the UK's largest grocery retailer, and whether it had some kind of anti-competitive or unfair advantage as a result
- Other non-competition concerns were also expressed. For example:
 - environmental impact of grocery retailing (eg excess packaging, plastic shopping bags, product wastage, environmental consequences of air freighting / importing fresh food over long distances)
 - working conditions for agricultural workers in the UK and foreign countries that supply the UK market
 - grocery retailers' influence on wider eating and drinking habits (eg unhealthy food, low price of alcohol)
- The Office of Fair Trading decided to ask the CC to investigate the competition concerns and made a *market investigation* reference to us in May 2006



Context - CC market investigations

- CC market investigations assess the effectiveness of competition in an industry
 - we assess whether there are 'features' that have an adverse effect on competition by preventing, restricting or distorting competition
 - market investigations are not investigations into the dominance of a single firm (such as Article 81 investigations under EU law), but sit alongside this regime
- Where we identify a feature that has an adverse effect on competition, we can address it through structural or behavioural remedies
 - for example, the CC has the power to require companies to sell assets or businesses, impose access regimes, require that consumers be provided with specific information, or impose behavioural codes
 - the CC may also recommend to government that it, for example, changes legislation

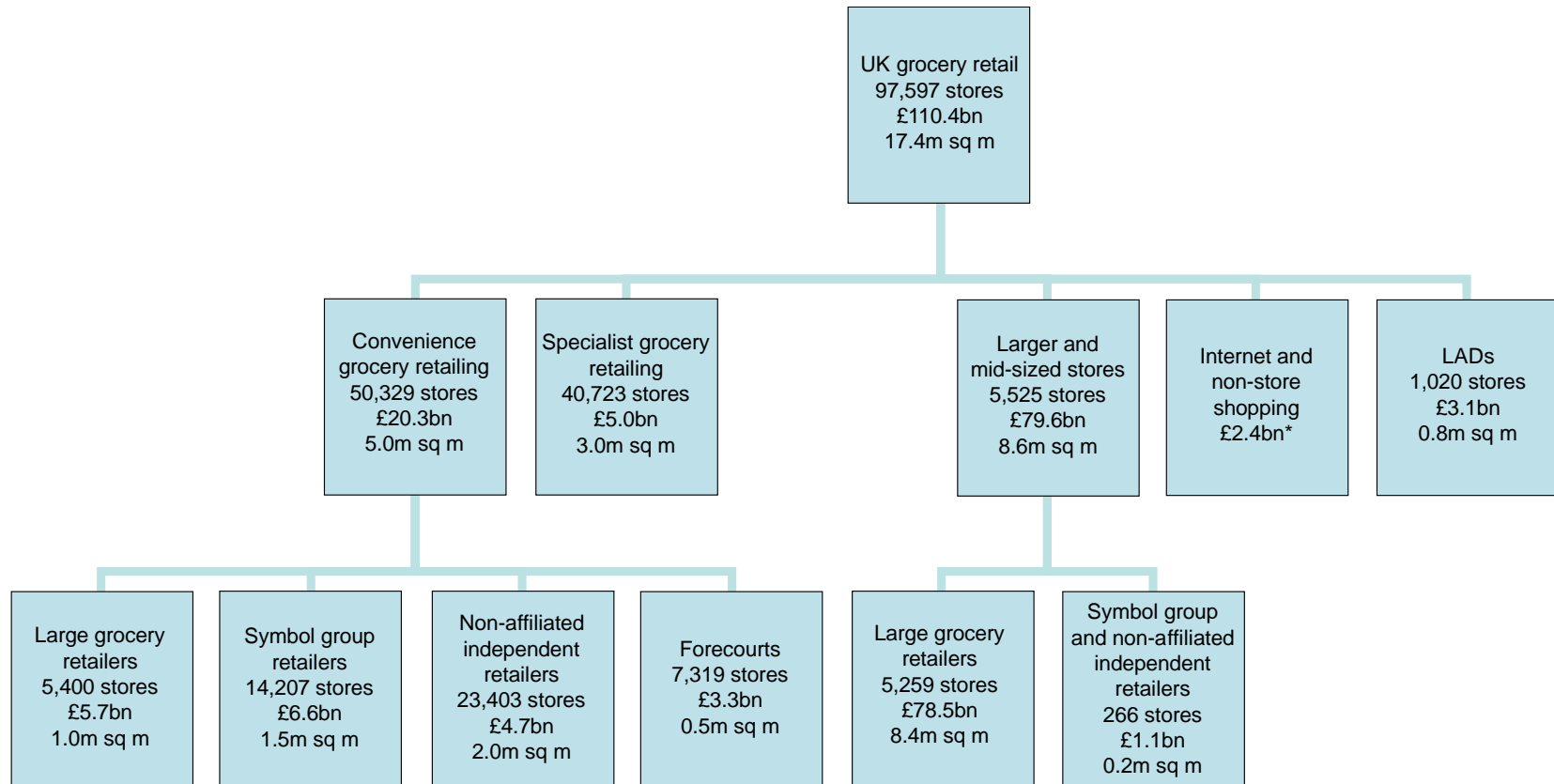


Context – UK grocery retailing

- Many different types of grocery retailers:
 - 8 large grocery retailers (Asda, Sainsbury's, Morrisons, Tesco, Co-op, M&S, Somerfield, Waitrose) with national chains that in a number of cases include large, mid-sized and convenience stores
 - 3 major discount chains (Aldi, Lidl and Netto) that sell a limited range of goods (Limited Assortment Discounters)
 - numerous symbol group retailers (franchise-type operators) such as Spar and Costcutter that primarily operate convenience stores
 - many smaller retailers, particularly in convenience store sector
- Annual UK grocery sales in 2006-07 was approx. £110 billion
 - 85% of sales by the national grocery retailers, including 65% by the four largest (Asda, Sainsbury's, Morrisons, Tesco)
- Most large grocery retailers (but not all) have national pricing strategies whereby they charge the same price for each product in each store format
 - for example, Tesco charges the same price for the same product at each Tesco Extra, but might charge more for that product at Tesco Express



Context – UK grocery retailing



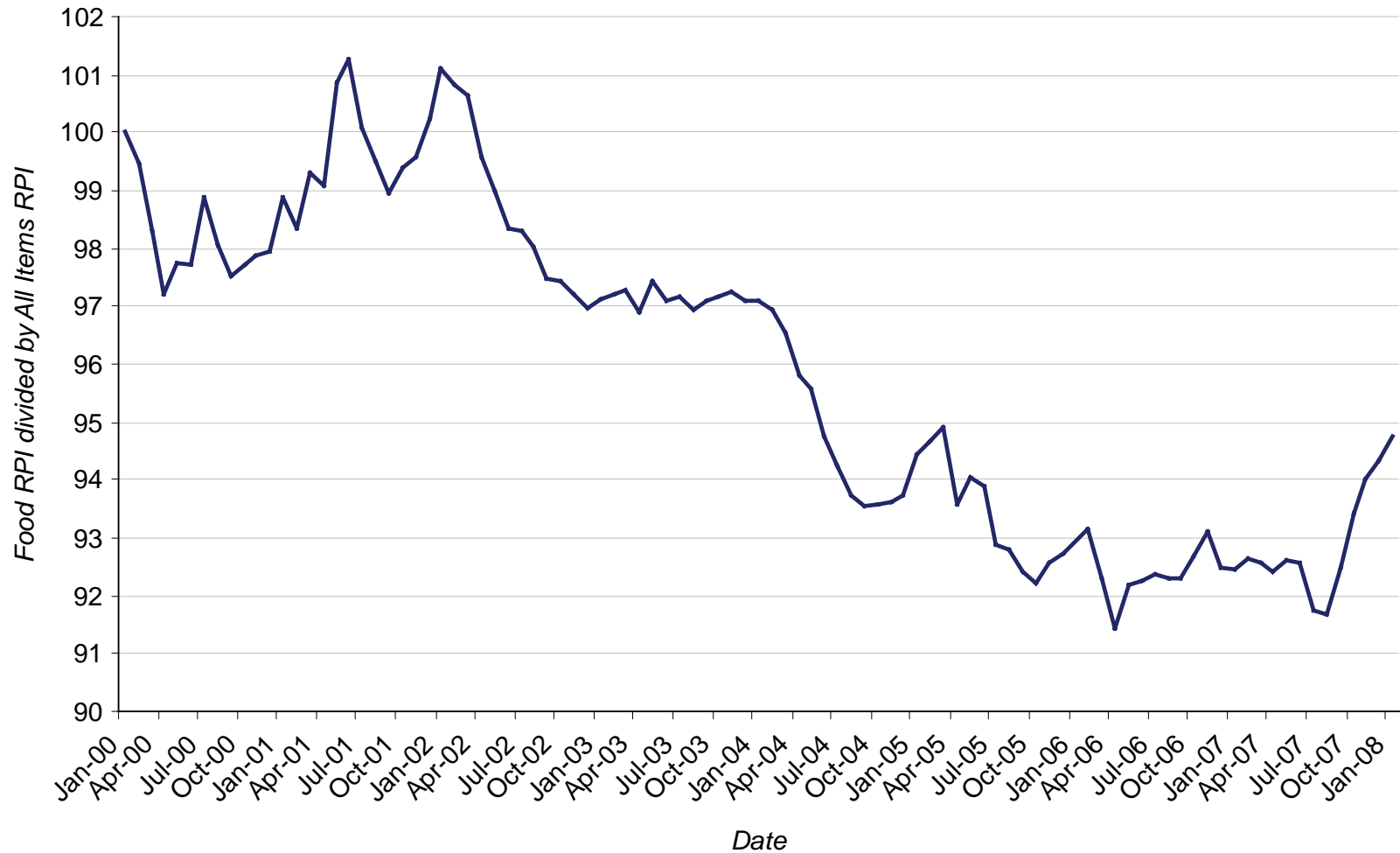


Summary of our findings

- Groceries market is delivering a good deal for consumers, but ...
- First, a significant number of local markets for grocery retailing by large stores are highly concentrated, and barriers to entry allow highly concentrated local markets to persist.
 - Consumers suffer harm as a result of grocery retailers:
 - providing a poorer retail offer at stores in highly concentrated local markets; and
 - charging prices across all stores that are higher than would be the case if local market competition was more effective.
- Second, grocery retailers with buyer power can pass on excessive risk and unexpected costs to their suppliers.
 - Consumers suffer harm as a result of reduced investment and innovation in the supply chain.
- We did not, however, find problems in competition between large grocery chains and operators of smaller stores

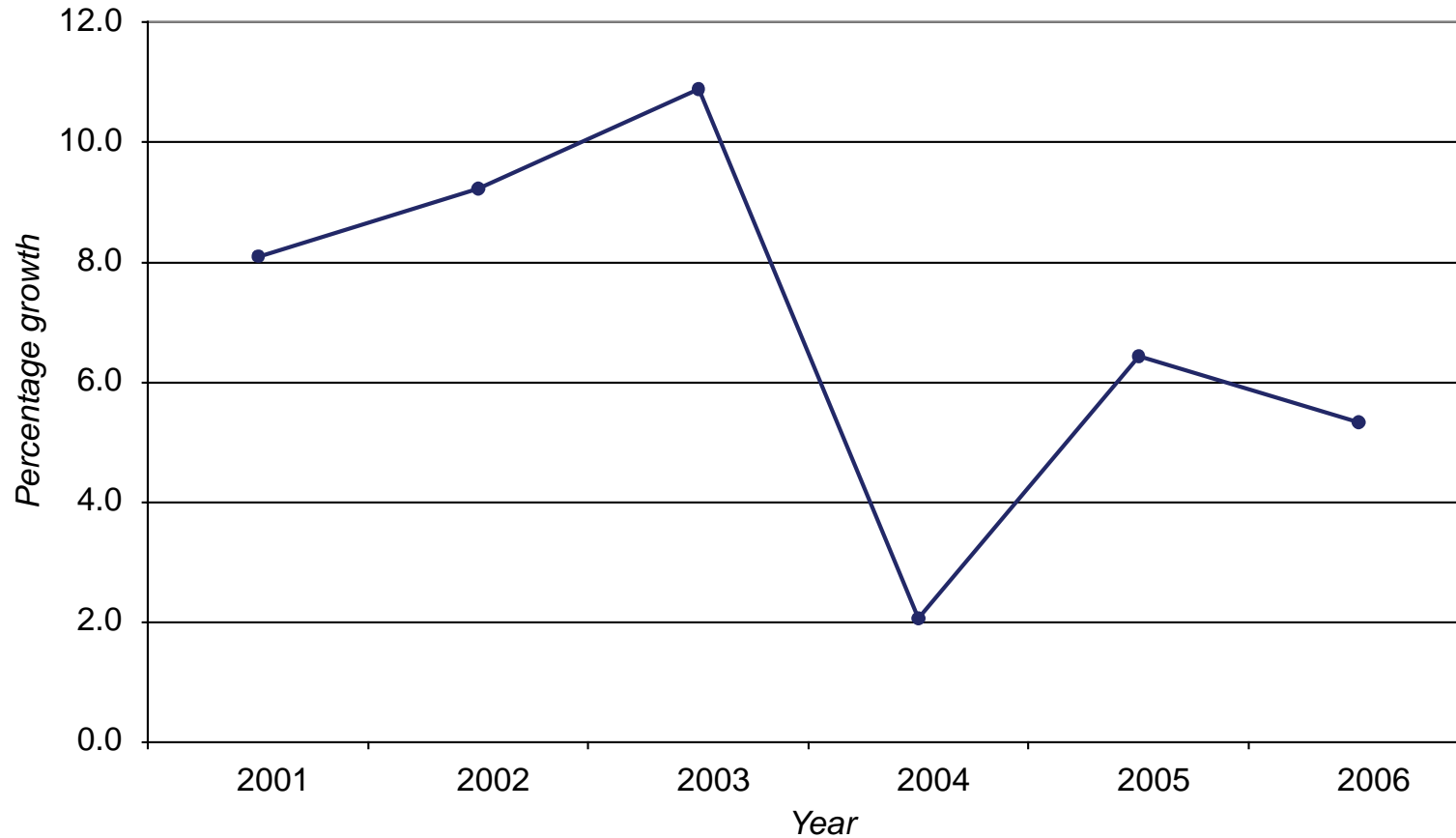


Changes in real food prices in the UK





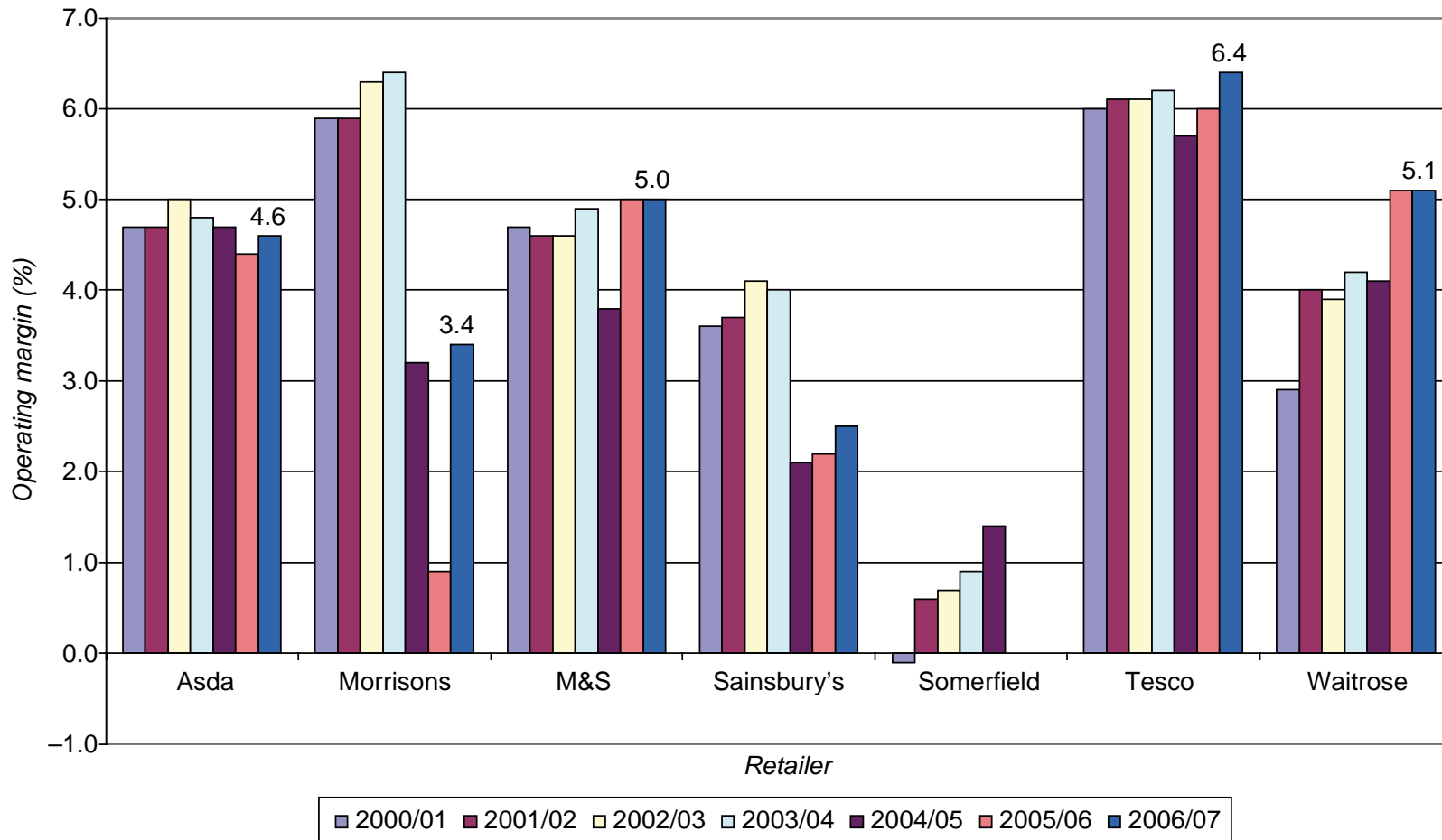
Growth in grocery retailers' product lines



Source: CC calculations based on data provided by Asda, Morrisons, Sainsbury's and Tesco.



UK grocery retailers, operating margins



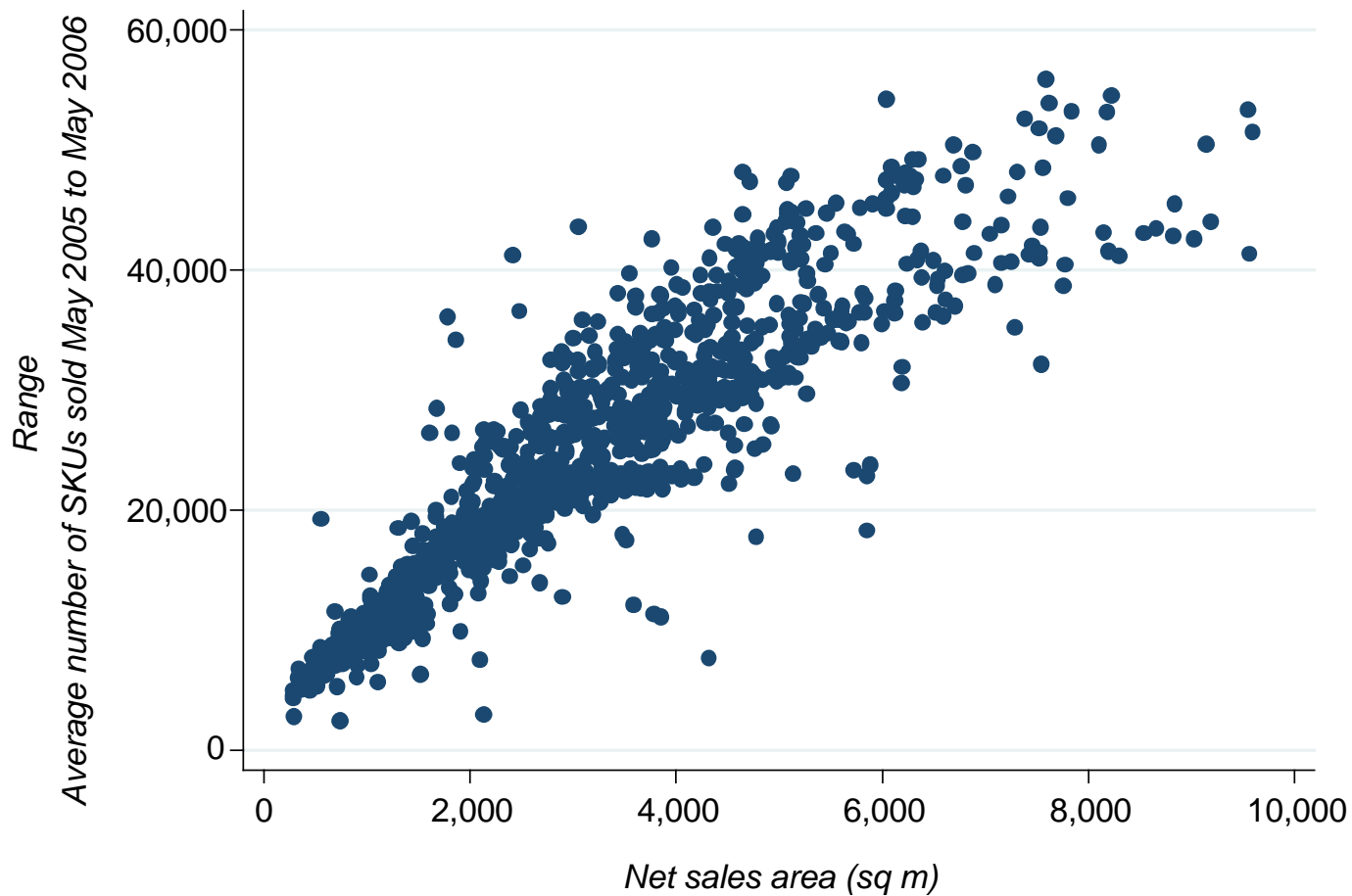


Market definition

- Large full-range grocery stores impose a competitive constraint on each other and also impose a competitive constraint on smaller stores and limited-range grocery stores
 - however, smaller grocery stores and limited-range grocery stores do not impose a competitive constraint on large full-range grocery stores
 - similarly, limited range grocery stores (eg limited assortment discounters) are constrained by full-range grocery stores but not vice versa
- Geographic market is local
 - for larger grocery stores it is a 10-15 minute drive-time around each store
 - for smaller grocery stores, the geographic market is smaller – around 5 minutes drive-time for the smallest stores

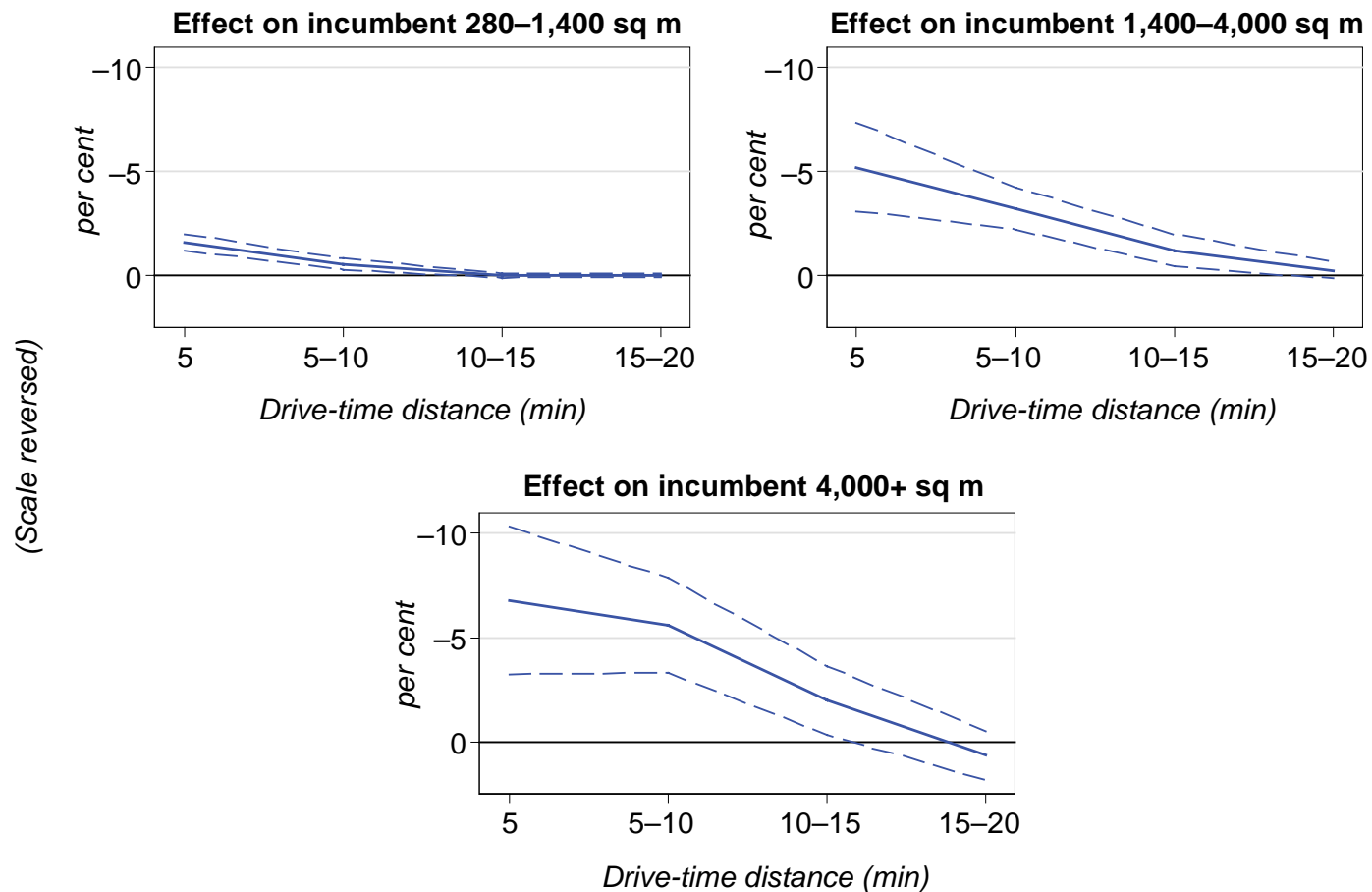


UK grocery retailers, store size and product range





Revenue impact of new store entry on incumbent stores



Source: CC analysis.

Notes:

1. Analysis uses data for incumbent stores with a net sales area larger than 280 sq metres.
2. Dashed lines represent a 95 per cent confidence interval around the estimated value.



Competition between supermarkets and convenience stores

- Convenience store lobbyists argued that the number of convenience stores was declining as a result of ‘unfair’ competition from supermarkets
 - evidence on convenience store numbers was mixed (no clear evidence of declining store numbers), but clear evidence that revenues in the sector had been growing
 - further, declining convenience store numbers is not evidence in itself that competition is distorted – could just reflect consumer preferences
- Examined a number of possible causes of competitive distortion:
 - below cost selling
 - local vouchering by supermarkets
 - waterbed effect
 - financial viability of the grocery wholesale sector
 - Tesco and Sainsbury’s expansion in convenience store sector



Below-cost selling

- Below-cost selling by large grocery retailers is widespread
 - represents, by sales value, up to 3 per cent of each retailer's total revenue
 - below-cost sales are focused in 2-3 product groups, particularly dry groceries and alcohol
- Grocery retailers sell below cost so as to:
 - avoid being beaten on price or to maintain a price differential with competitors
 - tempt customers into the store at certain times, such as Christmas
 - sell excess stock, particularly seasonal products
 - support the launch of a new product
- We found that:
 - the below-cost selling we observed was not predatory towards other grocery retailers and did not have any other anti-competitive effects
 - we did not find that below-cost selling was likely to mislead consumers about the cost of shopping at a store – basket prices are also important
 - temporary promotions, including loss leading, may constitute efficient pricing for retailers, and may reduce the average price for a basket of products



Local vouchering

- Local vouchering is used by many retailers to provide discounts at their stores in a particular locality (eg £5 off when £20 is spent)
 - Fuel discount vouchers are a variation of this strategy
- Extent of local vouchering activity varies substantially between grocery retailers, but not on the whole particularly extensive
- We did not find any evidence of any vouchering campaigns that could be regarded as predatory

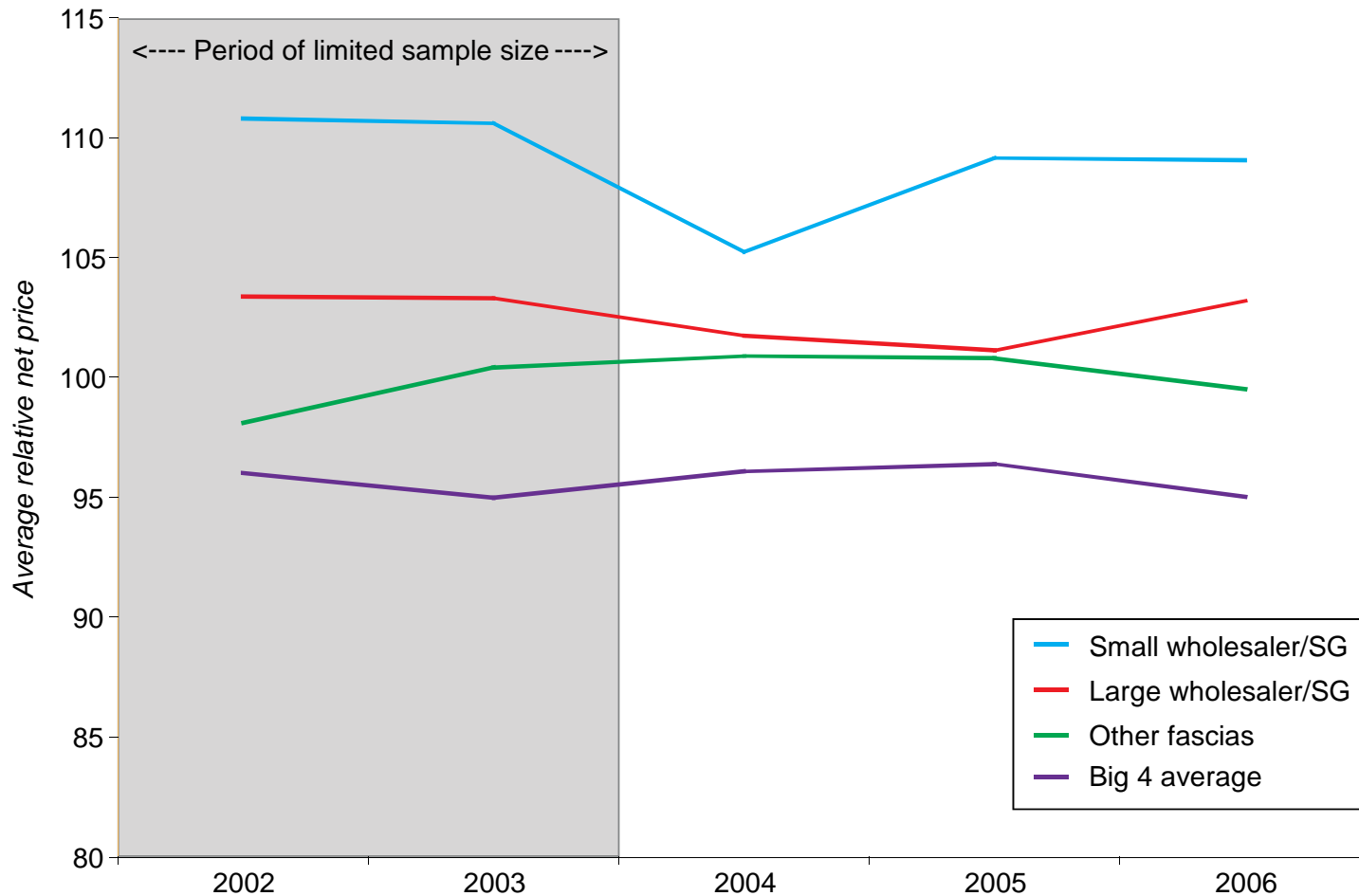


Waterbed effect

- Concerns about a possible ‘waterbed effect’ in supplier pricing to grocery retailers
 - a ‘waterbed effect’ occurs when, as a result of large grocery retailers obtaining lower prices from their suppliers, these suppliers increase prices for other grocery retailers and wholesalers
 - it was argued that this ‘waterbed effect’ would lead to small retailers inevitably going out of business as large retailers gained scale, through taking sales from smaller retailers, and obtaining an ever greater cost advantage from their suppliers
- We rejected the waterbed argument for a number of reasons:
 - it was not clear that the waterbed effect would lead to consumers being worse off – competition between large retailers would ensure lower prices from suppliers were passed on to consumers
 - no evidence that grocery retailers increasing in size were getting ever lower prices from suppliers (see following slide)
 - grocery wholesalers mitigate the impact of any waterbed effect



Average net supplier price by grocery retailer



Source: CC analysis.



Local market concentration

- We found that the extent of local market concentration is linked to a store's retail offer
 - not particularly in terms of local prices, as most retailers price nationally, but in terms of aspects of the non-price offer, such as availability of different fresh produce counters, staffing, store refurbishment activity, local vouchering activity
 - stores in concentrated local markets have wider profit margins than stores in more competitive local markets
- Local market concentration also influences those parts of the retail offer that are set nationally, such as prices
- A significant proportion of UK supermarkets are in highly concentrated local markets
 - between 11 and 27 per cent of larger grocery stores (stores larger than 1,400 sq metres)
 - between 10 and 22 per cent of mid-sized and larger grocery stores (stores larger than 280 sq metres)
 - Highly concentrated markets defined as where a grocery retailer has a large share of local floorspace (>60%) and few competitors (less than three)



Local market concentration

- Weak competition allows grocery retailers to:
 - earn £105-125 million in additional profits annually at larger grocery stores in highly concentrated local markets
 - earn additional profits at mid-sized grocery stores in highly concentrated local markets that may be of a similar order to the £105-125 million that we identify for larger grocery stores
 - earn further additional profits as a result of prices being higher at all stores (not just those in highly concentrated local markets)
 - almost impossible to estimate what the scale of this national price effect is, but for each 0.1 per cent increase in prices the four largest grocery retailers earn an additional £80 million per year



Barriers to entry

- **Planning**
 - planning regime aims to meet a number of public policy objectives (eg focusing new development in town centres, ensuring adequate transport links etc)
 - however, in doing so, it effectively caps supermarket capacity (ie floorspace) in a local area and allows grocery retailers to secure strong local market positions that other retailers find difficult to challenge
 - ease of gaining planning permission for extending an existing store compared to opening a new store gives incumbent retailers an advantage
 - large retailers also have an advantage over smaller retailers due to costs and complexity of the planning regime
- **Controlled land**
 - given the restricted amount of land available for supermarket development, grocery retailers are able to further restrict entry opportunities for competitors by preventing land sites being used for competing stores
 - land holdings, restrictive covenants, and exclusivity arrangements are all means of doing this



Groceries supply chain and buyer power

- Buyer power is a form of market power that a grocery retailer is able to exercise in relation to its suppliers
 - buyer power allows a grocery retailer to obtain a better deal from its suppliers compared to grocery retailers that do not have buyer power
- In general, the exercise of buyer power by grocery retailers will be positive for consumers
 - grocery retailers will pass on lower costs to consumers in the form of lower prices (provided that competition between grocery retailers is effective)
 - buyer power can act as a countervailing force to any market power possessed by suppliers
- Buyer power can have negative consequences for consumers, however, in certain limited circumstances
 - investment and innovation in the supply chain may be damaged where grocery retailers, in the hope of gaining a competitive advantage, transfer excessive risks and unexpected costs to suppliers



Groceries supply chain and buyer power

- In the UK, we found that all large grocery retailers, wholesalers and buying groups have buyer power in relation to at least some of their suppliers
 - larger retailers will have buyer power in relation to more of their suppliers than smaller retailers
- Gathered evidence on supply chain practices from supplier survey, supplier submissions to the CC and a review of emails between two grocery retailers and their suppliers
 - not all practices that suppliers complained about were of concern to us
 - in particular, tough price negotiations do not raise competition concerns
- Transfer of excessive risk and unexpected costs from grocery retailers to suppliers can take the form of:
 - retrospective changes to supply agreements (eg pricing, payment terms)
 - transfers of risk that create 'moral hazard' on the part of the retailer (eg cost of shrinkage)



Code of Practice

- Supermarkets Code of Practice (SCOP) established in 2000
 - many of its provisions are based on fair dealing concepts rather than being linked to concerns about adverse effects on consumers (consistent with the previous ‘public interest’ regime in the UK)
- Evidence that the SCOP was having some moderating effect on the four large grocery retailers to which it is applied, but
 - many suppliers were reluctant to use the Code due to confidentiality concerns
 - substantial uncertainty over many of the Code’s provisions where a ‘reasonableness’ test was being applied



Remedies

- A new 'competition' test in the planning regime
 - restricts new store developments in local markets where an incumbent retailer has a strong local market position
- Restrictions on the ability of grocery retailers to influence use of land
 - limitations to exclusivity arrangements
 - ban on restrictive covenants
 - existing restrictions to be lifted in around 60 locations
- Revised Code of Practice for grocery retailers
 - covers more retailers
 - more comprehensively addresses the cost and risk transfer issues that we identified
 - better enforcement through requirement for internal compliance systems at retailers and an independent ombudsman
 - ombudsman able to arbitrate on individual disputes and investigate areas that have been subject of complaint

How does the JFTC regulate abuse of dominant bargaining position by large-scale retailers ?

Takuro Ikeda & Naoko Teranishi
Fair Trade Commission, Government of Japan

July 10, 2008

Background

○ History of Japanese large-scale retailers

- ❁ 1905: appearance of Department stores

e.g. Mitsukoshi = 1673: established as Kimono Shop → 1905: changing its business category into Department Store → 1906: starting dealing cosmetics → 1907: opening restaurant/starting dealing shoes, photos → 1908 starting dealing jewelry

- ❁ 1945: end of the World War II and beginning of the occupation by the Allied Powers

- ❁ 1947: legislation of Antimonopoly Act and establishment of JFTC

- ❁ 1955 - : appearance of Supermarket

- ❁ 1973 - : appearance of Convenience Stores

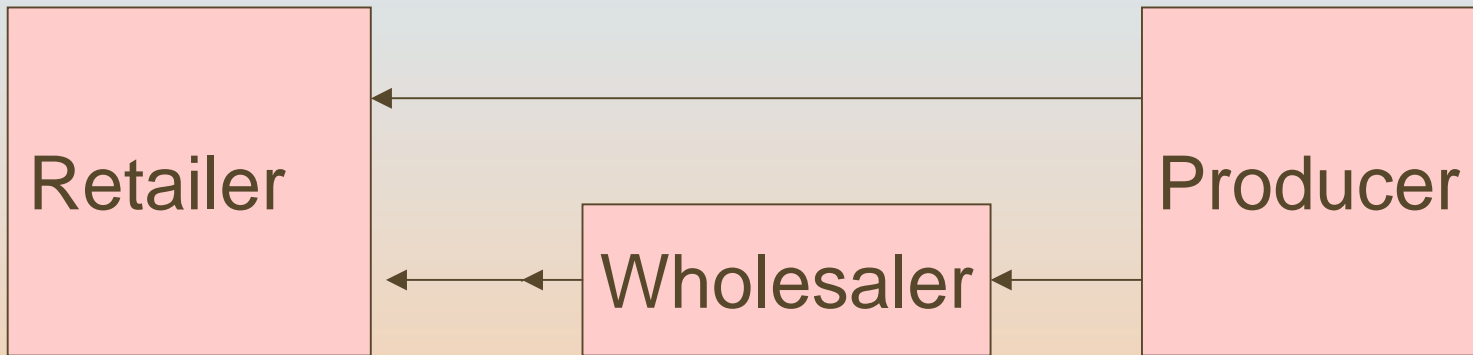
- ❁ 1990's - : Growth of the new categories of business

e.g. discount store, home center, shopping mall, large electrical products shop

Background

- Changes in the distribution environment
 - ❁ Drop in the sales amount in retail business
 - ❁ Low sales performance of the existing business categories (department stores, supermarkets)
 - ❁ Growth of the new categories of business
 - ❁ Increasing number of large-scale retail shops and decrease in the sales amount of 1 unit shop
→ Suppliers are left to bear the burden

Distribution route

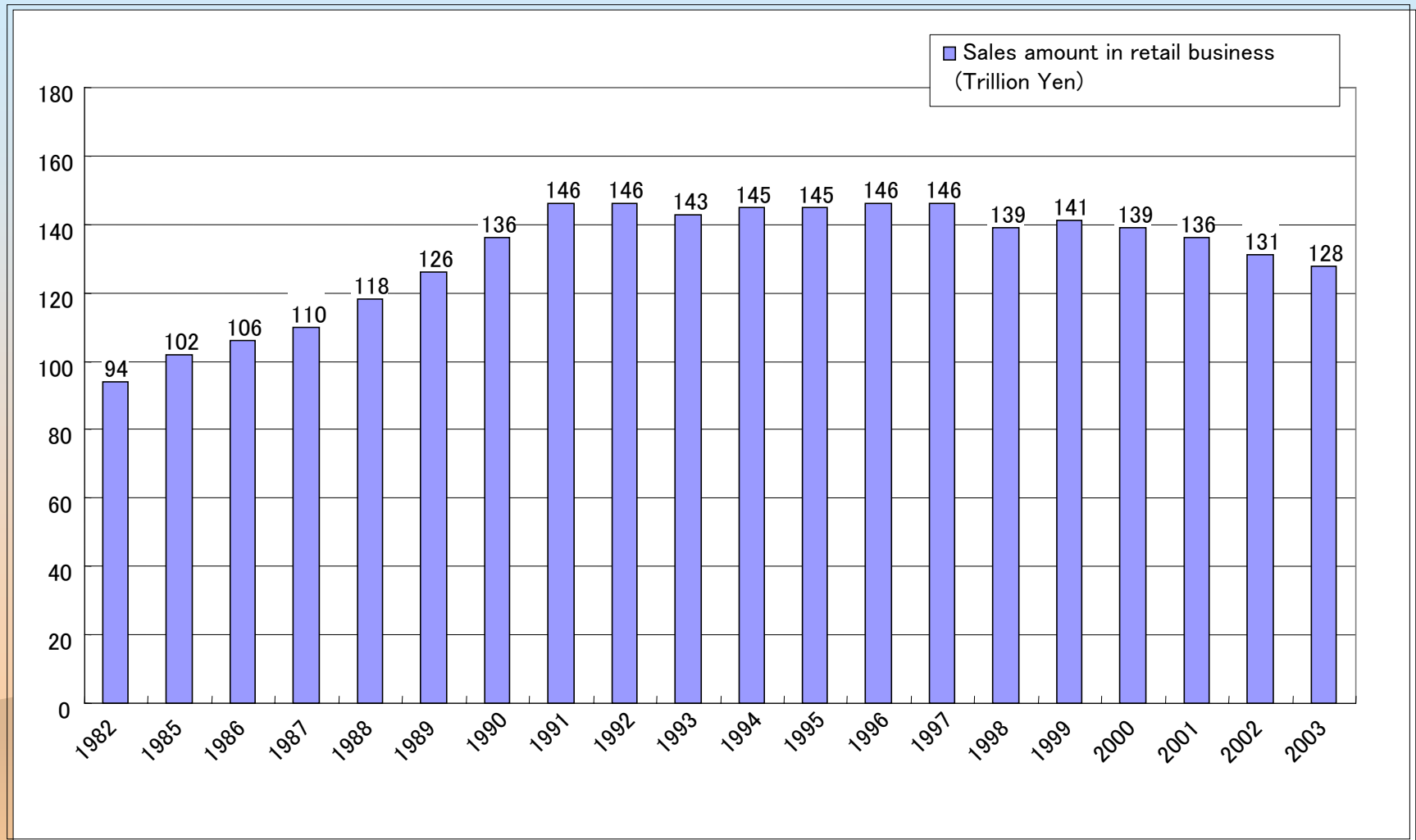


Business categories of large-scale retailers

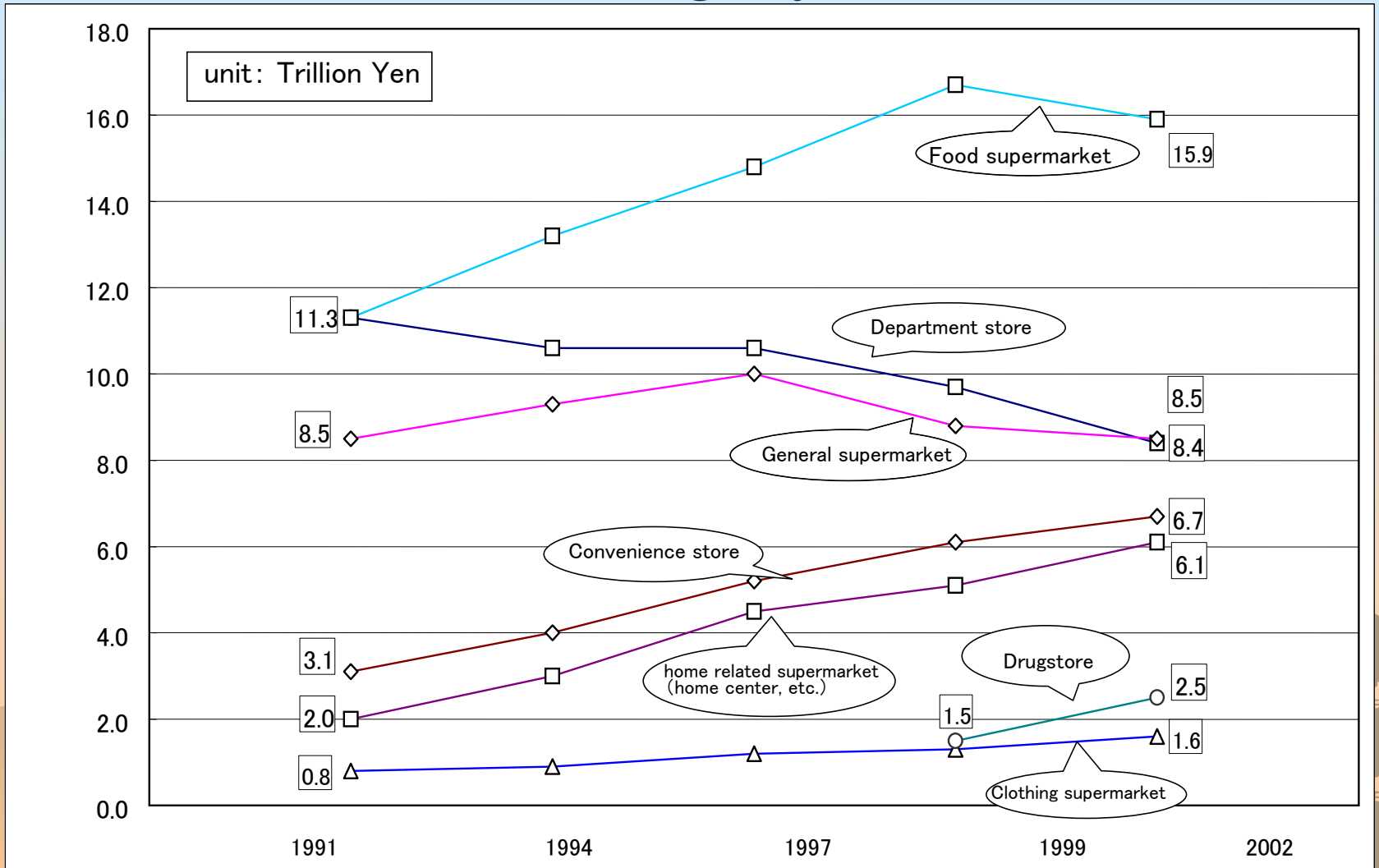
- ❁ Department stores
- ❁ Supermarkets
- ❁ Home-related supermarkets (Homecenters)
- ❁ Specialized mass sales store (clothing shops, electronic shops, etc.)
- ❁ Drugstores
- ❁ Total discount stores
- ❁ Convenience stores
- ❁ Online / Direct mail sales, etc.



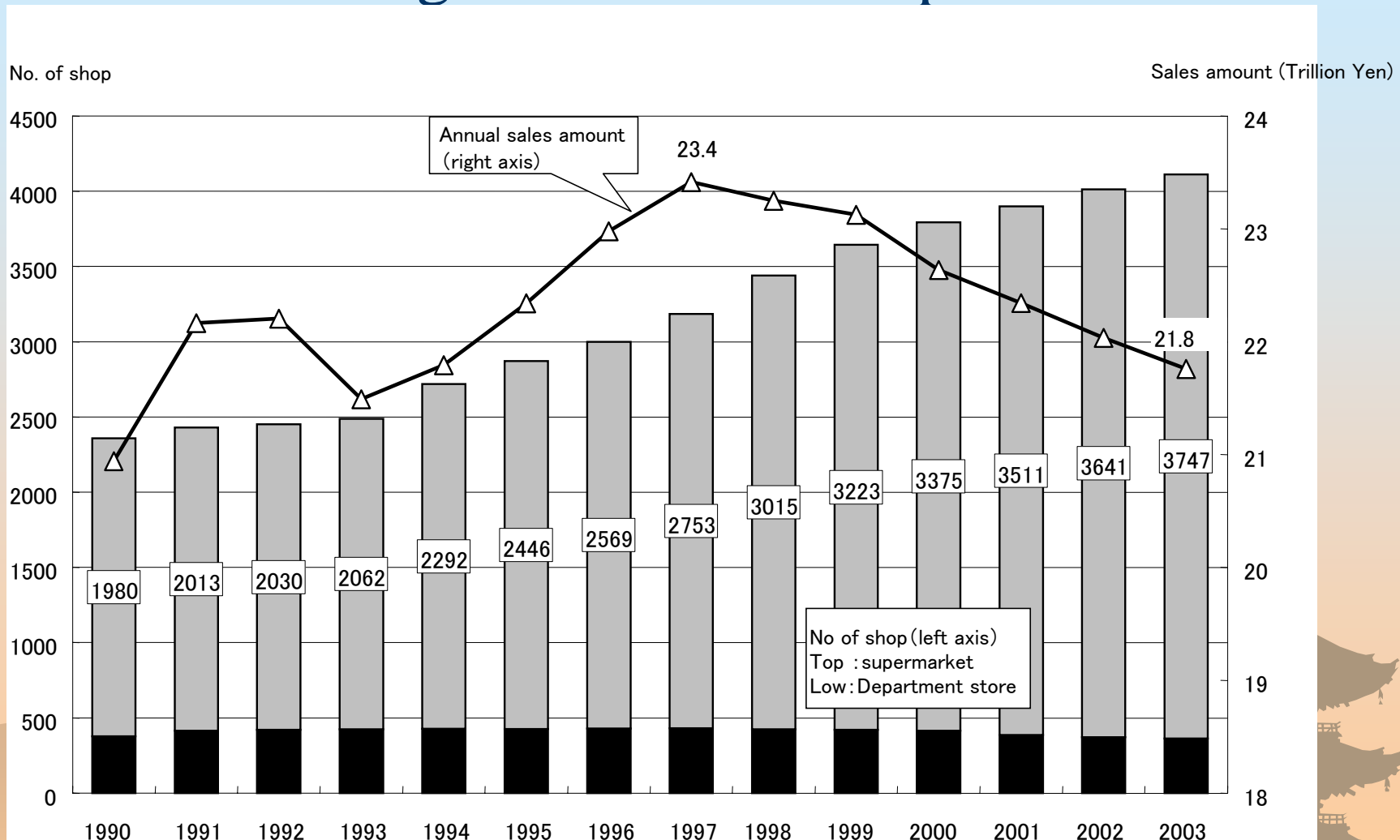
Sales transition of sales amount in retail business



Transition of sales amount per business category



Transition of sales amount and number of shop of large-scale retail shops



(Source : Trade statistic, data from METI)

Activities of the JFTC

Promoting fair trade between large-scale retailers and suppliers

- ❁ Rulemaking on the related trade practices
- ❁ Administrative guidance based on fact-finding survey
- ❁ Measures against violations to the Antimonopoly Act

Notification to large-scale retailers means

- ❁ Rules that regulate abuse of dominant bargaining position by large-scale retailers.
- ❁ The formal term is “Designation of Specific Unfair Trade Practices by Large-Scale Retailers Relating to the Trade with Suppliers”.
- ❁ Put the New notification into effect on 1 November, 2005.

Legal positioning of the notification to large-scale retailers

○ Antimonopoly Act

✿ **Section 19**

No entrepreneur shall employ unfair trade practices.

✿ **Section 20**

(1) When there exists any act in violation of the preceding Section, the Fair Trade Commission may...order the entrepreneur concerned to cease and desist from the said act...

○ Antimonopoly Act

✿ Section 2

(9) The term “unfair trade practices” as used in this Act shall mean any act coming under any one of following paragraphs, which tends to impede fair competition and which is designated by the Fair Trade Commission.

(v) Dealing with another party by unjust use of one’s bargaining position

❁ Section 72

Designation under the provisions of Section 2(9) [designation of unfair trade practices] shall be made by a notification.

Types of notification

- ❁ General designation

Rules applied to all categories of business

- ❁ Specific designation

Rules applied to a specific category of business



Dominant bargaining position means

- ❁ relative superiority against transaction's counterpart, and doesn't require dominant position within a relevant market.
- ❁ The JFTC, through its notification (general designation or specific designation) designates concretely the conduct of abusive dominant bargaining position.

Contents of the notification to large-scale retailers

○ Definition of “large-scale retailers”

I Retailers who have sales of 10 billion Yen or more in its last completed fiscal year

or

II Retailers who own either of the following store floor space;

- ① in ordinance-designated cities: more than 3,000m²
- ② in other cities: more than 1,500 m²

○ Definition of “suppliers”

- Entrepreneur who supplies goods to be sold by large-scale retailers.
- However, excluding any such entrepreneur which bargaining position is recognized as not being inferior to that of the large-scale retailer in question.

Prohibited conducts

- ① Unjust return of goods
- ② Unjust price reduction
- ③ Unjust consignment sales contract
- ④ Beating suppliers down on price for bargain sales, etc.
- ⑤ Refusal to receive specifically ordered goods
- ⑥ Coercion to purchase
- ⑦ Unjust assignment of work to employees of suppliers
- ⑧ Unjust receipt of economic benefits, etc.
- ⑨ Unfavorable treatment in response to refusal of requests
- ⑩ Unfavorable treatment in response to notification to the Fair Trade Commission

Unjust return of goods

- Prohibits large-scale retailers from returning goods which purchased from suppliers.

<Examples>

- Return of goods that became dirty due to the display in the store.
- Return of goods for the purpose of inventory adjustment at the end of month or semester.

▲ Exceptions

- ① When there is a reason attribute to a supplier (goods with scar, etc.)
- ② When conditions for returning goods are fixed with supplier beforehand
- ③ When the large-scale retailer bears a loss that should normally occur to the supplier due to the return of goods
- ④ When there is a request of the suppliers to return goods

Unjust assignment of work to employees of suppliers

- Prohibits a large-scale retailer from coercing a supplier to dispatch employee to assist with the ordinary operations of the retailer or to bear the labor costs of employees hired by the retailer.

<Example>

- For the purpose of conducting inventory, make a supplier dispatch his staff to perform this duty without paying the necessary labor costs.

▲ Exceptions

- ① With prior consent of the supplier, assigns dispatched employees solely to sales operations of those goods delivered by the supplier.
- ② With prior agreement with the supplier with respect to the dispatch terms and conditions, and the large-scale retailer bears the cost generally required for the dispatch of employees.

Coercion to purchase

- Prohibits a large-scale retailer from coercing a supplier to purchase any goods or services designated by the said retailer, unless there is any just reason.

<Example>

- Person in charge of purchasing requests a supplier to purchase goods sold by the one's company.

Unjust receipt of economic benefits

○ Prohibits the following conducts

① Coerce a supplier to provide with economic benefit including money and services that the supplier definitely should not need to offer.

② Coerce a supplier to provide with economic benefit including money and services that exceeds the limit recognized as reasonable in consideration of the benefits reaped by the supplier.

<Examples>

- For the purpose of handling the final financial report, make the supplier provide with monetary contribution.
- Make supplier provide with cooperative money as an advertising expenditure, more than the actual expenditure which the retailer paid.

Case ①

- The JFTC issued the cease and desist order against retailer A in March 2007
- Profile of retailer A
 - ✓ A supermarket and home center
 - ✓ Annual sales : approximately J\ 37 billion (≒ US\$ 350 million)
 - ✓ The largest supermarket and the largest home center in South Kyushu (Southern part of Japan) area
 - ✓ Number of suppliers in transaction : 390 companies

○ Fact of violation

① Unjust return of goods

- To adjust the excessive inventory, returning goods despite of no returning condition

→ Equivalent to J\ 665 million (≒ US\$6.3 million)

② Unjust price reduction

- To improve a retailer's profit that was lessened by markdown-sale, requesting suppliers for ex post facto price cut

→ Equivalent amount of the price reduction: J\ 248 million (≒ US\$ 2.3 million)

③ Unjust assignment of work on employees of suppliers

- When retailer A remodels its stores, it requests suppliers to dispatch their employees free of charge to help display products and attend to customers
 - Total: approximately 6,900 people dispatched



Case ②

- The JFTC issued the cease and desist order against retailer B in October 2006
- Profile of retailer B
 - ✓ A supermarket and home center
 - ✓ Annual sales : approximately J¥163 billion (≒ US\$ 1.5 billion)
 - ✓ The largest supermarket in Tokai area (where Aichi Int'l Exhibition was held)
 - ✓ Number of suppliers in transaction : 680 companies

○ Fact of violation

① Coercion to purchase

- Requesting suppliers to purchase gift products for sale

② Unjust assignment of work on employees of suppliers

- Requesting suppliers to dispatch their employees so that they help display and replenish products for the retailer without charge on the inauguration of retailer B's stores

③ Unjust request of monetary contribution

- Requesting suppliers to offer monetary contribution without clear and prior explanations about its estimation and account when inaugurating stores
- Requesting suppliers to provide free products sold continuously over a certain period of time
- Requesting suppliers to contribute rebate equivalent to 1% of the transaction with individual suppliers in Augusts and Decembers because higher sales are expected in these months

④ Coercion to purchase

- Requesting suppliers to purchase old stock in the stores that retailer B took over from other businesses
 - Retailer B planned to re-launch the stores with new products provided by suppliers
 - Retailer B coerced suppliers buyback products once they had sold to the other retailer that was transferred to retailer B

Antimonopoly Act (AMA)

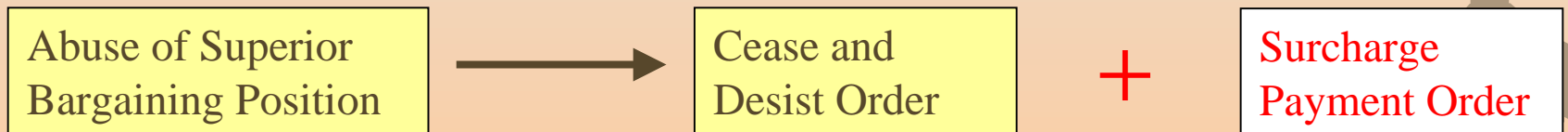
Amendment Bill

- ❁ In March 2008, the amendment bill of the AMA was submitted to the Diet
- ❁ Abuse of Superior Bargaining Position = Subject to Surcharge

(Now)



(Amendment Bill)



➤ *The Bill still remains under deliberation*

Expansion of Types of Conduct Subject to Surcharges: the abuse of superior bargaining position

- ❁ Elements of violation defined in the amendment bill
 - ✓ coercion to purchase
 - ✓ unjust receipt of economic benefits
 - ✓ refusal to receive
 - ✓ unjust return of goods etc.

❁ Surcharge calculation :

(Purchase/sales amounts of transaction with trade partner(s) that suffered the abuse) × 1%

- ❁ Levied against the continuous offence

Thank you very much for
your attention.



Examining Predation Concerns

Dr. Kenneth L. Danger

OECD

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[Acknowledgements]

- Jeremy West
- David Reitman

[Useful Articles]

- Baumol, William J. “Predation and the Logic of the Average Variable Cost Test,” *Journal of Law and Economics*, April 1996.
- OECD Roundtable on Predatory Foreclosure available at http://www.oecd.org/document/38/0,2340,en_2649_37463_2474918_1_1_1_37463,00.html

[Overview]

- Predation Background
- Predatory Pricing Evidence
 - Price-cost tests
 - Recoupment
 - Predatory intent
 - Defences against predation allegations

[Predation Background]

- Definition
- Why predation is a concern
- Practical enforcement difficulties

[Defining Predatory Pricing]

- Prices are predatory when they are so low that they can be considered rational only because they ultimately eliminate or deter competition.
- This strategy is said to enable the predator to achieve or maintain some degree of market power.

[Why Predation is a Concern]

- It might seem odd that competition laws might be used to attack prices that are deemed too low. Often consumers complain that prices are too high.
- Basic principle of competition and the laws is to promote the competitive process.
- Predation is a dynamic process that evolves over many periods.
- If a predatory strategy is successful in the long run, price will be higher than otherwise precisely because the competitive process has been harmed.

Practical Enforcement Difficulties

- A key difficulty for enforcement agencies is that predatory pricing resembles legitimate competitive behaviour.
- Example: Incumbent firm (who is earning super normal profits) cuts price in response to entry.
- The key question then is whether the price cut was predatory or simply a procompetitive response to entry.
- Because answering this question is difficult a number of tests have been proposed that attempt to sort out illegal behaviour from procompetitive behaviour.

[Evidence of Predatory Pricing]

- Benchmarks
- Marginal cost test
- Average variable cost test
- Average total cost test
- Average avoidable cost test

Why Do We Need a Benchmark?

- We need a benchmark in order to focus public policy. Otherwise there will be nothing which one can use to determine whether an illegal act was done.
 - You can't say don't drive too fast
 - You can't say don't price too low
- The problem is that what is fast driving and what is a low price is different for different people.

Use Internal Benchmark to Gauge Predation

- If a firm forces a competitor out of business by pricing such that the competitor must operate at a loss to meet that price, then it may be true that the elimination was intentional, that the firm intended to send a signal to deter potential entrants, and even that it wished to do these things so that it could achieve or maintain a dominant position.
- If that firm is more efficient than the competitor was, however, and it was therefore able to accomplish these goals simply by undercutting the competitor's price while continuing to cover its own costs, then the outcome described above is consistent with normal competitive behaviour.
- On the other hand, if the firm priced below its own costs, then the competitive process was distorted and the firm may have expelled an efficient competitor from the market.

Why Do We Use Price Cost Tests?

- The aim of price-cost test is to discern whether a company is incurring losses that are rational only if they are part of a predatory pricing strategy.

What Cost Benchmark Should I Use?

- Most jurisdictions use some type of price-cost test when analysing predatory pricing cases.
- The agreement largely ends there, however, because different jurisdictions consider different measures of cost to be most appropriate for detecting predatory pricing.
- Furthermore, some jurisdictions use more than one cost measure, while others have not yet decided what the best measure is.

The Areeda-Turner Test – Using Marginal Cost as a Benchmark

- Areeda and Turner proposed that a price less than short run marginal cost is predatory, and that any price above that amount is not predatory.
- The rationale for this test is straightforward: in the theoretical state of perfect competition - **the most extreme state** - market forces will force firms to price at MC.
- As long as a price is at or above that level, it cannot be deemed too low because that is the level that would prevail in the most competitive kind of market structure.
- As long as an incumbent's price does not exceed that level, the price cannot exclude a competitor who is at least as efficient as the incumbent.
- Phillip Areeda & Donald Turner, "Predatory Pricing and Related Practices under Section 2 of the Sherman Act," 88 Harvard Law Review 697 (1975).

Using AVC as a Substitute for MC

- Areeda and Turner were well aware that MC data is not easy to estimate. Because it is so difficult, they recommended using AVC as a surrogate. **Here variable costs are usually defined as the costs that a firm incurs at the margin for producing slightly more or slightly less output, but it does not include any fixed costs.**
- Many courts and agencies seem to have taken the position that what the test may lack in accuracy is compensated for by the fact that it is relatively easy to use.
- Furthermore, the test is not without some substantive merit. A price that is persistently below AVC indicates that the firm is not even covering all of its variable costs, let alone its fixed costs. Usually, when a firm is experiencing such losses over time, it shuts down because continuing to operate would create bigger losses than going out of business would.
- Therefore, a firm that stays in business in those circumstances could be a predator (unless it has a legitimate justification).

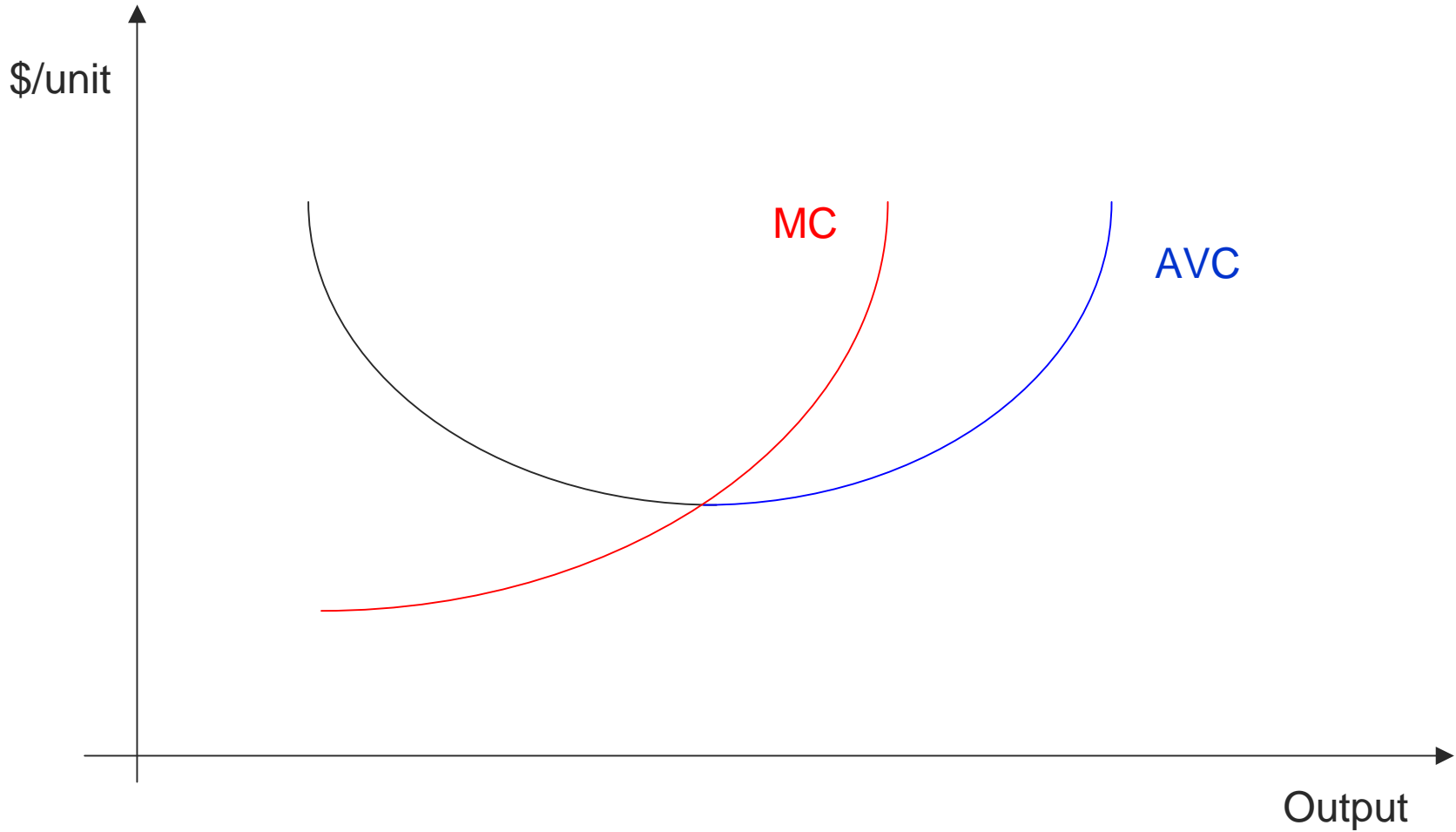
Defining Average Variable Cost

- You need to be careful about definitions.
- In most antitrust setting variable cost refers to those costs that vary with output.
- Examples include materials, some labour, electricity perhaps, etc....

Criticism's of the Marginal Cost Test

- Most of the criticisms levelled at the Areeda-Turner test can be grouped into either of two categories:
 - 1) short run MC is not a good test because even though most prices below it are predatory, some prices above it can be predatory, too;
 - 2) assuming that short run MC is a good test, AVC is often a poor substitute because it tends to fall below MC (and therefore underestimate it) at higher output levels, leading to false negatives when testing for predation.

The Relationship Between AVC and MC



Average Total Cost Test

- Some jurisdictions, such as the European Union, incorporate an ATC test in their predatory pricing analysis.
- Usually, the test is part of a framework that roughly resembles one first proposed by Joskow and Klevorick. Those authors favoured a joint AVC-ATC approach in which prices below AVC are always deemed predatory, and prices greater than AVC but less than ATC are deemed predatory unless the defendant has a reasonable justification for the price.
- Paul Joskow & Alvin Klevorick, “A Framework for Analyzing Predatory Pricing Policy,” 89 Yale Law Journal 213 (1979).

Problem: ATC is Difficult to Measure

- The basic problem is that when a firm produces several products, attributing common costs to a single product line is an arbitrary process.
- Examples of common costs include buildings, secretaries, electricity to light office lights, carpet, garbage services, etc.....

Solutions to Common Cost Problem?

- Revenue shares have been suggested as one way to solve the common cost problem.
- The problem with this easy fix is that sometimes it will be clear in an ordinal sense that one business line uses a source of common costs more than another business line, but it will not be clear how the two compare in a cardinal sense.
- In other words, one may be able to tell which line is the heavier user, but not by how much.

Baumol's Observation on Common Costs

- There probably exists no such thing as a single-product firm, and all multiproduct firms have fixed costs incurred in common on behalf of two or more of their products.
- There is, however, no economically defensible way of dividing such costs up among the firm's various products. As is well known, all methods for the allocation of common fixed costs are arbitrary.
- Before the courts or regulatory agencies, ATC are always manipulated to produce whatever answers are desired by the party that puts them forward.
- Moreover... the amounts by which these contrived cost figures can easily be manipulated is enormous. Any conclusion about the predatory character of a price that is based on a calculation of average total cost must be disregarded.
- Thus, we need a way around the common cost problem.

Average Incremental Cost

- Defined to be all costs that both vary with output PLUS those that are product specific and do not vary with output.
- Example: A firm buys a machine to produce a good. The AIC includes both the cost of the machine and the variable cost, but it would not include common costs incurred in producing another good such as building costs (if both goods are produced in the same building)

[Average Avoidable Costs]

- AAC is the same thing as AIC except that it does not include sunk costs.
- AAC includes all portions of product-specific fixed and variable costs that can be avoided or escaped from in the pertinent period of time.

What Are Sunk Costs?

- Sunk costs are the portion of fixed costs that are not recoverable over a certain period of time.
- Examples include
 - rent on a two year lease
- However, sometimes a firm can get out of what would otherwise appear to be a fixed cost
 - Sublease
- And sometimes a firm can reduce its fixed asset liabilities but it might do better over time
 - Machine can be sold today for \$10, but during the next month could probably sold for \$12. Actually value is say \$15. This means that right now \$5 is sunk ($\$15 - \10) but during the next month the sunk cost portion is reduced to \$3 ($\$15 - \12).

[Pricing Above AAC]

- When prices are above AAC some payments are going toward sunk costs.
- If the firm were to cease producing, its revenues would be zero and so to would it variable costs, but it would still have to pay for its sunk costs.
- As long as price is above AAC it pays to stay in business as at least some monies will go toward payment of the cost of the sunk asset.

[Pricing Below AAC]

- When price is below AAC the firm is simply adding to its losses resulting from its sunk cost obligations.
- Example: You have a machine that you could sell for \$10. You just bought it for \$12, hence \$2 is sunk.
- What would you do if you would only earn \$9 in profits by keeping the machine running?
- What would you do if would earn \$11 in profits by keeping the machine running?

Lesson on Pricing Below AAC

- When prices are set below AAC they are not compensatory and the firm could do better by redeploying its assets.
- Pricing below AAC is a significant indicator of what might potentially be predatory behaviour.

Product Combinations and the AAC Test

- Lets consider the case of airline transport.
- Airlines typically offer at least two services: first class and economy, for example.

This example comes from Baumol's paper cited above.

Example: The Cost of a Cancelled Flight

- When the airline cancels a flight the fuel expenditure can be avoided and perhaps the cost of the pilot (who could be redeployed or simply let go)
- When an airline decides to cancel first class service it does not forgo the costs of fuel and the pilot's salary. These costs are common. That is you need to have a pilot and fuel even if you only offer economy class. Fuel costs will probably change little by cancelling first class services.

Consider First and Economy Together

- The incremental costs of transporting first and economy passengers clearly includes both the pilot's salary and the fuel outlay.
- It's as if we had one product now called air transport services. That is, we don't have a common cost product.
- By cancelling the flight all of these costs would be avoided.

Numerical Example

- It is easy to see that the price of a first-class ticket and of an economy can be above their average avoidable cost yet fail to cover the combined avoidable cost.
- Incremental ticketing, food, etc costs for economy is \$40 and \$80 for first class. There are 200 economy passengers and 40 first class passengers. Fuel and pilot costs amount to \$15,000 for the flight.
- If the economy fare is \$60 and the first class fare is \$100 they both cover their AAC, but.....
- Total revenue = $\$60 \times 200 + \$100 \times 40 = \$16,000$
- Total Avoidable Costs = $\$40 \times 200 + \$80 \times 40 + 15,000 = \$26,200$
- Clearly the firm is pricing below the AAC of the flight. It could earn more money by redeploying the assets. These prices would be deemed to be predatory unless there is a legitimate business justification or no possibility of recoupment.

[Avoid Data Mining]

- Plaintiffs should know well in advance what product or product combinations they suspect a firm to be predating against.

[The Appropriate Time Period]

- As AAC concept does not include any sunk costs, the time period of the analysis can affect what is deemed sunk and what is not.
- The correct answer for the appropriate time period is the time in which the alleged predatory actions took place or could have reasonably be expected to prevail.
- Why? A predatory has to force the rival into realizing that the ACC costs for the rival are higher than the price and thus the rival would do better to exit.

[What is the Recoupment Test?]

- The recoupment test aims to determine whether a company's low pricing campaign would be likely to
 - eliminate and deter competition, **and**
 - whether it is likely that the predator will then **be able to amass at least enough supra-competitive profit to recover the losses** it sustained during the attack.

Why are Recoupment Tests a Good Idea?

- The recoupment test is based on the premise that the policy objective of competition law is to promote consumer welfare. If other objectives are seen as important (such as preserving small businesses), then the recoupment test has less importance.
- When recoupment tests are not explicitly incorporated agencies may punish behavior that has no hope of ever harming competition.
- Moreover, if recoupment is unlikely, then the period of low (non predatory) prices should actually increase consumer welfare.

Recoupment Analysis Should be Done Before Price Cost Tests

- If recoupment analysis shows that predation is unlikely to eliminate or deter rivals, or that recoupment of losses is ultimately implausible, then this test enables agencies and courts to dismiss allegations of predatory pricing without having to conduct a price-cost test.
- This is quite useful because the process of determining whether prices are predatory based on their relationship to some measure of cost is often quite difficult.
- If the test shows that recoupment is likely, however, then it must be used in conjunction with a price-cost test to establish that the alleged predator actually is charging predatory prices.

[What is Recoupment Analysis?]

- Recoupment analysis takes into account a variety of conditions that contribute to the likelihood that a predatory pricing strategy will be successful.
- Not all of the conditions must be present to establish a likelihood of success.
- And, they include

[Recoupment Analysis Factors]

- Ability to increase output significantly
 - Predatory needs to be able to drive price down by enough to harm rivals
- Entry Barriers
 - Need to make sure that entrants cannot destroy newly found monopoly power. Need to consider how long it takes to enter
- Relative Financial Strength
 - Deep pockets help sustain a period of losses.

[More Recoupment Factors]

- Relatively low cost structure
 - Can sustain losses longer
- Low demand elasticity
 - Small increments to output may decrease price considerably and thus less excess capacity is needed
- See many other factors in OECD paper cited above

[Predatory Intent Evidence]

- Evidence showing predatory intent might indicate that a firm intended to carry out a predatory plan or harm a competitor.
- Proponents of such evidence argue that business managers, not government agencies or judges are in the best position to determine whether a particular scheme would likely eliminate competition and ultimately be profitable.

Using Predatory Intent Evidence

- Some jurisdictions expressly incorporate intent into their predation analysis (European Union)
- Other jurisdictions are more skeptical that it indicates predatory conduct is occurring or competition being harmed.

[Predatory Intent Difficulties]

- Firms intend to do all the business they can, to crush their rivals if they can.... Entrepreneurs who work hardest to cut their prices will do the most damage to their rivals, and they will see good in it.... Almost all evidence bearing on intent tends to show both greed-driven desire to succeed and glee at a rival's predicament. Firms need not like their competitors; they need not cheer them on to success; a desire to extinguish one's rivals is entirely consistent with, often is the motive behind, competition.... Intent does not help separate competition from attempted monopolization and invites juries to penalize hard competition.
- A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc., 881 F. 2d 1396, 1401-02 (7th Cir. 1989) (Easterbrook, J.)

Legitimate Business Justifications

- Legitimate business justifications exonerate defendants who would otherwise seem to have potentially engaged in predatory practices
- All plausible legitimate business justifications need to be considered as there are many valid, even procompetitive reasons why firms occasionally price below cost.
 - “It is hard to imagine a firm that has never found it expedient or even necessary to sell products for at least a brief period at a price below cost, for reasons ranging from product introductions to distress sales of products that are perishable or subject to obsolescence.” William Baumol, “Predation and the Logic of the Average Variable Cost Test,” 39 Journal of Law and Economics 49 (1996).

Examples of Legitimate Business Justifications

■ Product Introductions

- Temporary below-cost prices are sometimes just part of a reasonable effort to break into a market and establish a new brand.

■ Loss Leading

- Sometimes a business may sell one or more of its products at a price below cost in order to attract customers in the hope that they will buy other products sold at higher profit margins. This is known as a loss leader strategy.

More Legitimate Business Justifications

- Obsolete inventory
 - Sometimes temporary pricing below cost may be necessary to clear out older products and make room for new merchandise. In general, this should be permissible.
- Downturns in demand
- Learning curve phenomena
- For more see the OECD paper cited above

Meeting the Competition Defence

- Whether a dominant firm's below-cost prices may be excused when they match, rather than undercut, a competitor's price is yet another controversial topic related to predatory pricing.
- From an economic standpoint, the decisions accepting the MC defence do not appear to be well-reasoned.
- The key question in determining whether a price is predatory has nothing to do with its relationship to competitors' prices. Instead, the question is whether the price is below the alleged predator's costs, regardless of whether the price "merely" met a rival's price.
- To do otherwise may result in the exclusion of more efficient entrants and the exit of products with higher quality.

[Summary]

- *Use Average Avoidable Cost in Price-Cost Tests.* It is the predatory pricing benchmark of choice for most economists today.
- *Use a Recoupment Test.* There already seems to be a growing international trend in favour of this test.
- *Do Consider Legitimate Business Justifications.* It should be possible for a defendant who fails the price-cost and recoupment tests to avoid punishment if it can establish that there were special circumstances that make its pricing reasonable. But remember that a justification can only be legitimate if the firm would have set the same prices even if doing so would not have harmed competition.
- Do not recognize the meeting the competition defence as it is not economically sound in its typical form.



分組討論實況（上圖為第1組，下圖為第2、3組）同時進行討論。

Buyer Power – Hypothetical Case Study

Retail Supermarkets in Newtralia

1. Background

In the country of Newtralia, the retail grocery market is quite concentrated. There are two companies that dominate, Yourway and Davids.

Newtralia is a country comprising of two islands and the majority of the population, 80%, live in the city areas. Over 60% of the entire population of Newtralia live on the North Island.

The Newtralian retailing grocery market has two major 'one-stop shop' grocery retailers accounting for 85% of the national dry packaged goods market. The remainder of the grocery market consists of smaller grocery retailers, franchised outlets operating in conjunction with wholesalers and small independent supermarkets.

The two major participants in the Newtralian market are Yourway and Davids. Both Yourway and Davids have an aggressive strategy to acquire an increased share of the retail market. Both companies have introduced similar strategies to achieve this aim, the strategies introduced over the past ten years include:

- Development of Greenfield sites for new supermarkets;
- The development of internal capabilities to sell non dry packaged goods, such as bakeries, butcher services, delicatessen services etc; and
- Increased development of own-label brands right across all areas their business.

The two majors argue, that their market share of the 'entire grocery market' is closer to 62% as the definition of the grocery market is not simply limited to dry packaged goods and should include fresh fruit and vegetables, meat, delicatessen items, bakery products and alcohol.

Yourway's business first started on the North Island and as such its market share on the North Island is close to 60% of the grocery market. Yourway's share of the national dry packaged goods market is approximately 45%, where as its share of all grocery retailing is approximately 34%.

2. Case

On the South Island of Newtralia there are only two milk cooperatives, Pure Milk Company (PMC) and Dairy Farmers Alliance (DFA). PMC and DFA both have equal share of the fresh milk market on the South Island.

In the South Island PMC supplies various milk products to a number of retailers, wholesalers and other outlets. PMC has contracts to supply both Yourway and Davids. In addition to the milk products that PMC produces, it has developed an extensive range of cheese and long-life milk products that it sells right across Newtralia.

Payless, is small South Island wholesaler that operates a number of retail grocery outlets and supplies various restaurant businesses on the South Island. Payless, unlike Yourway and Davids, only operates in regional centres and does not have a presence in the two largest cites on the South Island. Payless has developed a strong reputation amongst Newtralian consumers as a discounter as it predominantly stocks its own branded products.

PMC agrees to manufacturer, package and supply Payless with various milk and cheese products which will be sold under the Payless brand through its supermarkets as well as distributed through its wholesale business.

In response to this, Yourway contacted PMC and expressed concern about its arrangements with Payless. Yourway suggested that it might review its purchase of milk products on the South Island. At the time 60% of the fresh milk sold by Yourway in its South Island stores was PMC branded. Yourway also indicated that it was also considering reviewing its National buying strategy for cheese and long-life milk products.

Subsequently PMC advised Payless that it would be unable to supply it with Payless Branded milk and cheese products.

3. Issues for discussion

Market Definition

- i. What are some of the factors that should be considered in determining whether Yourway has market power? Is there a different retailing and wholesaling market? Is the market national, metropolitan and regional?
- ii. What is the relevant product market in this situation – is it fresh milk, milk based products, dry packaged goods or all grocery retailing?

Buyer Power

- iii. Does Yourway have buyer power and if so, has it exercised its buyer power in an anti-competitive manner?
- iv. Companies that exercise their buyer power to acquire goods/products at low prices often pass those savings onto their customers/consumers. Are there short-term benefits? Are there long-term ramifications?

Government Regulation

- v. Should the Government introduce some form of legislation that enables those businesses with a weaker bargaining position other mechanism to redress the 'unfairness' that may exist when small business contract with large businesses? If so, what are some forms of government intervention that may occur (for example Industry Codes of Conduct or unfair/unconscionable conduct legislation)?

Food Retailing Hypothetical Case Study

1. Introduction

1. This case concerns how NewMarket Retail Outlet has priced loaves of bread in its stores. NewMarket offers products other than groceries (such as automotive supplies, homebuilding supplies, electronic goods, etc.) Recently, NewMarket unilaterally decreased the price of bread below the price at which it purchased it. When it did that, sales of a small number of non-food items increased. NewMarket's new pricing practice lead to numerous complaints by competing retailers, especially ShopRight. Based on these complaints, the competition authority has conducted a preliminary investigation. This brief summarizes the facts that have been learned to date.

2. Background

2. Five years ago, Marilia opened the market to entry by foreign retailers. Shortly after enter was allowed, NewMarket established numerous stores throughout Marilia. During the last five years, NewMarket steadily gained market share throughout Marilia and, as a result of its entry, the retailing sector has experienced considerable change. Numerous small stores were driven out of business by the aggressive competition which ensued in any city in which NewMarket entered. Those retailers that exited, as well as others that continued to operate, complained to the Marilian government and local planning authorities that they simply could not compete against NewMarket's size, product offerings and low pricing strategy. They felt that NewMarket was often pricing below its cost and consequently they simply could not survive. As a direct result of these complaints, the federal government of Marilia has indicated that it will not allow other foreign retailers to enter Marilia. During this same time, many cities also enacted planning regulations which inhibited the growth of large scale retailers, like NewMarket. Moreover, historically low interest rates have lead to a significant increase in real estate prices. As a result, retailers are finding it significantly more costly to enter local markets.

3. Competitive landscape

3. NewMarket is the largest food retailer in Marilia followed by ShopRight. New Market sells many products other than groceries. NewMarket has 60 large-scale stores located throughout Marilia. 50 of its large retail outlets are located in the major cities which are dispersed throughout Marilia. ShopRight, in contrast, operates roughly 10 stores in the major

cities as do other retailers like ValuePlus and GoodDeals. ShopRight, ValuePlus, and GoodDeals, in contrast to New Market, sell food related items primarily and do not sell goods such as automotive supplies, homebuilding supplies, and electronic goods.

4. Pricing Practices of Concern

4. Recently NewMarket launched an aggressive pricing strategy in only those stores located in major cities. During that time, NewMarket priced bread a level below the price at which they bought it. That is, they bought bread at a price of \$2.25 per loaf and sold it for \$2 per loaf. Based on this pricing strategy as well as a large scale advertising campaign (which promoted NewMarket's low bread prices as well as the diversity of products that it offers), NewMarket's sales of bread in its city stores increased significantly at the expense of ShopRight and other similar food stores like ValuePlus and GoodDeals. In response to these practices, ShopRight filed a complaint with the competition authority of Marilia claiming that NewMarket had abused its dominant position. They claimed that the deep financial pockets of NewMarket would enable it to continue to do business despite any short term losses stemming from bread. Moreover, they claimed that it was obviously targeted towards retailers in the major cities as NewMarket had not employed this strategy elsewhere in Marilia. ShopRight claims that the relevant market is sales of food items through relatively large retail outlets as this is the market that NewMarket is trying to monopolize. ShopRight buys bread at a price of \$2.25 per loaf as does ValuePlus and GoodDeals.

5. NewMarket claims that they have employed a legitimate business strategy. According to NewMarket that strategy focuses on using the low price of bread to attract customers to their store, leading them to buy other more profitable items from New Market. They call this a "loss leader" strategy, and claim that it is common among retailers. Along these lines, they claim that it did not make sense to lower prices in its stores located in non-city markets as consumers in those markets typically buy bread from local bakeries and not from supermarkets. That is, consumers in non-city markets would not have purchased more bread at NewMarket's stores (even at substantially lower prices) as they prefer local bakery shops.

5. Market Definition and Shares

6. The competition authority does not know whether it should define the relevant market based on bread or based on the sales of food items through relatively large supermarkets such as

NewMarket, ShopRight, GoodDeals and ValuePlus. If it defined the relevant market as sales of bread sold through retail outlets, the competition authority thinks that it should include sales of bread sold through supermarkets such as NewMarket, ShopRight, GoodDeals and ValuePlus as well as bread sold from retail bakeries and other retail outlets. If the competition authority was to take this view, retail market shares for NewMarket in the major cities would be roughly 20%. If on the other hand, the competition authority defines the market as sales of food items sold through relatively large supermarkets then NewMarkets' share in major cities would be slightly above 40%. Lastly, the competition authority is also unsure at this point in time whether the market should be defined locally or nationally.

6. Revenue Shares

6. As indicated above, ShopRight sells food items primarily. Although bread sales vary from store to store, they generally account for 10% of ShopRight's revenues. Similar shares ratios were found to apply to ValuePlus and GoodBuy. In contrast, bread sales only account for 1% of NewMarket's revenues precisely because it sells so many products.

Issues for Discussion

Government Restrictions

1. If the Marilian government or local planning authorities had not restricted foreign entry would this have allayed any concerns that you might have that NewMarket is predating?

Dominance

2. Does NewMarket appear to be dominant? How would you determine whether they are dominant? Should market shares be defined based on bread or based on sales of food related items sold through relatively large retail outlets?

Loss Leader or Predation

3. How would you determine whether NewMarket is predating or enacting a legitimate business strategy? What data would you examine? What documents would you examine?

Revenue Shares

4. If NewMarket's strategy had impacted a greater proportion of ShopRight's revenues would you be more concerned? Why or why not? Or alternatively, should you be more concerned about how this strategy affects ShopRight's sales of nonbread items?

Enforcement Goals

5. What is the goal of competition law enforcement? What does it mean when someone says that the goal of competition law enforcement is to protect competition, not competitors?



International Co-Operation Program on Competition Policy Regional Seminar

on

Competition Issues in Retailing

July 10 & 11, 2008

Arnoma Hotel, Bangkok

By Mr. Om Dararith, Mr. Mey Bunly, Ministry of Commerce,
CAMBODIA

Competition in the Cambodian retail sector

Overall observation:

- Dynamic development of food retailing in Cambodia

1. Transformation:

- Traditional market retailing (including informal traders) → shop retailing (supermarket, mini-markets, shops)
- Result: → competition is increasing:
 - product supply improves (greater variety of products)
 - services improve (quality, packaging,)
 - fixed prices instead of negotiated prices

Competition in the Cambodian retail sector

Overall observation:

- Market share of supermarket, mini-markets, shops is increasing
- Market share of traditional market traders is decreasing

Competition in the Cambodian retail sector

Overall observation:

2. Price competition and market power :

- Price competition for standard products (can be local, can be imported - bananas, rice, mango, coca cola) is high (because both traditional market traders as well as shops, mini-markets and supermarket sell these products)

Competition in the Cambodian retail sector

Overall observation:

For some very specialized products (e.g. a very special cheese product, special chocolate) the very few retailers (mostly supermarkets) have some market power and price competition is low (and prices are high)

Competition in the Cambodian retail sector

Conclusion:

- Competition in food retailing is very strong in Cambodia and rather increasing at the moment because more and more supermarket, mini-markets and shops are established
- But still opportunity for further increase of competition (especially in supermarket-retailing) because international retailer chains (such as Seven Eleven) have not yet entered Cambodia

Competition in the Cambodian retail sector

Problem (small or big?): VAT-issue – VAT is only paid by supermarkets, mini-markets, shops (not by traditional market traders which give them price advantage)

Important:

So far lack of studies on food retailing (or other retailing in Cambodia), therefore, more research is required

Thank you for your attention





Horizontal Competition Issues in Indonesian Retail Sector

presented by:

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Commission for the Supervision of Business Competition
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Horizontal cases

- There were two cases in KPPU that involving horizontal issues:
 - The Indomaret case (Case No. 03/KPPU-L/I/2000);
 - Acquisition of Alfa Retailindo by Carrefour



The Indomaret case

- This case was involved competition between modern market and traditional market;
- Indomaret's price was way cheaper than small retailer (mom and pop store), plus a continuance discount program;
- Indomaret gained dominant position in controlling the market, financial ability, and direct distribution network.



The Indomaret case

- Based on examination, KPPU ordered Indomaret to stop their expansion at the traditional market which faced directly with small retailer in creating balance competition between big, medium, and small enterprises;
- KPPU also stated that Indomaret in growing their shares shall involved society in giving more portion on franchise;
- By the end, KPPU also recommended the Government to enhance technical regulation in zoning, licencing, opening hour, social responsibility, and empowerment of small and medium enterprises.



Acquisition of Alfa Retailindo by Carrefour

- Carrefour is deemed as a hypermarket with lead Indonesian retail sector;
- Alfa Retailindo is one of the big enterprises with large format of supermarket and hypermarket in Indonesia.



Market Share

Hipermarket dan Supermarket dan Cash n Carry

	2004	2005	2006	2007
Carrefour	14.22%	16.72%	17.66%	19.63%
Matahari	5.03%	7.03%	8.99%	9.47%
Hero	12.21%	11.79%	11.11%	10.73%
Mutiara	1.71%	0.66%	0.22%	
Alfa	10.82%	9.30%	8.51%	7.22%
Makro	6.72%	6.31%	5.84%	5.45%
Goro	0.37%	0.33%	0.29%	0.25%
Inti	3.62%	3.26%	2.93%	2.72%
Lion	5.05%	3.24%	3.02%	3.07%
Macan Yaohan	0.86%	0.88%	0.88%	0.86%
Mitra	0.45%	0.35%	0.31%	0.25%
Metro	0.08%	0.03%	0.03%	0.03%
Others (75 outlet)	38.88%	40.11%	40.21%	40.11%



Market Situation

- Alfa Retailindo has 29 supermarket in all over Indonesia, as Carrefour only has 37 hypermarket nationally;
- Carrefour gained additional market power after this acquisition;
- KPPU focusing its analysis on abuse of bargaining position by Carrefour on its supplier that will take effect on competition, horizontally;
- Numerous complains were addressed by supplier on several behavior by Carrefour, such as price squeezing, resale below cost, and other selling side issues.



Market Situation

- KPPU is analyzing potency for anti competitive behavior by this acquisition;
- Obstacles:
 - Measuring relevant market; since Alfa is a retailer with different format from Carrefour;
 - Measuring market power;
 - Measuring potency for abuse of dominant position by Carrefour.



khawp khun makh
(thank you very much)

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COMMISSION FOR THE SUPERVISION OF BUSINESS COMPETITION OF THE REPUBLIC OF INDONESIA (KPPU)

Regional Seminar on Competition
Issues in Retailing – Bangkok 2008

Buying Power of Retailer
by: Nur Muhammad

**REGIONAL SEMINAR ON
COMPETITION ISSUES IN RETAILING
BANGKOK 2008**

www.kppu.go.id



INTRODUCTION

Increasing Retail Concentration

The two most important are a general growth in retail concentration within national markets and a significant increase in the share of retail sales accounted for by private labels (i.e. brands owned and usually exclusively distributed by one or more retailers).



****) There are probably many causes of these rather high levels of retail sales concentration, but the following are certainly prominent among them:***

- 1. changes in consumer shopping habits, linked to demographic, transportation, and income changes, which tend to favor “one-stop”, weekly shopping especially for fast moving consumer goods;
- 2. changes in application of computer technology to retailing (especially point of sale scanning) which tend to create or reinforce economies of scale in retailing, open the way to major stock management savings (including direct dealing with manufacturers), and grant retailers unique access to valuable consumer spending data (in connection with customer loyalty rebates); and
- 3. changes in marketing sophistication and capability of large retailers, i.e. greater ability and willingness to sell private brands. **(OECD Round Table 1999)*



Shopping is Recreation to Indonesia

Asia-Pacific boats the world's largest percentage of "Recreational Shoppers"

74% of world's consumer admit to shopping as entertainment

(based on ACNielsen's Research)

15 June 2006 New York, NY, USA

Table : Ten Markets for Recreational Shopping

<i>Market</i>	<i>Percentage*</i>
Hong Kong	93%
Indonesia	93%
Singapore	90%
South Korea	89%
Philippines	88%
Malaysia	88%
Thailand	86%
United Arab Emirates	84%
China	84%
Taiwan	83%

* Combined percentage of respondents who shop for "something to do" twice or more, once a week, once a month, or less than once month.



NUMBER OF ALL TYPE

	2005	2006
Traditional Grocery Stores	1,787,897	1,846,752
Convenience Stores	115	120
Total Hypermarkets	83	105
Total Warehouse Clubs	24	26
Total Minimarkets	6,465	7,356
Total Supermarkets	1,152	1,311
Total	1,795,736	1,855,068



STORE COUNTS

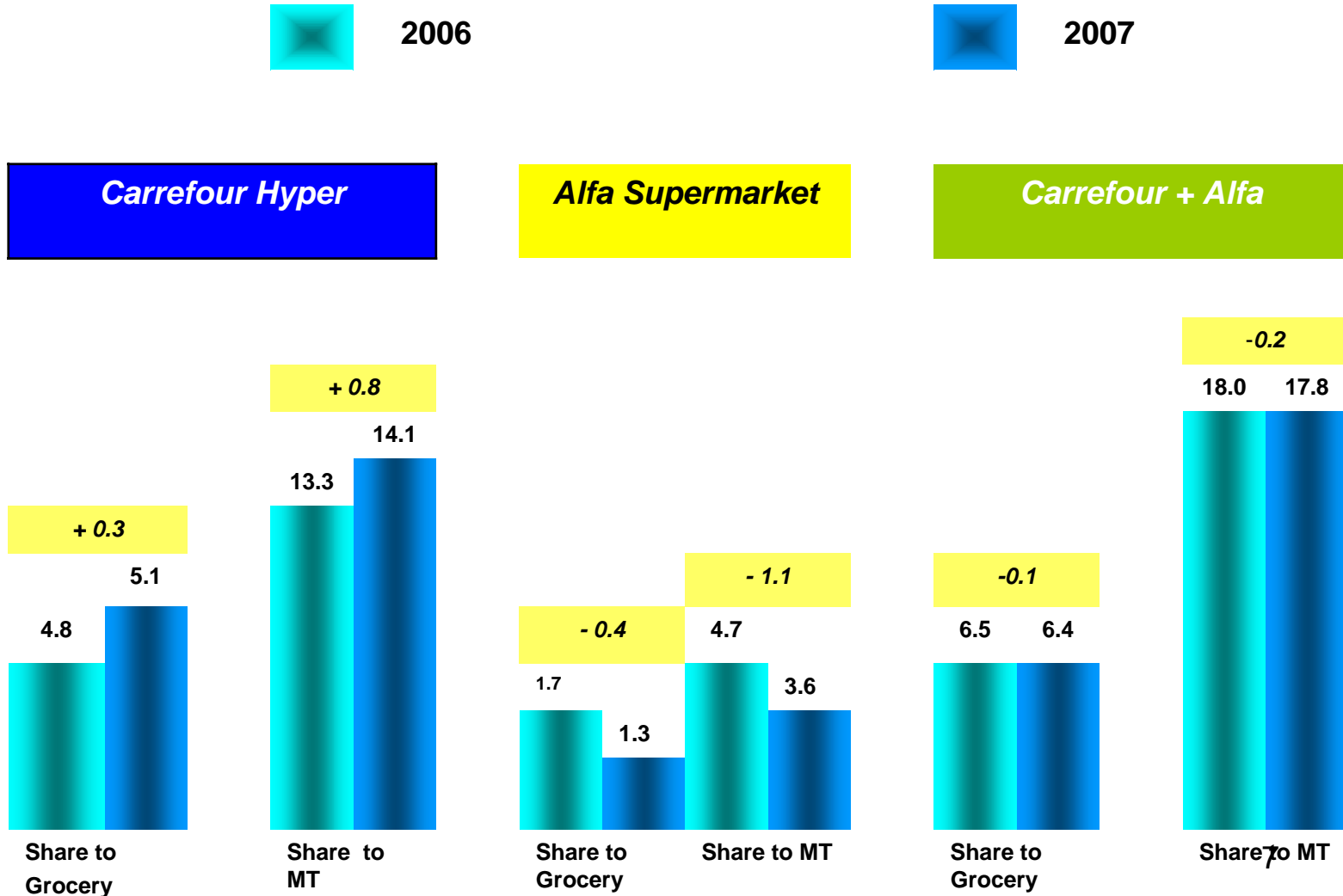
<i>Format</i>	<i>Chains</i>	<i>Dec 06</i>	<i>Dec 07</i>	<i>+/-</i>	
Large format	Makro	19	19	0	
	Indogrosir	6	6	0	
	Giant Hyper (DFI)	17	17	0	
	Carrefour	29	37	8	
	Hypermart (Matahari Group)	26	36	10	
Middle format	Foodmart (Matahai Group)	32	29	-3	
	Cut Price (Matahari Group)	5	3	-2	
	Giant SPM (DFI)	1	23	22	
	Hero (DFI)	89	71	-18	
	Alfa	32	31	-1	
	Ramayana	81	89	8	
	Super Indo (Delhaize))	50	56	6	
	Yogya & Griya (Yogya Group)	49	53	4	
	Small format	Alfamart	1692	2084	392
		Indomart	1857	2425	568
Yomart (yogya Group)		110	144	34	
Circle K		92	120	28	
Yomart (Yogya Groupo)		110	144	34	
PC & Drugstores	Boston (Matahari Group)	36	42	6	
	Century (Pharos Group)	128	145	17	
	Guardian (DFI)	129	150	21	
	Shop In (DFI)	3	2	6 ⁻¹	
	Watson	4	4	0	

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Carrefour Hyper + Alfa Supermarket Market Share to Total Grocery Indonesia and to Modern Trade Market

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Carrefour Nationwide Networks in Indonesia

In Indonesia, Carrefour was established in 1996 and started its operations in 1998. Until May 2006, Carrefour has 22 stores in Indonesia covering 15 stores in Jakarta and 4 big cities nearby, and 7 stores in other cities. Carrefour offers more than 40,000 products in each store and partners with 2,500 suppliers of which almost half of them are categorized as SME. Carrefour employs about 7,900 direct employees and about 8,000 indirect employees.



Carrefour Brings Indonesian Retail World to New Heights

As a world-class corporation, Carrefour Indonesia puts great efforts into bringing world class standards to the Indonesian retail industry. Since its first establishment in 1998, Carrefour mission has been to provide a “one stop-shopping” destination with the largest assortment of products, offered at a discounted price combined with excellent customer service dedicated to our valued customers. Carrefour Indonesia has also formed a solid and mutually beneficial relationship with thousands of suppliers including SMEs, partners, stakeholders, as well as with employees throughout Indonesia.

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“Buyer power” can be simply defined as the market power that retailers, or buyers in general, possess vis-à-vis their suppliers. The presence of buyer power at some point in the supply chain is now a market feature that is taken into consideration whenever a careful analysis of the sector is required.



Buyer Power

..”buyer power as “a situation which exists when a firm or a group of firms, either because it has a dominant position as a purchaser of a product or service or because it has strategic or leverage advantages as a result of its size or other characteristics, is able to obtain from a supplier more favorable terms than those available to other buyers” (OECD, 1981).



There is possibility that, even though retailers have a large amount of buyer power and are therefore able to extract lower prices from suppliers or and producers in general, at the same time, they compete with each other very aggressively in the sell side of the market. Any supply price reductions achieved through the exercise of buying power may be fed straight into retail prices.



There is a alleged abuse of retail buyer power, including things like “unjustified” discounts, demands for help against rival retailers, loss-leading, and shelf allowances/slotting fees/listing fees.

Some manufacturers say they are being forced to cave in to retailer demands because they fear being delisted or finding their products relegated to the lowest of the low shelves in important retail chains.



Example Case:1

“The Minus Margin Term”

Unfair Conduct of Carrefour

Carrefour has implemented the minus margin in its trading terms, as follow:

- **Minus margin term was intended to create a condition in which the selling price of Carrefour’s competitor would not be lower than that of Carrefour.**
- **Minus margin term has indirectly resulted in the blockage of consumer access to buy product with competitive price in the relevant market.**



The Minus Margin Term (continue)

- Some dealers were discontinuing their supplies to Carrefour's competitor selling product in lower price than that of Carrefour, because afraid of being sanctioned on minus margin term.

The impacts are:

- Competitor is unable to sell the same product
- Product stock of competitor is getting lessen, hence reduce the consumers option in buying a product
- Based on above mentioned, it can be concluded that Carrefour act of implementing the minus margin term has potential of preventing its competitor from doing business in the relevant market.



Impact Analysis

- The minus margin term implemented by Carrefour constitute Carrefour act in burdening the dealer for loss competition risk, namely when selling price of the competitor is lower than that of Carrefour. Hence, the minus margin term which was implemented by Carrefour to the dealer given that the competitor sold a product in lower price than that of sold by Carrefour, constituted an unfair act since the Carrefour has troubled the dealer with something beyond its authority.
- The minus margin term has disturbed business relation between the dealer and the Carrefour's competitor.
- The minus margin term has indirectly intended to maintain the selling price of product in vendors of the competitor, so that the selling price would not lower than that of sold in vendors of Carrefour.



**Article 19 Paragraph a of Law No. 5 Year 1999,
stating that:**

“business actor shall be prohibited from engaging in one or more activities, either individually or jointly with other business actor, which may result in monopolistic practices and or unfair business competition, in the following form:

- a. reject and or impede certain other business actors from conducting the same business activities in the relevant market”*



Example Case:2

Indomart (convenience store) versus Traditional Stores

- 1. Controlling Chain Distribution:**
controlling chain supply and services for FMCG and certain products, directly or indirectly impact on either price or supply and demand in the geographic market.
- 2. Continues Discounts (*in the long run smart promotion*) of FMCG (*early month*), *directly influence on consumers habit performance (part of marketing strategic?)***



Reasoning

- Indomart has power of buying and controlling distribution channel in the same geographic market with traditional stores.
- Indomart can always control price of FMCG
- Indomart has smart promotion program, i.e. continuously discount and giving gifts
- Indomart as a convenience store
- Indomart can't be compared to traditional stores as its competitor, but in the same relevant geographic market.



CONCLUSION

Hypermart (Carrefour) and Supermarket (Indomart) have a dominant position as a purchaser of a product or service or because it has strategic or leverage advantages as a result of its size or other characteristics, is able to obtain from a supplier more favorable terms than those available to other buyers



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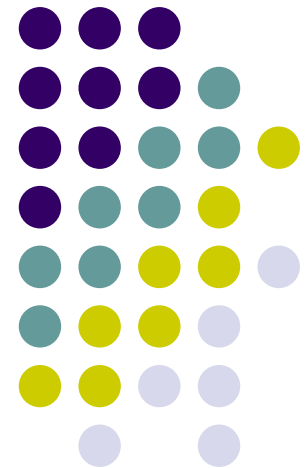


Thank You.....

Go to>>>> www.kppu.go.id

Malaysian Experience in Buyer Power

The Control Mechanism in
Distributive Trade Sector



THE GUIDELINES



- **GUIDELINES ON FOREIGN PARTICIPATION IN THE WHOLESALE AND RETAIL TRADE SECTOR 1995**
- **GUIDELINES ON THE ESTABLISHMENTS OF HYPERMARKETS 2002**
- **GUIDELINES ON FOREIGN PARTICIPATION IN THE DISTRIBUTIVE TRADE SECTOR 2004**
- **RULES AND REGULATIONS BY THE LOCAL AUTHORITY & STATE GOVERNMENT**

THE CONTROL MECHANISM



FOR FOREIGN HYPERMARKETS

- To incorporate a local presence under the Registrar of the company (ROC)
- To have at least 50 million paid up capital
- To comply with 30% Bumiputera equity structure that contributes towards socio-economy
- To allocate at least 30 % products and spaces for local SME's
- Approvals must be obtain before **taking over/ buying over**
- To operate within the locality of at least 350,000 population
- To undertake indicative study plan before the pre- establishment of the buildings on the stand alone basis



Buyer Power

- *Classical Case* in Malaysia- TESCO of UK taking over MAKRO of Netherlands on 21 Oktober 2006 worth MYR589.5 million.
- *Giant of Dairy Farm International* buying over local supermarkets.

Buyer Power



- To imposed conditions to TESCO such as;
 - To maintain the wholesale concept by MAKRO.
 - To differentiate price given to distributor, retailer and end consumers.

Resale Below Cost





Foreign Hypermarkets

- 71 out of 112 approved hypermarkets in operation
- Have outnumbered local hypermarkets of only 9 in operation
- These foreign hypermarket have deprived locals in loss leader strategy.

The issues

- Availability of the below cost product
- Confusion of the price tag among consumers
- Unclear conditions on buying below cost products

Nestle Coffee Mate
Pouch (450g)



Munchy's Mini Sandwich





Below Cost Essential Goods

The essential goods in Malaysia comprises of;

1. Sugar
2. Cooking Oil
3. Standard loaf
4. Poultry (chicken)
5. Meats

The list goes on...

The loss leader (hypermarket) is capable of selling this essential goods below the government ceiling price



Applicable Laws

- **Price Control Act 1946**

Government intervention of putting a ceiling price for the essential goods.

- **Supply Control Act 1961**

To maintain the availability of the essential goods

- **Trade Descriptive Act 1972**


To reflect transparency in buying and selling transactions.



Steps taken...

- Fair Trade Practice Bill
- A Bill that focuses on the conduct of firms
- Intention is to promote innovation, culture of competition and welfare of the consumers

WHY THE NEED FOR FTPB?



Hard-Core Cartel
(Anti-competitive Practices)

Monopolisation
(Anti-competitive Practices)

Price Fixing
(Anti-competitive Practices)

Profiteering
(Unfair Trade Practices)



ASEAN SCENARIO

- ASEAN countries with competition law :
 - **Thailand** - Trade Competition Act 1992
 - **Vietnam** - Competition Law 2004
 - **Singapore** - Competition Act 2005
 - **Indonesia** - Prohibition of Monopolistic Practices & Unfair Business Competition Act 1999



Retailing in Mongolia

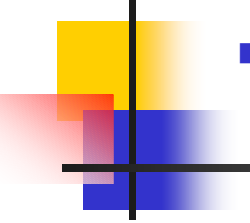
Senior specialist Kherlenchimeg B

Specialist Zoljargal M



RETAILING IN MONGOLIA

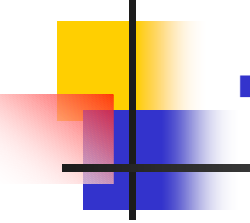
- Introduction, current economic situation in Mongolia
- Legal environment for retailing
- Difficulties faced in retailing sector
- Future tendency of retailing sector in Mongolia

- 
- It has been 18 years since Mongolia opened up its economy to the rest of the world. In connection with rapid economic growth within our own country and in effect of regional development, many sectors including agriculture, mining, construction, and food underwent a dramatic transformation period.
 - The fact that in 2007 enterprises working in retailing sector makes up 17% of over 30 000 enterprises countrywide shows 0.4% (by 152 enterprises) increase versus last year.
 - Retailing has been since 1990 a vital sector in total state budget collection generating 60,7% of trade overall income, which is 635,2 bill. ₮ (equals 547 586 206\$) as of 2007.
 - From the facts mentioned above we can conclude that retailing plays a significant role in trade sector.



LEGAL ENVIRONMENT FOR RETAILING SECTOR

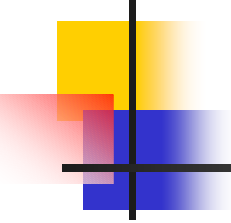
- Unlike many developed and successfully developing countries such as USA, Japan, UK, France, Korea, and China, Mongolia has no law specifically regulating trade relationships. Despite the fact that retail business start up, registration, arbitration, payment conditions are regulated by applicable legal provisions of different laws and rules, issues concerning types of domestic trade, its relationships, and controlling are not specified in any regulation.
- At present trade regulation is made through various international agreements and statutes governing common relationships between individual and enterprises (civil law, ...).

- 
- Legal uncertainty in allocation of government functions- Unclear division between the responsibilities of government bodies restricts trade activities and impairs therefore financial prosperity.
 - In terms of National security policy, Food safety program, and Economic safety policy, there is an increasing need of specific regulations to govern relations in the sale, participants of trade activities, purchase of goods and other relevant issues such as retailing.



Difficulties faced in retailing sector

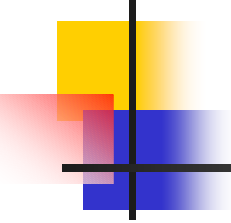
- In December 2007 a 'conference on retailing in Mongolia' was successfully held. For the preparation of the conference about 80 private formal and informal enterprises were surveyed. The purpose of the survey was to identify the difficulties and barriers in the retailing sector, and find out what political support they need. Some of the findings of the survey were as follows:
 - State support and policy:
 - Lack of complex policy according to
 - No support for newcomers into market introducing advanced techniques and technology (for instance, reduction of taxes)
 - Distortionary policy on human resource (for instance, lack of professional salespersons, counters, and bookkeepers)
 - No business community's interest representation in policy-making

- 
- Lack of Financial capacity
 - Short duration credit with high interest
 - Too strict crediting conditions under pledge of property
 - Unavailability/lack of low investment credit products for small businesses
 - Lack of credit products offered by banks as a means of investment
 - Investigation and Bureaucracy
 - No distribution of necessary information on decisions, rules, guidelines and standards passed pertaining investigation procedures
 - Poor communication system among public authorities, overlapping of investigation area (repeated investigation)
 - No prior notification or no time allowing enterprises to correct or improve



Future tendency of retailing sector

- In recent years it has become evident that due to globalization individuals have more business opportunities offered in the market than ever. With this developing trend, new demand has urged to regulate relations pertaining new types of private businesses. In most cases, specially in transition economy, business communities are not in a state to carry out their business activities in best standards on their own from very beginning.

- 
-
- For instance, there has been recently reported that chain stores are concentrating in the centre of the city too densely, which has resulted today in inevitable problems such as traffic jam, bad living environment for citizen, poor infrastructure, etc. Problems mentioned above have certainly number of reasons. However, public bodies (relevant authorities) are obliged to set standards and requirements for them to get better products and services to offer.



THANK YOU FOR YOUR ATTENTION

Retail Sector in Pakistan

- Pakistan comparatively small but the sixth most populated country in the World.
- 52% of the people under the age of 23 years.
- People spend liberally and with passion.
- Multinational consumer goods giants are doing roaring business in Pakistan e.g. financial results of Proctor & Gamble, Philips, LG, Pepsi Coke etc. (hold testimony to the promise which the domestic market of Pakistan carry).

Opportunities

- Survey reveals that Super market, which are approx. 500-600 in number account for only 3-4% of total retail sales. Modern General Store (MGS) and Traditional General Store (TGS) account for more than 50% of retail sale. There are approx. 650,000 stores in this category. Beverage Street Vendor, Corner store, Pan shops, and Medical Stores account for another 20%. Retail sale is made in more than two million tiny stores, mostly on an area less than 40 square meters. Most of these shops are managed by a family. There is no data available on the actual number of such shops in the country.
- The retailing sector has seen complete transformation over the past decade. Large hyper markets like Metro, Makro, Carrefour and IKEA, have made in-roads putting a lot of pressure on wholesalers. These will also put a lot of pressure on the small stores for survival to improve their product quality and maintain competitive prices.
- Counterfeiting is rampant which is highly frustrating for consumers.
- Competition in price is restricted by fixing prices in the distribution agreements.
- Consequently few companies that provide consistent level of quality are able to build a brand name and then able to charge a premium for their products.
- Significant opportunity lies in any segment where quality plays an important in decision making of consumers most sensitive are health, beauty and food particularly fresh products.

Foreign Investment

- Pakistan is open to foreign direct investment and has no restriction on foreign companies owning and operating retail outlets in Pakistan.
- Moreover, given the fragmented structure of the retailing industry there is no strong and organized lobbying against such inward investment.
- Despite this open outlook, companies tend to enter the market through joint ventures with local firms, rather than entering fully fledged, as the risks are perceived as being too big given the uncertain outlook of the region.



Competition
Commission

S I N G A P O R E

**OECD - Chinese Taipei FTC
International Co-Operation Program on
Competition Policy**

**Regional Seminar
on
Competition Issues in Retailing**

11 July 2008
Morning Presentation



Overview of Singapore's Retailing Sector

- Urban city state, reliant on imports
- Trade agreements, minimal import tariffs
- Positioning Singapore as a choice for shoppers
 - Setting aside land
 - Entrance of more brands
 - Nationwide mega-sale events
- Emergence of retail REITs
 - Active management approach adds value
 - Benefits retailers and shoppers
 - Resulted in competitive retailing scene



Buying Side Concerns

- Various legislations governing supplier-retailer relationship:
 - Sales of Goods Act 1979: provisions on transfer of title, delivery, implied terms, warranties, performance of contracted parties and remedies for breach of contract
 - Unfair Contract Terms Act 1977: obligations and liabilities of contracted parties to ensure that unfair terms imposed in a contract will have no effect in law
 - Misrepresentation Act 1967: provisions on the various forms of misrepresentations covered by the Act and the remedies
- CCS has no specific guidelines pertaining to buying power
- Section 47 of the Competition Act deals with exclusionary abuses by a dominant party
 - However, countervailing buyer power is a factor in the assessment of a firm's market power
 - Abuse of superior bargaining power is not provided for in the Competition Act



The End



Competition
Commission

S I N G A P O R E

**OECD - Chinese Taipei FTC
International Co-Operation Program on
Competition Policy**

**Regional Seminar
on
Competition Issues in Retailing**

11 July 2008
Afternoon Presentation



Selling Side Concerns

- Competition Act prohibits a dominant undertaking from predating
 - Loss leading, short-run promotions, option value may be objective justifications
 - Factors relevant for assessment include the intention to eliminate competitors, and the feasibility of recouping losses



Selling Side Concerns

- Other possible infringement of section 47 of the Competition Act
 - Exclusive purchasing requirements (e.g. quantity forcing)
 - Vertical restraints (e.g. tying or full-line forcing)



The End



■ Competition Issues in Retailing



Chinese Taipei Fair Trade Commission

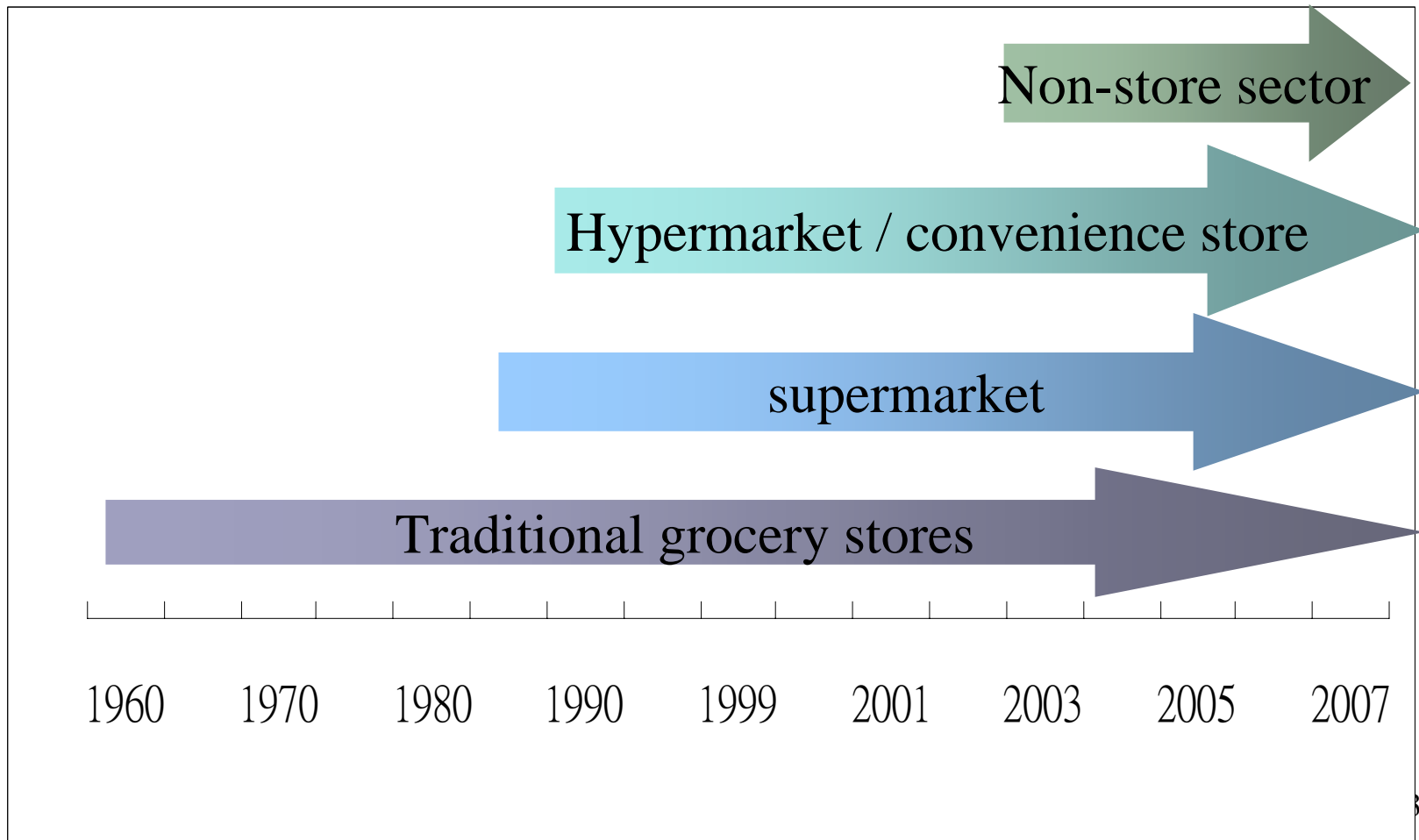
10-11 July, 2008

■ Context

1. Buying Power of Retailer

2. Other Selling Issues

Developing Trends-1



■ Developing Trends-2

- Mature stage
- Variety of products and service
- One-stop shopping
- Increased in reliance
- Increased in concentration
- Positive feedback / winner takes all

Sales (\$ million)

Year	Dep. Store	Hyper Market	Super Market	Con Store	Other Retail	Non-store
1999	4 417	3 562	2 402	3 398	3 098	1,498
2000	4 801	4 165	2 402	3 713	3 292	1,741
2001	4 992	4 409	2 483	4 132	3 106	1,582
2002	5 562	4 570	2 447	4 573	2 939	1,674
2003	5 660	4 614	2 576	4 961	3 187	1,787
2004	6 388	4 506	2 746	5 283	3 557	1,997
2005	6 716	4 512	2 801	5 752	3 370	2,294
2006	6 660	4 584	2 855	6 261	3 478	2,218
2007	7 087	4 753	3 076	6 388	3 587	2,484

Annual Growth Rate

(%)

Year	Dep. Store	Hyper Market	Super Market	Con Store	Other Retail	Non-store
1999	-	-	-	-	-	-
2000	8.69	16.93	-0.02	9.27	6.24	16.19
2001	3.97	5.85	3.39	11.27	-5.64	-9.13
2002	11.42	3.66	-1.46	10.69	-5.38	5.80
2003	1.78	0.96	5.25	8.48	8.43	6.77
2004	12.85	-2.34	6.63	6.48	11.62	11.76
2005	5.14	0.13	2.01	8.88	-5.25	14.85
2006	-0.84	1.59	1.93	8.85	3.20	-3.29
2007	6.42	3.69	7.72	2.03	3.13	11.95

Stores

year	Hyper Market	Super Market	Con Store
2003	96	837	7539
2004	837	848	8089
2005	7539	863	8664
2006	109	915	9029
2007	848	1062	9071

Department Store -market share

■(%)

	2003	2004	2005	2006	2007
Shin Kong Mitsukoshi	25.89	27.65	29.36	30.11	27.71
Pacific Sogo	14.65	14.58	14.65	14.19	15.93
Far Eastern	10.12	8.67	8.75	9.06	12
Sum	50.66	50.9	52.76	53.36	55.64

■ Hypermarket-market share

■(%)

	2003	2004	2005	2006	2007
Carrefour	32.29	31.19	33.64	43.12	43.24
RT-Mart	22.92	21.1	20.91	21.1	20.72
Géant	13.54	11.93	12.73	12.84	12.61
Sum	68.75	64.22	67.28	77.06	76.57

■ Supermarket-market share

■(%)

	2003	2004	2005	2006	2007
PX Mart	24.61	29.48	31.63	34.43	35.69
Welcome	18.40	19.46	19.24	19.02	19.11
Matsusei	9.68	9.43	8.34	7.65	6.78
Sum	52.69	58.37	59.21	61.1	61.58

Convenience Store-market share

■(%)

	2003	2004	2005	2006	2007
Seven-eleven	50.48	49.43	52.53	51.51	51.69
Family Mart	15.88	16.71	16.65	15.86	16.87
Hi Life	8.53	9.35	9.27	9	8.98
Sum	74.89	75.49	78.45	76.37	77.54

■ Buying Power-1

- Fair Trade Commission Policy in Distribution Industry
- Fair Trade Commission for Cases Concerning Additional Fees Charged by Distribution Businesses
- Fair Trade Commission Guidelines on Trade Practices Between Department Stores and Branded Products Suppliers

■ Buying Power-2

- Constrain business area (to against rivals)
- Constrain sale price
- Delisting (remove or withdraw products) or unfairly return products
- Additional fees

■ Buying Power-3

- Additional fees (Slotting Allowances)
 - the exception of amounts payable for goods
 - Negotiation and written agreement
 - the types of additional fee
 - the use of additional fee
 - the amount of additional fee
- disclose relevant information (list of bill or account) prior to deducting the additional fees

Improper charging of additional fees

- Irrelevant purpose:
 - Fees are not directly related to promoting the sale of the goods
 - Fees are for the sole distributor's purpose of achieving target figures or other accounting measures
- Exorbitant conditions:
 - Amount exceeding the benefit that suppliers may reasonably expect to derive from sale
 - Demanding a reduction of purchasing price for already-delivered goods when the supplier is under no obligation



Thank You



■ Competition Issues in Retailing



Chinese Taipei Fair Trade Commission

10-11 July, 2008

■ Context

1. Buying Power of Retailer

2. Other Selling Issues

■ Regulations

- Fair Trade Commission Policy in Distribution Industry
- Fair Trade Commission for Cases Concerning Additional Fees Charged by Distribution Businesses
- Fair Trade Commission Guidelines on Trade Practices Between Department Stores and Branded Products Suppliers

■ Other Issues-1

- Resale-below-cost
- Predatory foreclosure
- Mandatory minimum resale price maintenance

■ Other Issues-2

- Illegal Merger
- Exclude the new entrant
 - Exclusive Deal
 - Boycott
 - Covenant
 - Raising rival's cost

■ Illegal Merger

- Far Eastern Department Store, Co. Ltd. merged with Pacific Sogo Department Store, Co. Ltd. without reporting to TFTC in advance.
- Far Eastern acquired 55% shares of the holding company of Pacific Sogo in 2002. Far Eastern indirectly control the business and personnel of Pacific Sogo.
- Far Eastern was requested to file merger application, and was fined \$33,000.

■ Exclusive Deal

- Pacific Sogo is a department store with 30% market share in 2001.
- In attempt to drive out new entrant, Pacific Sogo required the branded product suppliers not to offer the same products or service within a radius of 2 kilometers of its store.
- Pacific Sogo was fined with \$80,000.

■ Boycott

- Shin Kong Mitsukoshi is a department store, enjoying 33% market share in 2001.
- Shin Kong Mitsukoshi demanded the branded product suppliers not to deal with the new entrant.
- Shin Kong Mitsukoshi was fined with \$26,000.

■ Covenant

- Tesco, a large volume retailer with less than 1% of market share in 2001, bought a land and asked the landlord to guarantee that his other land would never exist any other large volume outlets.
- The landlord was bound by the enormous penalties that the land cannot be sufficiently offered to the other retailer.
- Does the covenant form a barrier of entry?

■ Raising rival's cost

- PX Mart is an incumbent supermarket firm.
- PX Mart complained to its suppliers that the Mercuries store, a new entrant with 86m², has the lowest sale price as PX Mart does.
- The suppliers, in order to provide the lowest price to PX Mart, was forced to raise the price to the new entrant or change the product standard.
- Abuse of economic dependence?



Thank You

Thailand

Buying Power **in Retailing**

Jarim Dumronghud
Trade Technical Officer
Department of Internal Trade
Ministry of Commerce, THAILAND



Regulations

govern relationship between Suppliers and Retailers

Thai Trade Competition Act 1999

Sec. 29 : concerning unfair trade practices
between business operators

(not specifically governs relationship between
Suppliers and Retailers)



**Guidelines for Unfair
Trade Practices in the
Wholesale/Retail
Business**

Guidelines

pertaining to buying power

Guideline for Unfair Trade Practices in the Wholesales / Retail Businesses (2006)

Principles

- Wholesalers / Retailers and Suppliers
- No coercion
- No discrimination
- Clear criteria
- In-advance agreement
- No restriction and fair competition

Unfair Trade Practices

1. Unjust pricing
2. Unjust receipt of economic benefits
3. Unjust return of goods
4. Unjust consignment contracts
5. Coercion to purchase
6. Unjust assignment of work to employees of suppliers
7. Unjust refuses to receive private brand goods
8. Others unfair trade practices

Complaints

1999 - 2007

Types of Abusive Conducts

Year	Numbers	Abuse of Dominant Position	M&A	Restrictive Agreements	Unfair Trade Practice
1999	2	1	-	-	1
2000	4	2	-	-	2
2001	7	4	-	1	2
2002	7	2	-	1	4
2003	13	3	-	8	2
2004	12	-	-	3	9
2005	9	-	-	2	7
2006	7			-	7
2007	8	1	-	2	5
Total	69	13	0	17	39

14 Complaints concerning Retail business

Conclusion

In dealing with buying power in the context of Competition Law

- Section 29 of Thai Trade Competition Act 1999 could be the general regulations to govern the unfair trade practice between business operator which includes the exploitation of buying power of Wholesalers/Retailers to their Suppliers.
- Guideline for unfair trade practices in wholesales/Retails business play as specific rules to govern buying power in Wholesales/Retails business, especially between wholesalers/retailers and suppliers.
- Policy for the implementation of standardized contract in particular goods

**Thank
you**

Thailand

Sales Below Cost **in Retailing**

Chantida Kalampakorn
Senior Trade Technical Officer
Department of Internal Trade
Ministry of Commerce, THAILAND



Regulations

govern relationship between Suppliers and Retailers

Thai Trade Competition Act 1999

Sec. 25 (1) : prohibits dominant players to
fix unjust low price
e.g. **sales below cost,**
predatory pricing

Exemption :

- Expired product
- Seasonal product
- Obsolete product



Regulations

govern relationship between Suppliers and Retailers

Thai Trade Competition Act 1999

Sec. 29 : prohibits any act which is
"not free and fair competition"
and prevents other business
operators conducting their
businesses

Guidelines
for Unfair Trade Practices
in the Wholesale/Retail Business

Unjust Pricing

e.g. **sale below cost price**

Exemption

- Expired product
- Seasonal product
- Obsolete product



Regulations

govern relationship between Suppliers and Retailers

Definition of Sales Below Cost

$$\text{Selling Price} < \text{Purchasing Cost} + \text{Administrative Cost}$$



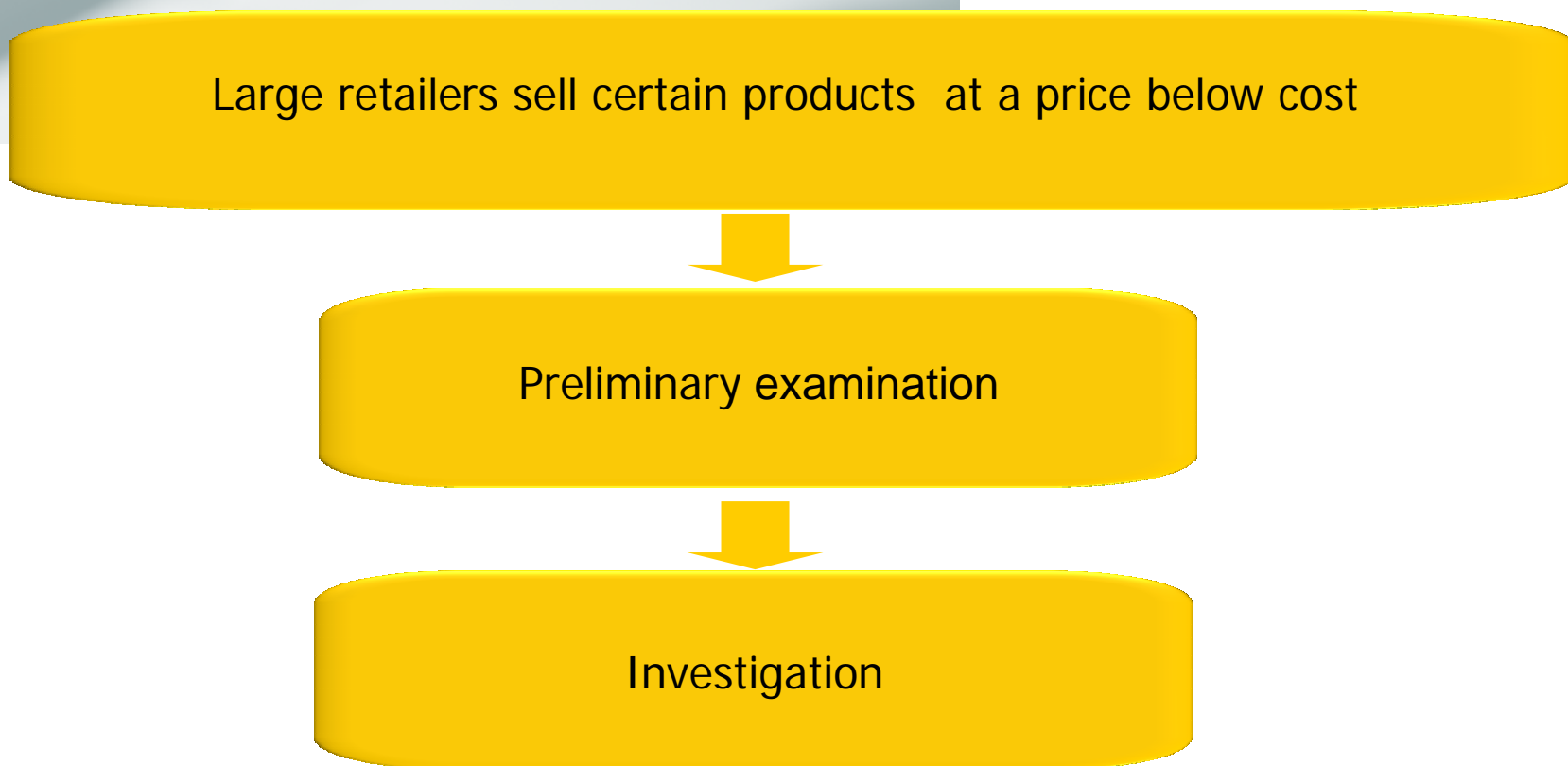
Benchmark



$$\text{Purchasing Cost} = \text{Purchasing Price} - \text{Rebates} - \text{Discounts}$$

Complaints

pertaining to Sales Below Cost



Conclusion

Challenges for the law implementation

The calculation of the administrative cost
of multi-product retailers

Sale Promotion strategy
e.g. duration of the sales, range of goods sold,
frequency of the sales

**Thank
you**

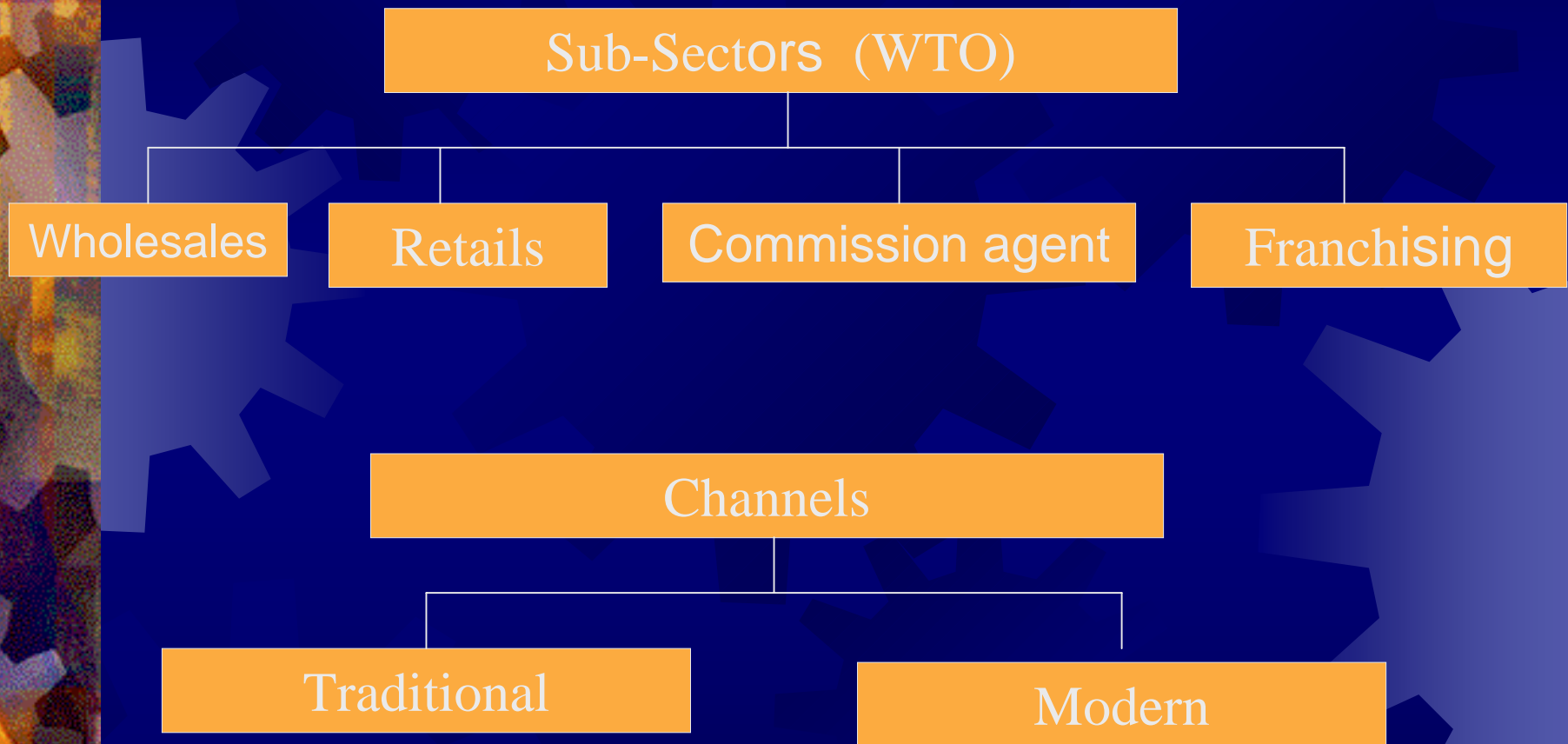


**VIETNAM'S COMMITMENTS ON
DISTRIBUTION SERVICES**

Overview of distribution services in Vietnam

- ★ Sales: \$ 20 billion/year
- ★ Comprise of: 54000 non State businesses; over 1000 businesses with a State stake, 15 foreign investors and 1,2 million out of the nation's 2,9 million household businesses
- ★ Total sales of retail sectors has grown significantly from 11% (1996-2000 period) to 18% (2001-2005)

Classification of distribution services in Vietnam



US-Vietnam Bilateral Trade Agreement (BTA)

- ★ Effected on 10th Dec, 2001

- ★ Scope of commitments:

 - + 4 sub-sectors (W120/WTO)

 - + Excluding: oil and oil derivatives, gas, fertilizer, pesticide, and insecticide, alcoholic drinks and sprits, cigarettes and cigars, medicines, precious metals and stones, explosives, rice and wheat flour.

US-Vietnam Bilateral Trade Agreement (BTA) (Cont)

★ Level of commitment:

Mode 1-Cross-border supply: Unbound

Mode 2- Consumption abroad: None

Mode 3- Commercial presence:

- + 10th Dec, 2004: Joint ventures with US equity limited to 49%

- + 10th Dec, 2007: None limitation on US equity but not 100%

- + 10th Dec, 2008: 100% US owned companies

Mode 4 - Presence of natural person: Unbound

WTO's commitments

- ★ Scope of commitments:

- + 4 sub-sectors (W120/WTO)

- + Excluding: Cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar.

WTO's commitments (Cont)

- ✦ Level of commitments:
 - + Mode 1-Cross-border supply: Unbound (except: products for personal use, legitimate computer software for personal and commercial use)
 - +Mode 2- Consumption abroad: None
 - +Mode 3- Commercial presence: None as of 1st Jan, 2009.
 - + Mode 4 - Presence of natural person: Unbound

WTO's commitment (Cont)

- ✦ Mode 3: The establishment of outlets for retail services (beyond the first one) shall be allowed on the basis of ENT
- ✦ Main criteria of ENT: number of existing service suppliers in a particular geographic area, the stability of market and geographic scale.

Commitments between Vietnam and Japan

- ★ Scope of commitments:
 - +4 sub-sectors (W120/WTO)
 - +Excluding: (12 goods): oil and oil derivatives, gas, fertilizer, pesticide, and insecticide, beer, wine, cigarettes and cigars, medicines, precious metals and stones, explosives, rice and wheat flour
- ★ Level of commitments:
 - + MFN treatment for mode 3.

Challenges

- ✱ Foreign companies taking over the domestic retail market
- ✱ Corporation and linkages between domestic retailers
- ✱ Government issues a master planning for the domestic retailers as well as creates an adequate legal framework for retail sector.

THANK YOU!



FACTS ABOUT COMPETITION ACTIVITIES AND ROLE OF COMPETITION AUTHORITIES IN DISTRIBUTION SECTOR IN VIETNAM

LE THU HA

Investigation division for competition restricting cases
Vietnam Competition Administration Department
(VCAD)
Ministry of Industry and Trade





CONTENTS

- Development trend of distribution sector in Vietnam
- General introduction of competition activities in distribution sector (wholesales and retailing) in Vietnam
- Role of Vietnam's competition authority in dealing with anti-competitive acts in distribution sector

GENERAL DEVELOPMENT TREND OF DISTRIBUTION SECTOR IN VIETNAM



- Investment in services has been increasing
- Domestic distribution enterprises grow rapidly to compete on the market
- Large-scale retailers (both foreign and domestic) have created favorable conditions on the market such as: price reduction, more options and benefits for consumers etc



ANTI-COMPETITIVE BEHAVIORS (1)

Competition restricting acts: mean acts performed by enterprises to reduce, distort and prevent competition on the market, including acts of competition restriction agreement, abusing the dominant position on the market, abusing the monopoly position and economic concentration.



ANTI-COMPETITIVE BEHAVIORS (2)

- **Unfair competition acts:** mean competition acts performed by enterprises in the process of doing business, which run counter to common standards of business ethics and cause damage or can cause damage to the State's interests, legitimate rights and interests of other enterprises or consumers.



ANTI-COMPETITIVE BEHAVIORS (3)

- Abuse of market power on the market:
 - **In case of competitors:** Retailers resale below cost aimed to exclude other competitors (predation).
 - **In case of suppliers:** Suppliers may be forced not to provide goods/services to competitors of large-scale retailers and/or buy stock items and/or accept unreasonable offered by retailers.



ANTI-COMPETITIVE BEHAVIORS (4)

- Making consumers misunderstand of goods/services by:
 - Providing false/exaggerative advertisement/slogan of own product(s) or competitors' product(s)
 - Issuing false information to mislead consumers.
 - Example: Advertising for 50% reduction in price but remaining unchanged price in practice

ROLE OF VIETNAM COMPETITION ADMINISTRATION DEPARTMENT IN DEALING WITH COMPETITION



- Duties and Powers (*under the Decree No. 06/2006 on functions, duties, powers and organizational structure of Vietnam Competition Administration Department*):
 - Investigation of competition cases;
 - Supervision of economic concentration;
 - Handling dossiers submitted for exemption;
 - Handling and sanctioning unfair competition acts.

INVESTIGATION DIVISION FOR COMPETITION RESTRICTING ACTS



- Directly handling and investigating competition restricting cases including act of abusing market power to sell goods/provide services at prices lower than aggregate costs aimed at excluding competitors.
- Submitting investigation results and suggestion to Competition Council for consideration and settlement.



RECOMMENDATIONS

- Effectively enforcing Law on Competition in distribution sector.
- Actively supervising distribution activities (wholesales and retailing)
- Promptly creating adequate legal framework to promote fair competition on the distribution market.



THANKS FOR YOUR ATTENTION!

