



PRIVATE LABELS AND RELEVANT MARKETS

a comment

Nikodem Szadkowski
Office of Competition and Consumer Protection
Poland

Pros and Cons of Market Definition
Stockholm, 3 November 2017

POLISH CA'S EXPERIENCE WITH PRIVATE LABELS

Mergers: FMCG (instant desserts and detergents), PLs as a potential constraint on branded products of the merging parties.

PLs as a potential source of bargaining power in the assessment of unfair trading practices.

Clearly a problem for (particularly smaller) producers.

Interesting fact: discount chain stores in Poland forbidden from selling more than 20% of their turnover under PLs (an act of unfair competition)...

...but no legal definition of „discount chain stores”

PRIVATE LABELS AND MARKET DEFINITION: A QUICK LOOK AT THE PRODUCTION CHAIN

Manufacturing

Contract manufacturers, brand producers
(BPs, as manufacturers)

Design & Marketing

BPs and retailers (as PL designers/marketers)

Retailing

Retailers

PRIVATE LABELS AND MARKET DEFINITION: A QUICK LOOK AT THE PRODUCTION CHAIN

Manufacturing

Contract manufacturers, brand producers
(BPs, as manufacturers)

Design & Marketing

BPs and retailers (as PL designers/marketers)

Retailing

Retailers

PRIVATE LABELS AND MARKET DEFINITION: A QUICK LOOK AT THE PRODUCTION CHAIN

Manufacturing

Contract manufacturers, brand producers
(BPs, as manufacturers)

Design & Marketing

BPs and retailers (as PL designers/marketers)

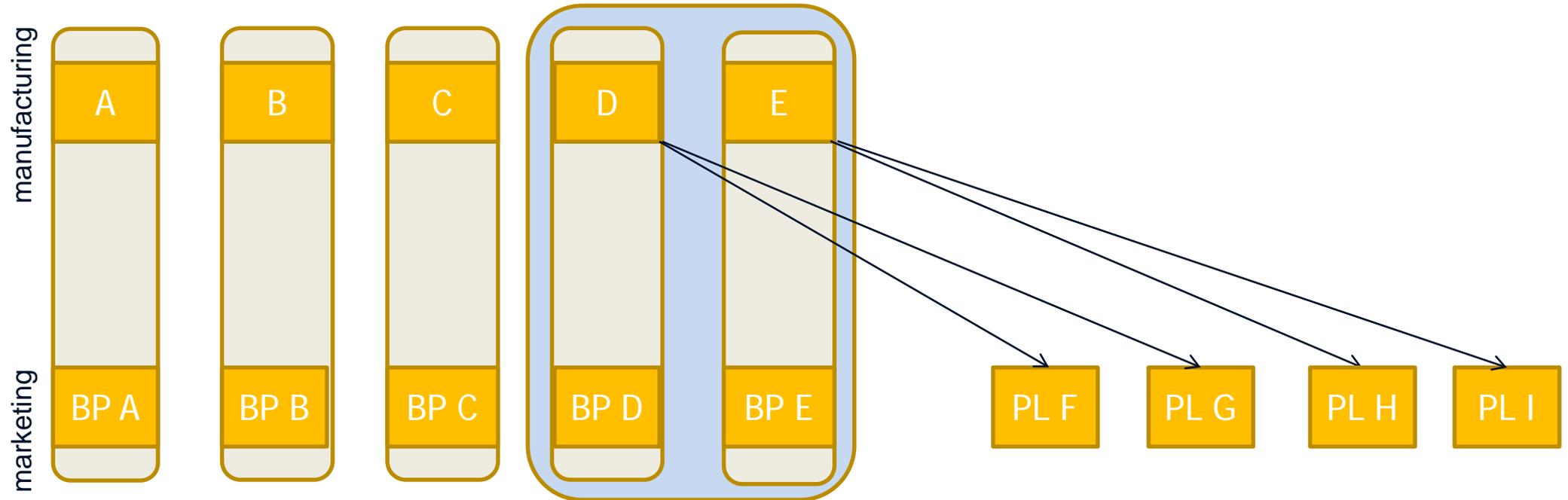
Retailing

Retailers

PRIVATE LABELS AND MARKET DEFINITION: COMPETITIVE CONCERNS

Scenario 1

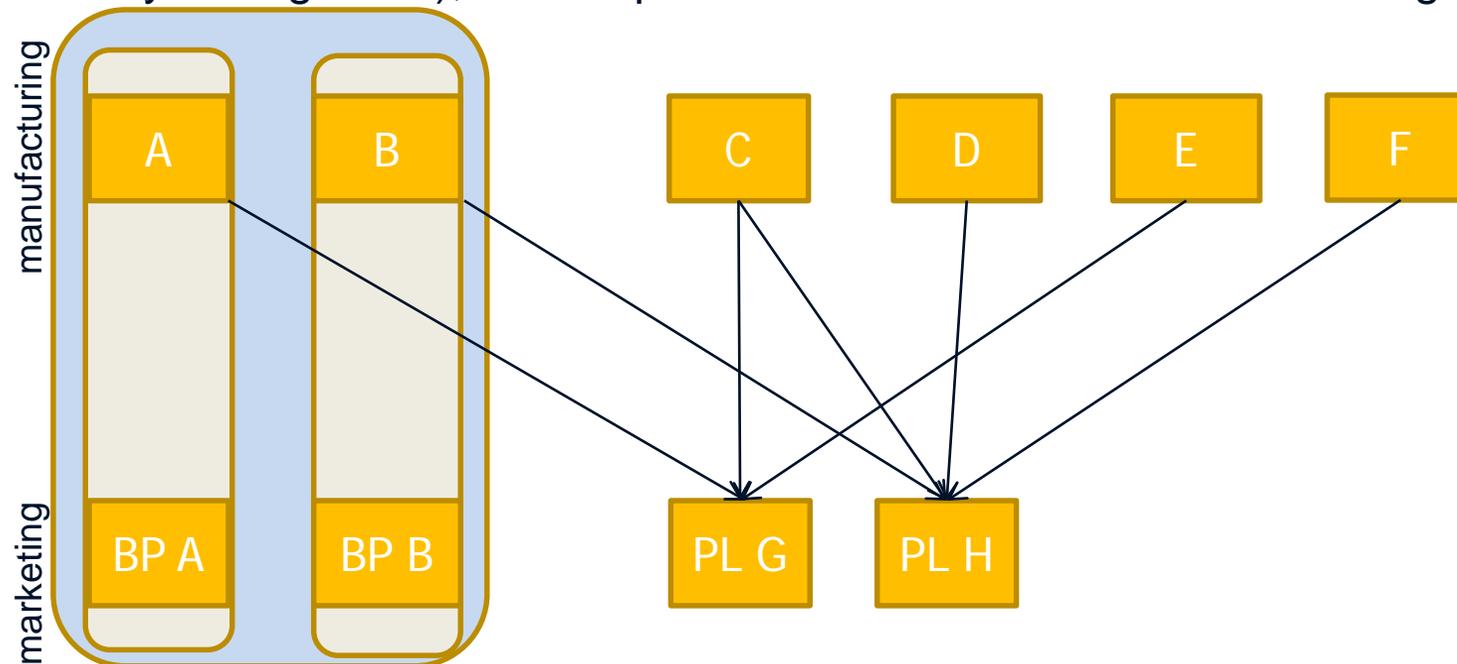
A merger between two of many BPs, who happen to be the only manufacturers of PLs. No problem at the design & marketing stage, significant competitive concerns at the manufacturing stage.



PRIVATE LABELS AND MARKET DEFINITION: COMPETITIVE CONCERNS

Scenario 2

A merger between the only two BPs, who also produce PLs for retailers, but retailers also use other manufacturers, who - from retailers' perspective – are perfect substitutes for BPs manufacturing capacity and face no capacity constraints. Problems at the design & marketing stage (unless PLs particularly strong there), no competitive concerns at the manufacturing level.



Where exactly do BPs and PLs compete?

In shops?

- No BP producers there...

At the procurement/supply level?

- retailers active as customers there, BPs supply products that are already marketed, while PL manufacturers supply an input for a product to be marketed by the retailer.

Design & marketing stage falls „between” real markets

PRIVATE LABELS AND MARKET DEFINITION: BACK TO EARTH

Practical solution: upstream market for the supply of products to retailers.

Take 1: separate markets for the supply of BPs and PLs, taking into account competition between those products downstream (at retailers' shelves) (SCA/Metsa [EC, 2001], SCA/P&G [EC, 2007])

- makes sense if BPs and PLs do not compete downstream or if the parties active in only one segment and we want to take a cautious approach (Diageo/United Spirits [OFT, 2013], branded vodka)
- if downstream competition between BPs and PLs, some odd results may follow (very high market shares [80-90%] not indicative of market power – SCA/P&G, par. 126)
- is significant market power for BP producers upstream possible with competition from PLs downstream?

PRIVATE LABELS AND MARKET DEFINITION: BACK TO EARTH

Take 2: one upstream market for BP and PL producers (EC, Friesland/Campina [2008])

- market shares make more sense
- is BP producers' revenue comparable to PL producers' revenue (different costs)?
- should PLs be treated collectively or separately (BPs are sold by all retailers, while particular PL only by one retailer)?

Asymmetry: PLs constraining BPs, but BPs may not constrain PL producers (only indirect influence).

Therefore it may helpful to look at PL suppliers separately (possibility of cost increases to retailers not constrained by BPs or raising rivals' costs by dual producers).

The most important issue: downstream competition between BPs and PLs (to the extent it influences retailers purchasing decisions).

Differentiated products: market definition and resulting market shares may be less informative than evidence on closeness of competition.

ISSUES RAISED

No market power for entities from outside the relevant market?

- Yes (in that market).

Broad market definition implying no/small market power?

- Yes, but careful with differentiated products.

Assessment of dominance with conflicting market definitions?

- There should not be conflicts. If there are, think in terms of the ability to raise prices.

Dual producers, who should market shares go to?

- PLs → retailers, BPs → BP producers.

Impact of the shifts in bargaining power?

- Should not influence market definition much, but important for understanding the distribution of surplus created by BPs, market power issues and incentives for using vertical restraints.

Is market definition important if we have all the competitive constraints clearly worked out outside this framework?

- Not really, but it's a useful framework and one to which courts and NCAs are accustomed, even if market shares don't mean much in a particular setting.

CONCLUDING REMARKS

Market definition just a framework allowing us to tell coherent stories. Story incoherence – important signal that we might have gone wrong somewhere in our analysis.

Particular problems with complicated markets with a lot of vertical integration and differentiated products.

But it's a flexible framework we are all used to. No serious alternative at the moment (though important complements exist).

End results most important: better to make the right decision using clunky market definition, than to reach a bad one, dogmatically clinging to „the most rational” definition.



Office of Competition and Consumer Protection

Thank you

Nikodem Szadkowski

nikodem.szadkowski@uokik.gov.pl