



Position of Detailhandel Nederland on the Retail Market Monitoring Report

Detailhandel Nederland represents the Dutch council for SME-retailers (MKB Nederland) and of large retailers (Raad Nederlandse Detailhandel).

Registered as interest representative: nr 22232504133-92

1. Introduction

Please find below a reaction of Detailhandel Nederland, the Dutch Retail Association, to the Retail market monitoring report of the European Commission, published under the title: 'Towards more efficient and fairer retail services in the internal market for 2020'.

The Dutch Retail Association has taken good note of the content of the aforementioned report and would like to make a number of remarks. We hope that the European Commission will take these into account in the process of preparing a follow-up to the report.

2. The ominous title of the report

The words towards 'more efficient and 'fairer' in the title seems to indicate that the European Commission is of the opinion that the sector of commerce is essentially neither efficient nor fair. The actual report and the accompanying staff document of the Commission are considerably more nuanced than this overly negative wording implies. Thus, in our view, the title is not justified.

Especially as Dutch Retail Association we feel that the title is unfounded. For example, in the chapter on price level differences across member states, the Commission points out that the price levels in the Netherlands concerning food and non-alcoholic beverages are at 88% of the European average, while in Belgium and Germany they are at respectively 113% and 106% of the EU average. Overall, the Dutch price levels are among the lowest in Western-Europe, only in Portugal they are at an even lower level. This indicates that the Dutch retail market for food and non-alcoholic beverages is highly efficient and provides goods at a very fair price to consumers. The same applies for other segments of the Dutch retail market.

The title of the report is also somewhat surprising giving the fact that the Commission acknowledges that retail services encompass a wide variety of retail forms, formats, legal structures and locations. This variety should already in itself be a reason to avoid generalizations with such a negative connotation.



3. The difficult definition of retail

The European Commission argues that retail services encompass a wide variety of forms (shops, electronic commerce, open markets, etc.), formats (from small shops to hypermarkets), products (food, non-food, prescription and over-the-counter drugs, etc.), legal structures (independent stores, franchises, integrated groups, etc.), locations (urban/rural, city centre/suburbs, etc.). The Commission also points out that this complexity cannot be reduced to a simple dichotomy between small shops and retail chains. Nevertheless it chooses, in its report, to speak about 'retail services' for all these forms.

The Dutch Retail Association agrees that retailers represent a mixed bag, with different formats and other features. However, for reasons of analytical clarity it would have been recommendable to work on the basis of a dichotomy of independent stores and retail chains concerning for at least some aspects, such as buying power. It should be stressed that one of the main reasons that retailers opt for strategies which provide them more scale is that they have to buy a number of relatively popular consumer goods from giant international producer organisations. A certain level of scale is necessary to prevent retailers falling victim to the selling power of these giants. It is obvious that small shops are not able to create such a countervailing power, unless they join a buying alliance for example. So, here a dichotomy of independent stores and retail chains is helpful to understand their respective business strategies.

4. The presumed lack of accessibility of shops

The European Commission concludes that consumers lack accessibility to a sufficient choice of grocery shops and thus to a wide selection of affordable and quality products. This, according to the Commission, adversely affects the most socially vulnerable citizens. It could for example be very difficult for elderly people to go shopping because of a lack of shops close by.

In the Netherlands the network of grocery shops is dense. Problems of proximity of shops are non-existent, according to the Netherlands Competition Authority (NMa), that is keeping close track of the situation. This in particular from the viewpoint that the NMa would like to have assurance that there is sufficient competitive pressure. In this respect, one of the main indicators is whether there is within a certain driving distance another shop, which would allow consumers to switch. In the cities consumers have ample opportunities to switch. Also in (semi) rural areas there are, according to the NMa, no problems. It should also be borne in mind that the Netherlands is a relatively small country, densely populated.

The Dutch Retail Association would like to add that the drive of the Commission to ensure proximity of shops for vulnerable groups is at odds with its aim to promote e-commerce. Growth of e-commerce could easily lead to a number of shops closing doors. This in itself would potentially exacerbate problems of accessibility.



5. Use of buying power

The European Commission reports a number of complaints from suppliers about alleged abusive buying practices of retail chains. The Dutch Retail Association would like to point out that some tensions between retailers and suppliers on prices and conditions of supplies are inherent to the normal bargaining process and the fact that purchasing at sharp prices and conditions is a necessity for retailers which wants to stay afloat in generally very competitive markets.

To get sufficient buying power vis à vis retail chains smaller retailers often join buying alliances. European and national competition rules provide a number of very strict rules, which are also strictly enforced by competition authorities, concerning abuse of dominant positions and on the conditions under which purchasing platforms are allowed.

Any further policy intervention should be based on solid evidence. It should be noted that, to our knowledge, there are no reports of Competition Authorities that prove anything like abusive use of buying power.

Last December the Dutch Competition Authority (NMA) published the results of a relevant study concerning the costs and margins in the food production chain in the Netherlands, from producer to supermarket. The NMA looked into the price-formation mechanism for potatoes, onions, cucumbers, bell peppers, apples, bread and eggs in the Dutch food and agro-processing industry. Its study's main conclusions reveal that in the period of 2005-2008, supermarkets were unable to unilaterally raise prices profitably at the expense of producers and consumers. So, complaints from suppliers about alleged abusive practices should be taken with a pinch of salt.

6. Private labels

Private labels are increasingly a common practice, both in the food and non-food retail. The European Commission tends to take a surprisingly sceptical view on private labels, given its remark that: 'Even though no case of anticompetitive effects stemming from the increasing use of private labels has been found to date by any competition authority, they recognize the risk of such effects.'

Retailers, just as any other company, could chose to 'make or buy' a product. Over the last three decades, making own labels has gained ground. In part, this could be explained by the growth of retailers and buying alliances. Making and marketing own brand products requires a certain level of scale. Another important explanation for the increase of private labels is that more scale has allowed retailers to invest heavily in researching the purchasing behaviour of consumers. This has strengthened their knowledge of consumers and offers them while developing their own brands, a comparative advantage vis à vis traditional producers of consumer products.

In general retailers first developed own brands in more commodity products categories like biscuits and toilet paper. A more recent trend is that they also commenced to develop high end specialty products, like fresh ready meals and sustainably produced fish and meat. Retailers took in the



developments of these products the lead. For this reason, there is no vindication for the claim of traditional producers that own brands are the deathblow for innovation. The contrary is the case.

7. Territorial supply constraints

Retailers have complained to the European Commission about wholesalers or subsidiaries of pan-European producers which are refusing to sell to retailers seeking to engage in legitimate parallel trade. The Dutch Retail Association believes that such territorial restrictions need to be scrutinised closely, since they run counter to a smooth functioning of the Internal Market for retail services. Scrutiny should be targeted towards those retail markets that show large price differences between Member States, like food retail. Especially in those segments, parallel trade could prove to be a good instrument to level out those price differences, to the benefit of the consumer.

8. Payment terms

In the section on payment terms, the European Commission makes a number of assumptions based on data of which the independence is questionable. It seems that the Commission predominantly bases itself on data retrieved by Intrum Justitia. According to the research of the latter, payment terms in commercial transactions tend to be long and payments exceeding the contractual payment term are widespread throughout Europe. In addition, research used by the Commission paints a picture of a culture in which creditors do not charge their debtors interest in case of late payments.

Without totally discarding the research used, we would like to emphasize the fact that parties involved (Intrum Justitia is one of the largest debt collecting agencies in Europe), have a clear interest in exaggerating the problem. If the Commission, basing itself on such research, proceeds with strengthening the rights of creditors (granting them higher interest rates/ reimbursement of administrative costs) this could well generate more business for the parties who provided the Commission with data.

By proposing a recast to the Late Payment Directive, the Commission tries to address the problem. We are pleased to see that, while strengthening the rights of creditors, the Commission leaves intact the contractual freedom on payment terms in B2B relations.

This is important, as flexibility on agreeing on payment terms with suppliers, constitutes an essential element of the way business is done in the retail sector. The reasons are manifold. In a difficult economic climate where banks are reluctant with supplying credit to SMEs (98% of retailers is SME), the retailer will have to rely on trade credit from suppliers to finance its stocks.

In addition, several branches within the sector traditionally rely on trade credit. This is in the interest of both supplier and retailer. In textile-retail, suppliers deliver their merchandise to the retailer well in advance of the moment the actual sale takes place, such as in the case of season related fashion collections. This is only possible on the condition that both parties can agree on flexible payment terms.



9. Access to finance

The Dutch Retail Association regrets the lack of attention in the Retail Market Monitoring to the important issue of access to finance. In the aftermath of the financial and economical crisis, banks are reticent to provide finance to companies such as retailers. This interrelates with requests from the side of retailers to suppliers to lengthen payment periods. Without such extensions retailers could sometimes be forced out of business, because they simply could not finance their stocks. Reluctance to provide finance by banks does also make it very hard for independent shopkeepers to buy a shop.

In the context of access to finance, the Dutch Retail Association would also like to point at plans of the International Accounting Standards Board (IASB) to make it obligatory for retailers to put the value of lease contracts of buildings on their balance sheets. Such an obligation would in many cases lead to a serious weakening of the balance sheet of retailers and this would probably make banks even more reticent to provide finance. In this regard, we urge the European Commission, the European Parliament and the Member States to take seriously note of these probably unintended negative consequences of the plans of the IASB.

10. Payment systems

The European Commission rightly points out in the Retail Market Monitoring that retailers will seek to minimise cash handling costs and so encourage the use of credit and debit cards. This touches upon the current process of integration of all national payment markets in Europe to form a single European payment market. This process, better known as SEPA, began in 2008. In 2013, payment products must comply with European rules, which will result in uniform payment products in Europe with which businesses and consumers can make payments everywhere.

In the context of SEPA the Dutch Retail Association is pushing for opening up the market for cross-border acquiring. This would enable a retailer to have all its European transactions processed by an acquiring bank of its choice, even if this bank is located in a different European country than the one in which the retailer is established or the transaction takes place. Although cross-border acquiring is possible in theory, in practice there is no business case to do so as the established card schemes oblige banks to apply the fee level they allocated for the country where the transaction takes place. Cross-border acquiring, apart from allowing retailers to have the processing of their payments centralised and therefore reduce the costs involved, would also create real competition in the market by creating an incentive for acquiring banks to become more cost effective than their competitors. In this way, retailers could shop around for better prices and services. Because competition in most retail markets is fierce, cost savings by retailers would be translated into better prices, wider ranges and better value for consumers.

Removing constraints to cross-border acquiring activities would give retailers more power in relation to the banks and in relation to the existing duopoly of the 'card schemes'. New possibilities would arise for all European retailers and furthermore, this would give dynamic banks a strong stimulus to innovate.



In economic terms, it can be said that as long as the current Multilateral Interchange Fee (MIF) remains permissible, removing constraints is the only way to ensure that the competition principle between banks leads to lower prices. Ultimately, it is the consumers who will benefit from this.

In the context of payments we consider it also important to note that the European Commission recommends that retailers should accept all euro coins and notes. Research conducted in the Netherlands showed that consumers do not like to have their wallets stuffed with coins of 1 and 2 eurocent. Retailers also dislike them, for the reason of high handling costs. Against this background the Dutch Retail Association would be against obligations for shopkeepers to accept coins of 1 and 2 eurocent. In the Netherlands, shopkeepers are currently free to choose whether they accept these coins. If they refuse to do so, they have to notify consumers by a sticker on the façade of their shop.

The Dutch Retail Association considers in certain sectors payments of small amounts extremely important. These include sectors with many low receipt amounts (e.g. kiosks). In the Netherlands, PIN debit transactions are costly for small amounts, because the banks charge a fixed sum per transaction, which makes the payment method unattractive for small amounts. The Dutch Retail Association therefore asked banks in the Netherlands to present a concrete solution for this problem. We will remain alert to the need for the solutions offered to lead to a permanent substantial reduction in the costs of all payments of small amounts, enabling a rapid reduction in cash transactions.

Another important payments issue is the costs for retailers of credit card use. We will continue to work for a transparent and realistic composition of credit card charges. Credit cards should be safe, reliable and efficient.

Unfortunately this is currently not the case. The costs of every credit card transaction are around € 3 or more, according to independent research institutes. The Dutch Retail Association believe that it is not businesses that should bear the costs if customers pay by credit card, but the parties that benefit from the credit facility. These are the customers, who after all, choose to pay by credit card themselves – and the banks and card schemes, whose profit are driven through credit card use.

A last point is that the Dutch Retail Association is in favour of account number portability, whenever a consumer likes to switch from bank.

11. Consumer rights

For the Dutch Retail Association it is of great importance that the European institutions make progress on creating a level playing field in consumer rights. The current status quo of minimum harmonization in the existing consumer protection directives does not come close to establishing a real European single market for retailers and consumers.

We are aware that, due to significant differences in consumer rights between Member States of the European Union, it is hard find a compromise at European level which is both acceptable for consumer organizations and businesses alike. However, we have concerns about the policy option



which Vice president of the European Commission, Viviane Reding, presented before the summer break. She expressed her desire to break the current deadlock by 'going for fully harmonized rules on distance contracts and allowing diverging national rules for face-to-face contracts'. This in the expectation that 'workable fully harmonized rules for the online world could then pave the way for more harmonization for off-line contracts at a later stage'.

In our view such a two track approach would cause serious problems. An increasing number of retail businesses are using a multi channel approach with both a brick and mortar shop and a website. Solely harmonizing the consumer rights for online shoppers would create confusion and probably frustration. We are afraid that a shopkeeper will hardly be able to explain to his consumers why a consumer buying a washing machine at the online shop will be entitled by law to only a two year guarantee, while if the consumer buys the same machine at the brick and mortar shop he or she will receive a four year guarantee period. This divergence in guarantees will be even harder to explain when the consumer – after having purchased online – complains after 2,5 years that the washing machine no longer works.

Moreover, a two track approach in consumer rights would especially in countries like the Netherlands pose problems, given that in the Dutch system the length of the guarantee period is linked to the reasonable life expectancy of a product, a system that offers a relatively high level of consumer protection. This would imply that in the Netherlands a two track approach would almost certainly result in substantial differences in consumer rights between online shops and brick and mortar shops. Differences that would cause unfair competition between online shops and brick and mortar shops.

We also foresee serious difficulties regarding redress of the retailers in case of faulty products. The retailer normally takes within the duration of the guarantee period care of repairing or replacing a defected product for the consumer. The retailer will afterwards seek redress from the producer of this product, for it is the producer who is ultimately responsible for faults.

However, seeking redress will become more difficult if retailers have to explicitly prove to the producer whether the product is bought via the web or via the shop. The producer will be anxious to know the channel as that determines the guarantee period.

As a matter of fact, seeking redress is currently already quite burdensome for retailers. A number of pan-European producers dislike the patchwork of consumer right rules and tend to simply neglect these differences. This puts small and medium sized retailers in an especially difficult position, for they lack the bargaining power to remedy this behaviour.

We would also like to emphasize that there are other strong arguments to harmonize the consumer rights for goods bought in traditional shops as people are increasingly mobile. Harmonization of consumer rights would make it easier for them to buy goods when travelling abroad. One set of consumer right rules would also make it easier for shops to establish themselves cross-border.

We strongly believe that for practical reasons as a general approach the consumer right rules should be harmonised regardless of the retail channel. Such a harmonisation across the board might be difficult, but we are optimistic that it will in the end be feasible. In the Netherlands we had some



tough discussions between representatives of businesses and consumer organizations, but finally The Social and Economic Council of the Netherlands (SER), which is a high level advisory board of the Dutch government, comprising the aforementioned representatives, unanimously approved a compromise how to harmonize the European consumer right rules. This advice has subsequently been endorsed by the Dutch government in the Spring of 2010¹.

12. Labour in the retail sector

The European Commission points to some labour market malfunctioning in the retail services markets. The very diverse rules and collective agreements both within and across member states are mentioned as an indication that there is room for improvement to create a more smoothly functioning labour market.

The Dutch Retail Association is convinced that the regulation of the labour market for retail services is well organized in the Netherlands. Collective labour agreement are negotiated between representatives of employees and employers for retail sectors and large retail chains. There are also regularly meetings in which representatives of employees and employers discuss issues like safety at work, work related stress and vocational training. These meetings are being held at the level of the so called Hoofdbedrijfschap Detailhandel. Labour arrangements are thus best tailored to the needs of the different sectors and companies. The Dutch Retail Association is not at all convinced that a more centralized European approach would deliver better results. Quite the contrary, it believes that the more decentralized Dutch approach works fine. If the problem is that in a number of European member states the labour market is not well regulated, it could be helpful to share among member states best practices. This could be facilitated by the European Commission.

13. Shop opening hours

In the Retail Market Monitoring the European Commission touches upon the issue of shop opening hours. It is pointed out that flexible opening hours could add to the accessibility of stores, yet the Commission foregoes drawing any firm conclusions.

In the Netherlands, shop opening hours and Sunday openings, are regulated by the Winkelopeningstijdenwet. Whereas this law contains a general set of rules on shop opening hours, it leaves considerable leeway to local authorities to decide on the basis of local needs and preferences. For instance, local authorities in a municipality can decide, in close cooperation with all retailers involved, to allow shops to open up on Sunday on grounds of tourism, the so called tourism provision (toerismebepaling. In a legislative proposal, currently pending in Parliament (Eerste Kamer), the Dutch Government proposes to limit the use of the tourism provision.

¹ http://www.ser.nl/sitecore/content/Internet/en/Publications/Publications/2009/2009_05.aspx



The Dutch Retail Association believes that it is in the best interest of retailers and the local population to leave it ultimately up to municipalities to decide whether or not to allow stores to open on Sundays.

Against this background both the current and the proposed legislation contain criteria on tourism which are problematic, because the wording is rather vague. The lack of objective criteria makes it difficult for retailers to determine whether they may open their shops on Sunday. This equally applies for retailers based in other Member States, which consider opening one or more shops in the Netherlands. They will be confronted with huge unpredictability whether or not they may be open on Sunday. From the viewpoint of legal certainty and transparency this is a very undesirable situation. For this reason the Dutch Retail Association strives for a more transparent system with clear criteria on exemptions which municipalities can make on national legislation regarding shop opening hours on Sunday.

14. Energy use and waste production in the retail sector

Recently, the Member States and the European Parliament have reached agreement on the revision of the European rules on energy efficiency of buildings. The new rules, which are currently being implemented by Member States, broaden the scope of the energy efficiency rules to all shops and not longer only to those with a floor space of more than 1000 m². As a consequence, we expect that over the years to come the energy use by shops per m² will decrease substantially. But it should also be mentioned that already now, shops take on a voluntary basis many measures to cut back on energy use, see for example the best practices that are publicly shared by retailers that have signed the Retail Environmental Sustainability Code.

It should be noted that the drive by retailers to save energy is not infrequently frustrated by public authorities. In the Netherlands for example numerous municipalities enforce very strict rules for the timeframe in which suppliers may deliver to shops (so called *venstertijden*). These logistical straightjackets often exacerbate the problem of traffic jams on roads in the morning and cause a substantial additional use of fuels and emissions of CO₂. A study of the independent research institute TNO of 2003 into the effects of “*venstertijden*” concluded that for the whole Dutch retail sector these restrictions cause an extra cost of € 425 million annually.

Concerning the drive to cut back on waste it should be noted that there are often conflicting policy objectives, which makes it necessary to strike a balance. The aim to reduce packaging could for example conflict with rules on food safety and on obligations to inform the consumer about the exact content of the food (it frequently concerns very detailed obligations which require a lot of space on the pack). In principle retailers are in favour of reducing the packaging to the bare minimum because this makes the products cheaper to produce, to transport and also to put on the shelf. Moreover, reducing packaging makes the product more environmentally friendly.

An additional problem related to packaging waste is the different deposit, collection and recovery systems in the Member States that have made them mandatory. Apart from creating additional barriers to retailers trying to engage in legitimate parallel trade, differences between such national



and mandatory systems also create significant barriers to retailers wishing to export their business models to new markets without having to adapt its in-store return systems, logistical planning and sourcing strategies.

It should be noted that the quest for more environmentally and sustainable products and processes in the retail sector is not merely a matter of money. In practice, it is often very well possible to find solutions which are good for people, planet and profit alike. For example, some retailers explicitly ask their customers at the cash register whether they want to have a paper receipt. Many people are not interested to receive one. As a consequence large savings of paper, ink, to the benefit of both the retailers and the environment are achievable, while the customer remains satisfied too.

15. Fight against retail related crime

An important subject for retailers remains unfortunately totally outside the scope of the Retail Market Monitoring: crime. From a European perspective it is important to note that the retail trade in North West Europe is increasingly being plagued by itinerant crime groups, a trend also known as mobile banditry. These are mainly (South) Eastern European groups, which conduct series of crimes in a short space of time, mainly involving shoplifting, ram raids, holdups, payment card fraud and burglaries.

In the Netherlands, the retail trade loses around € 250 million every year as a result of shop thefts and burglaries by these groups. In general, there has been a rise in the number of crimes and groups in recent years. The main targets of these crimes are cosmetics, clothing and DIY articles. Itinerant crime groups are also active in countries such as Belgium, Germany, the United Kingdom, France, Italy, Spain, Sweden, Denmark and Austria. Associations of retailers in these countries are seriously concerned about the damage these crime groups cause.

Countries in Central Europe and the Baltic states are also targeted by itinerant crime groups, although the problem is less serious than in North West Europe. Almost everywhere, the trend shows an increase in the number of reports of mobile banditry. In 2009, the Dutch Retail Association commissioned a research project by a researcher from Radboud University Nijmegen into cross-border retail crime. One of the most important outcomes of this project is that annual losses resulting from shop thefts carried out by itinerant crime groups totals at least € 7.6 billion in the European Union.

At the European level, virtually no attention is currently devoted to itinerant crime groups. The only known research was a study carried out by Europol into payment card fraud. The European Commission will start statistical research into criminality against business in 2010.

A European approach towards cross-border retail crime has failed to get off the ground. The reasons for this can be found in legislation, prioritisation, organisation structure and culture and a lack of mutual trust between national law enforcement organizations. Nevertheless, the Member States should easily be able to focus on mobile banditry at the European level. For example, Europol could start research involving the collection and exchange of information about the problem. A Joint



Investigation Team could also be set up to facilitate operational cooperation. It is possible to call on Europol and found a Joint Investigation Team on the initiative of just two Member States.

The Dutch Retail Association recommends that at the European level, the Member States should commission Europol to investigate itinerant crime groups and the relevant Member States should then create a Joint Investigation Team to root out those crime groups as much as possible.

For any questions and/or comments please contact the Brussels office of Detailhandel Nederland at 0032-2-7365830, or send a mail to hendrikjan.vanoostrum@dedetailhandel.nl or Julius.witteveen@dedetailhandel.nl