

## Buying alliances in Europe are under threat



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On Monday 18 November 2019 the Dutch Authority for Consumers and Markets ("ACM") announced that the regulator had dawn raided several large traders in the agriculture sector. These dawn-raids follow a European trend in which regulators across Europe focus on buying alliances and cartels in the agricultural and retail sectors. In this blog we will discuss this trend.

### European Commission

On 4 November 2019, the European Commission ("Commission") [announced](#) that it formally opens an investigation into possible collusion by two French retail groups Casino and Intermarché. The Commission conducted dawn raids in February 2017 and May 2019, following an own-initiative inquiry into possible collusion between these retailers through a buying alliance. The European Commission will now carry out a detailed investigation of the possible infringements.

### Belgium

Buying alliances between retailers are also under scrutiny of the Belgian Competition Authority ("BCA"). On 20 May 2019, the BCA [conducted dawn raids](#) at certain companies in the retail sector. The BCA suspects the companies to have "implemented anticompetitive practices related to a purchase partnership concerning consumer goods". According to the [press](#) these dawn raids relate to the buying alliance which was set up end 2018 by Carrefour and Provera (the buying center of the "Louis Delhaize" Group, not to be confused with Ahold Delhaize). It is yet unclear when we will hear more about this investigation.

## Luxembourg

The Luxembourg retail sector largely depends on the Belgian distribution channels. Therefore, the Belgian investigation in the Carrefour and Provera buying alliance (which also includes retailers with a strong presence in Luxembourg), will also have an impact on the Luxembourg market.

Some buying alliances have come under investigation lately and the Luxembourg Competition Council has condemned several local retailers in June 2018. These retailers are grouped in a buying alliance (Epicierie de Luxembourg), but [went beyond their buying alliance](#) and also agreed on common promotional actions towards the end-consumers.

## The Netherlands

As set out above, in the Netherlands the ACM is investigating buying alliances in the agricultural sector. The ACM dawn raided several large traders as part of its investigation into alleged illegal agreements between traders regarding the purchase price paid to farmers. The ACM suspects that these traders have fixed the purchase prices, this kind of behaviour would lead to a disadvantage for farmers because they would receive a lower price for their products.

## New directive

Also in the European context, it is recognized that farmers and small businesses in the food supply chain are sometimes in a challenging position. Therefore, in order to improve farmers' and small and medium sized businesses' position in the food supply chain, the EU has recently adopted a [Directive](#) that bans certain unfair trading practices (for more background see [here](#)). The EU Member States now need to transpose the Directive into national legislation by 1 May 2021, which needs to enter into force no later than 1 November 2021. In this framework, each member state will need to designate a competent authority to enforce the rules. These designated authorities will have the power to launch investigations and impose fines on companies infringing the rules.

## Conclusion

The dawn raid and investigation by the ACM fit in the European trend in which different regulators carefully review buying alliances and the cooperation in the food sector. Companies should bear in mind that although buying alliances could be beneficial for (end)customers, it is not allowed for the participants of the buying alliances to coordinate their behavior or for the different purchase organizations to coordinate their behavior between the different organizations. At the same time, European legislators recognize the sometimes challenging positions of the suppliers of buying alliances, especially in the agricultural sector.

It will be interesting to see whether Directive and the different investigations will improve the conditions for the small suppliers of the buying alliances in the agricultural sector.

Please do not hesitate to contact us if you would like more information about the competition rules at both EU and Benelux levels.