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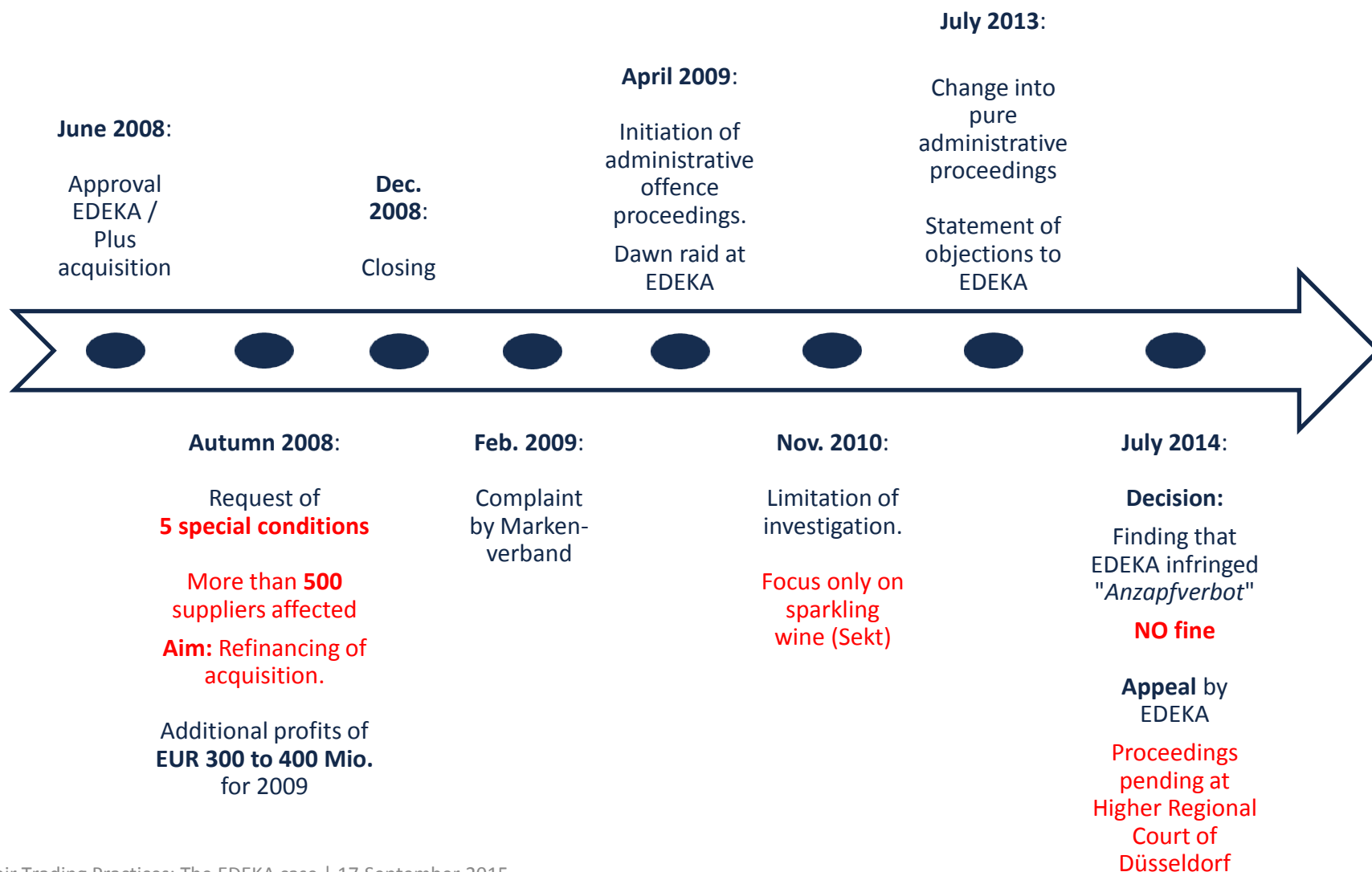


Unfair Trading Practices – The EDEKA case

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Madrid, 17 September 2015

EDEKA case | Timeline



EDEKA case | Five requests

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| 1 | Most favored value comparison of past net-net purchase prices | Comparison using three reference dates in the past |
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| 2 | Most favored value comparison of payment dates | No consideration of package of terms and conditions |
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| 3 | Synergy bonus of 0.5% of total turnover | Without measurable synergy gains |
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| 4 | Partnership bonus of 4% on previous turnover | To make Plus shops more attractive |
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| 5 | Extension of product range bonus of 10% on expected additional turnover or 40 euros per item | Without measurable return service as no specific listing commitment |
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Concept of unfair trading practices under German law

Addressee	Dominant buyers (retailer)	Presumption: As of 40% market share
	Each buyer (retailer) in relation to suppliers which are dependent on the buyer	<ul style="list-style-type: none"> ▪ General position buyer downstream market ▪ General position buyer procurement market ▪ Position on affected procurement market ▪ Bilateral positioning, i.e. sales share buyer
Prohibited	Buyer requests economic advantage ...	<ul style="list-style-type: none"> ▪ Advantage: bonus, rebate, payments, date of payment etc ▪ Every request or ultimate request ?
	... without objective justification (delineation towards "hard bargaining")	<u>New criteria in EDEKA case:</u> <ul style="list-style-type: none"> ▪ advantage/service reasonably linked ▪ Reasoning/calculation of request and service comprehensible (transparent) ▪ Advantage proportionate (only evidence test)
Possible consequences	<ul style="list-style-type: none"> ▪ Cease and desist order ▪ Fine ▪ Damage claims 	<p>Up to 10% turnover</p> <p>FCO decision binding</p>

EDEKA case | Theory of harm

High concentration on retail market

- EDEKA market leader
- Only two other relevant retail groups

Smaller retailers are no longer independent

- Smaller retailers often members of same buying group with market leaders
- No independent negotiation of purchase conditions

Strong link between purchase conditions and downstream market position

- Smaller retailers need protection against better purchase conditions achieved unfairly by market leaders

EDEKA requests prevent suppliers from offering better conditions to smaller retailers

- Suppliers need to avoid negative consequences following future acquisitions
- Waterbed effect: split of purchase conditions

Concentration will be fostered

- Market leaders gain market shares steadily
- Spiral effect

The concept of consumer welfare is not limited to "price" and "volume" but also requires to consider the impact on "product quality" and "innovation"



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