

**CONSUMERS AND COMPETITION: A CONSUMER WELFARE
ANALYSIS OF THREE RETAIL MARKETS IN 14 EU MEMBER
STATES**

About Consumers International (CI)

Consumers International (CI) is the only independent global campaigning voice for consumers. With over 220 member organisations in 115 countries, we are building a powerful international consumer movement to help protect and empower consumers everywhere.

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Consumers and competition: a consumer welfare analysis of three retail markets in 14 EU member states

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EXECUTIVE SUMMARY

The effective implementation of competition policy is critical to the world's consumers. Competitive markets benefit consumers by enabling them to obtain best value, and economic performance generally by improving efficiency.

Recently, perhaps as a result of trade and market liberalisation, anti-competitive practices have received increasing attention from regulators and from consumers. This is because their effect can be to make goods and services more expensive, even those that are essential for survival, and to reduce their quality. The consumer interest lies in the operation of laws and institutions which control restrictive business practices.

Consumers International (CI) works to empower consumer organisations to identify anti-competitive behaviour and seek its elimination. This report describes its most recent work - co-ordinating a two-year project to build the capacity to deal with competition issues in 14 consumer organisations in Europe. Participants have monitored competition practice in their countries by:

- Surveying the retail prices of petrol, paracetamol and ink jet printer cartridges
- Assessing national competition regimes and their institutional relations with consumer organisations.

The project began in 2005 and was largely funded by the European Commission (DG Health and Consumer Affairs).

Market Survey Results

Paracetamol

In many EU countries paracetamol is sold through pharmacies only, and in some countries the full range of products and their prices are not on display. These sales practices restrict consumer choice and have implications for the development of the Single Market. In many cases consumer organisations are not involved in decisions about how over-the-counter (OTC) medicines are sold, while business interests are invited to participate.

Generic paracetamol tends to be significantly cheaper than identical branded products. But lack of transparency at the point of sale, inconsistency across the EU in how generics are marketed, and low consumer awareness of generics mean that consumers are not benefiting from the best-value products.

Printer Ink

Alternatives to printer manufacturers' own ink cartridges are increasingly common and are often much cheaper. However take-up is low and research shows that many consumers do not consider alternatives to be the equivalent of the manufacturers' products.

Direct and indirect factors can deter consumers from considering alternatives. Competition authorities may need to consider the market impact of the use of chips in cartridges by manufacturers to prevent copying or reuse, and of printer warranty conditions which depend on using original-brand ink.

More information comparing printing costs and the quality of alternative cartridges would put consumers in a better position to make an informed choice. Retailers should comply in-store and in advertising with international standards that describe cartridges in a comparable way, for instance showing price per printed page.

Petrol

The sale of petrol through hyper- and super-markets seems to have a beneficial effect on local competition. Many country studies found that prices in other outlets were lower in the immediate

vicinity of a supermarket. In some countries supermarkets are only just entering the market; this may have a similar impact in the longer term.

Prices are often highest on motorways. This is likely to be explained by the fact that once on the motorway the consumer is to an extent 'captive', with limited choice about which petrol station to visit without significant inconvenience.

Legislation Survey Results

Within the EC, national competition laws are not harmonised and differ substantially. In particular there are variations in: the definition of the consumer and of market dominance; the structure of the national departments in charge of competition; the rights of, and opportunities for, consumer organisations and individual consumers to be involved in judicial and substantive procedures; and the extent to which consumer detriment is identified as a measure of anti-competitive practices.

Consumer organisations face obstacles in participating in the competition regulation; in some cases they do not have a recognised role, in others they lack the resources or expertise to engage effectively. Both consumer organisations and competition authorities should play a part in empowering consumers to promote and benefit from competition. Competition regulation is a relatively new public policy issue in many countries and it is important that the principles of consumer benefit and of consumer representation are recognised as laws and institutions are structured and refined.

Consumers International believes that co-operation between competition authorities and consumer organisations are mutually beneficial. To be effective, this requires action to remove the obstacles faced by consumer organisations in representing their constituency on competition issues and to ensure that business practices are assessed in relation to their effect in enhancing or diminishing consumer welfare. This means:

- Ensuring that legislation and regulation refers appropriately to achieving consumer benefits
- Establishing formal rights for consumer organisations to participate in developing and applying competition policy
- Enabling them to be effective in this role through training and practical support
- Improving the mechanisms by which individual consumers and consumer organisations can seek redress for loss resulting from anti-competitive behaviour
- Supporting programmes to improve individual consumers' awareness and understanding of competition issues and their avenues for redress where rules are broken.

INTRODUCTION

Background

In an ideal world, competition between businesses benefits both producers and consumers. Competition to attract customers can create economic efficiency, innovation and better quality products at lower prices. When this is the case, consumers - and the economy - win.

However competition rarely takes place in this perfect environment. And when, instead of offering choices and lower prices, liberalisation leads to the creation of monopolies and cartels, it then denies consumer the very benefits that it is supposed to promote. It is therefore fundamental to consumers, and thus to organisations that represent consumers, that competition is promoted with the benefit to the consumer in mind.

Consumers International (CI) has worked on a range of programmes on competition issues over the last five years. The objective of this current project was to build the capacity of its members to provide an informed consumer perspective in competition-related discussions and negotiations, both nationally and internationally. Implemented over two years from September 2005, and funded by the European Commission Health and Consumer Protection Directorate-General (DG SANCO), the project promoted consumer welfare in competition policy decision-making in 14 European countries and at the EU level.

The specific objective was to build knowledge, experience and technical expertise in:

- Research to establish prices, choice and accessibility of goods and services within the retail distribution sector;
- The analysis of competition policies, procedures, law and cases from a consumer welfare perspective;
- Representing consumer interests to competition authorities at national and EU level.

Project overview

Fourteen national consumer organisations formed a multi-country and multi-stakeholder steering group, which was co-ordinated by Consumers International and assisted by experts in competition law, research methodology, economic analysis, and consumer participation in competition policy (participants and experts are listed in Appendix 1). The steering group was involved in all key decisions, such as formulating research criteria and methodologies, to ensure that the project met its objectives.

The research undertaken as part of the project and presented in this report is divided into:

- Market surveillance and data collection
- Analysis of competition law, competition policy and other policies with implications for competition.

Project partners held face-to-face meetings and used electronic list serves for debate, to share their national perspectives and research expertise, and to discuss necessary policy and procedural decisions. Partners were able to learn from each other as the research progressed and their experiences will contribute valuable guidance both for future work by consumer organisations on competition and for future multi-stakeholder projects.

MARKET SURVEILLANCE

Aim

The purpose of the market surveillance programme was to:

- 1) Train partner organisations to conduct robust price and availability research, an essential skill for contributing authoritatively to debates and decisions on competition and its impact on consumers;
- 2) Carry out a practical study on specific consumer products, enabling assessments to be made of the effectiveness of their markets and action which might be needed to deal with barriers to competition.

The research process

The research was organised in four phases:

- Initial screening:
 - retail sector mapping
 - product selection analysis and debate
 - preliminary market screening of 6 products.
- Pilot price and availability research.
- Full-scale price and availability research.
- Analysis of results and conclusions.

Initial screening

The aim of the pre-pilot screening was to gather background information about the retail sector in all partner countries and establish where there were common concerns about competition. Partners then worked together to identify products that were sufficiently similar in all countries for comparisons to be made. The process began with retail sector mapping using a questionnaire, followed by a project product discussion and selection, and then preliminary market screening of products using a further questionnaire. Six products were initially identified and then reduced to three for the full investigation.

Identifying similar products which would be available across 14 countries was a challenge. A staged information-gathering approach was adopted, starting with general market information and refining this to pinpoint products that all participants could research. The selection criteria adopted were:

- Products must be sold in an identical or very similar form (brand, specification, pack size etc)
- Products must hold a similar position in the market (similar consumption and popularity levels)
- Researchers must be able to gather prices while behaving as ordinary consumers
- At least one product should be available from a supermarket (to address issues of concentration); one products should be available online; one product should be available for purchase cross-border; and one product should raise issues about essential access, especially for rural consumers
- There must be some grounds for suspicion that there could be problems with competition in at least one partner country.

Methodology: establishing the framework

Gathering background market information

Little variation in the price of a product or service on its own does not indicate whether competition is working. The greater the competition within a market, the more vigorous price competition will be. Economic theory argues that in a perfectly competitive market, prices will be driven as near as possible to marginal cost, leading to near-harmonised prices. Likewise, a market run by a cartel, in which there is collusion or price-fixing, will also tend towards a single price. Therefore a single price can indicate both near-perfect competition, and near-absolute lack of competition. So looking at price alone is not sufficient - in order to assess whether competition is working, the market in question must be defined and then assessed.

In the pilot exercise, obtaining market share information was often problematic; data on leading brands and models and sales volumes was not available in the public domain. In some cases, retailers and trade bodies were able to provide partial information. Some research established that market research companies held the information but the purchase cost was beyond the project budget. If consumer advocates are to carry out effective analysis of markets, access to accurate market information is critical; in its absence their advocacy role is jeopardised.

Consistency of approach

Because of the large number of field researchers across 14 countries with different types of retail outlets, different package sizes and different currencies, a consistent approach was required in order to gather comparative findings. A great deal of preparation went into determining exactly the brands and specifications for which partners were to gather prices; however it was recognised that researchers were likely to come across unexpected variations in the field.

Market Structure

Within each product area, participants gathered information about the market structure. It was important to identify: the most popular brands; what sorts of outlets (including online) people buy from; the methods of sale; the number of competitors and their market shares; any relevant state intervention, other regulations or laws, especially where these might affect imports or create barriers to suppliers entering the market. This information was essential for determining the sampling for the full-scale price collection exercise. Some types of outlets and sales methods were important in some countries, but did not exist in others (for example, the sale of printer ink online, or of paracetamol in supermarkets). It was important that the selection of shops and other sources represented a broad cross-section of the market for all partners, and did not exclude important local markets.

Brands

Specific brands for paracetamol and printer ink were chosen for their availability and popularity across the 14 countries. HP and Canon cartridges were widely sold in all countries. Panadol was easily available in most countries; however as the research progressed it became apparent that in Germany, France and Spain other brands would have to be researched because Panadol was unavailable or not for sale in enough outlets. For petrol, individual brands were not specified due to national variations and because the study was not intended to compare brands. Instead, partners were asked to collect prices for major brands and smaller brands.

Geographical Area

For petrol it was crucial to examine the market in a wide range of areas (urban, suburban, rural, motorways and close to national borders). The investigation of paracetamol covered possible differences in product availability and price between urban and rural areas. Location was not considered important for printer cartridges.

Online Retail

The extent of the online market for printer ink and paracetamol varied considerably. Therefore sampling from online shops was included, to be completed by each country if and as appropriate.

Methodology: specific products

Paracetamol

National markets fell into two main groups; the countries where the sale of paracetamol was restricted to pharmacies (the majority participating) and those where paracetamol was available through other outlets, such as supermarkets, mini-markets or kiosks, in addition to pharmacies. As a result of this difference, the partners worked in two groups, designing a separate sample frame for each market structure. In both cases, the objective was to compare the price and availability of a pack size of 20 Panadol (or the leading popular and widely available brand of paracetamol) with a non-branded/generic paracetamol with the same active chemical composition of 500mg¹.

In countries where paracetamol was restricted to sale in pharmacies, prices were gathered for both Panadol (or the brand leader) and an unbranded alternative from pharmacy chains and independent pharmacies, in urban, rural, and suburban areas, and also online where this was possible.

If paracetamol was available through other outlets, prices were collected from pharmacy chains, independent pharmacies, supermarkets, and local shops, in urban, rural, suburban areas, and online where this was possible.

Ink Cartridges

The investigation looked at the price and availability of the printer manufacturers' own black ink cartridges for the Hewlett Packard HP45 and the Canon BCI24 compared with alternative black ink cartridges sold under other brand names or unbranded. Prices were collected for both printer brands and the alternatives in computer or electrical chain shops, independent computer or electrical shops, supermarkets, office equipment stores, online (where available) and in specialist ink cartridge shops (where these existed).

Petrol

Prices were collected for 95RON unleaded petrol in a range of different types of area. In general five prices were collected in each area, but this was not possible in some locations because there were too few filling stations. In these cases, as many as possible were surveyed. Prices were collected in two major chain petrol stations, two smaller-brand petrol stations, and supermarket forecourts in urban, suburban and rural areas, on motorways, and on country borders (if relevant).

Timing

The prices for paracetamol and printer ink were collected in the two-week period Monday 25th September to Sunday 8th October 2006. Since petrol prices can change quickly, all prices were collected on a single day, Monday 9th October, between noon and 6pm.

Key Findings

Paracetamol

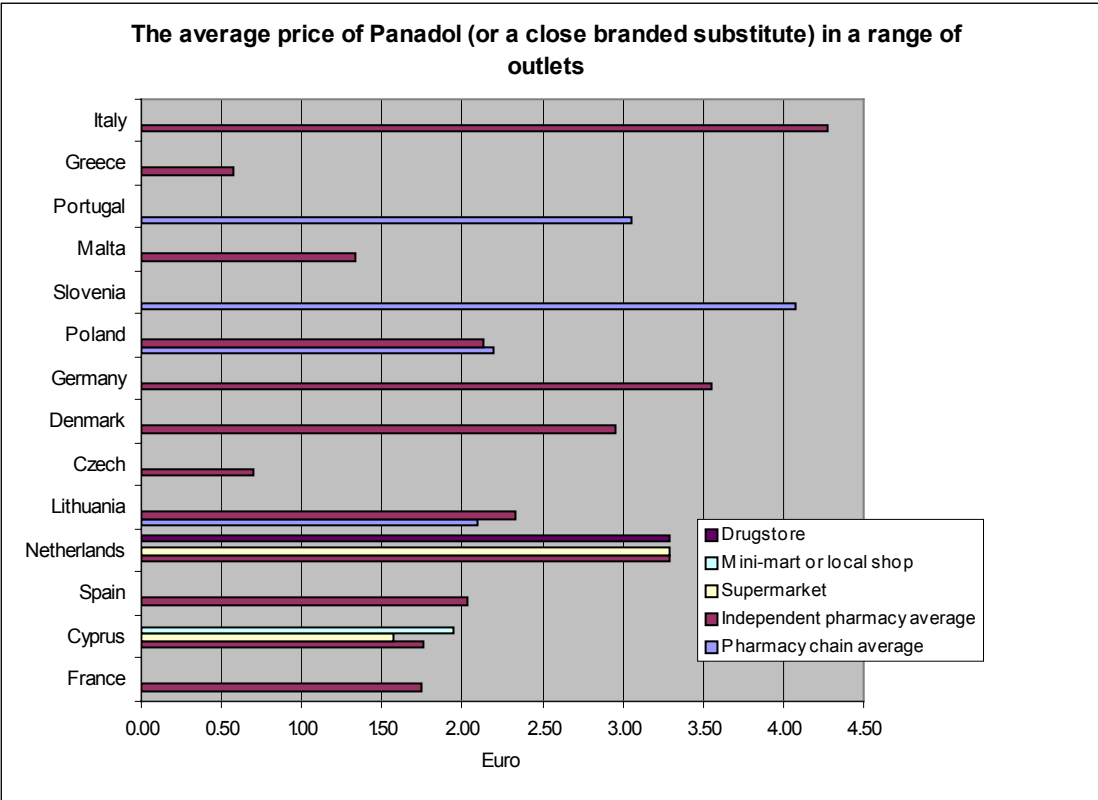
Paracetamol is a basic product that most consumers will buy at least occasionally. The research was designed to establish if access to the medicine and/or its price varied between or within urban and rural areas. In addition, although paracetamol is sold without a prescription in all countries

¹ Prices were collected for paracetamol in pack sizes of 20 tablets. In countries where this format was not available, indicative prices have been calculated for the purposes of cross-country comparison in this report.

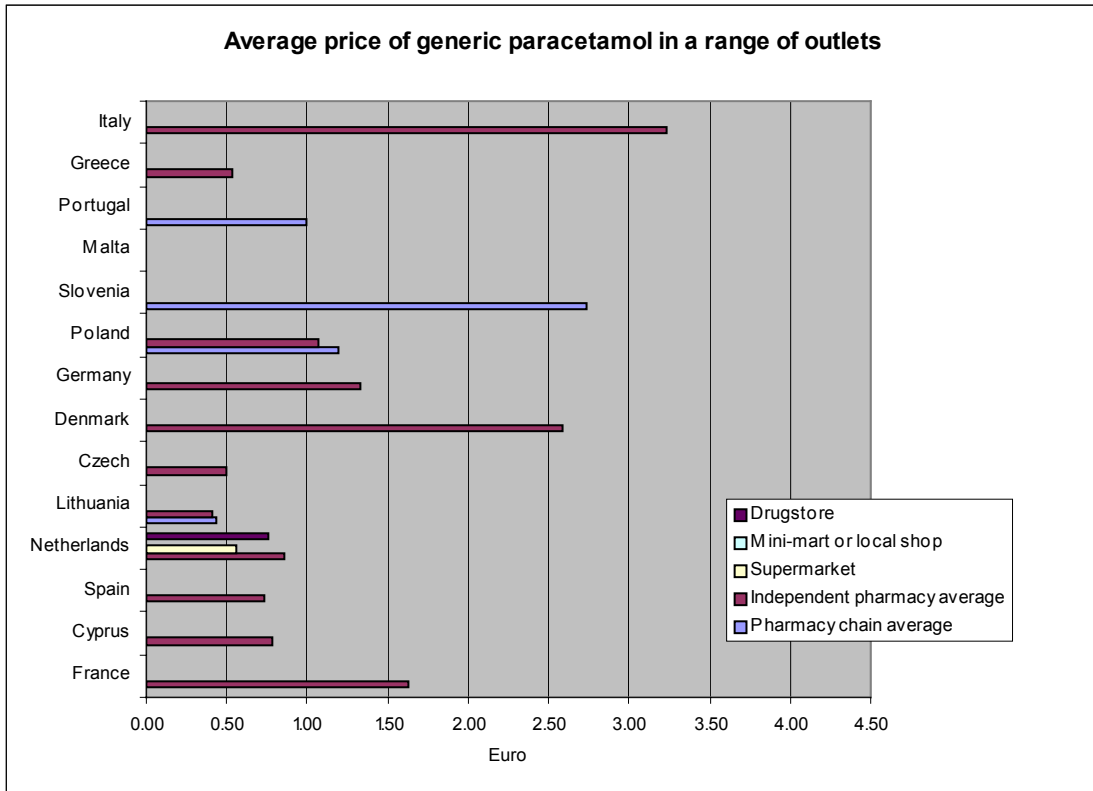
participating in the survey, in some it is available only from pharmacies but in others in various retail outlets, including super- and hyper-markets. The differing retail structures and regulation (in respect of OTC sales, pharmacy licensing, internet sales) might affect both availability and price.

Generics are cheaper than branded paracetamol, but consumers still tend to buy brands

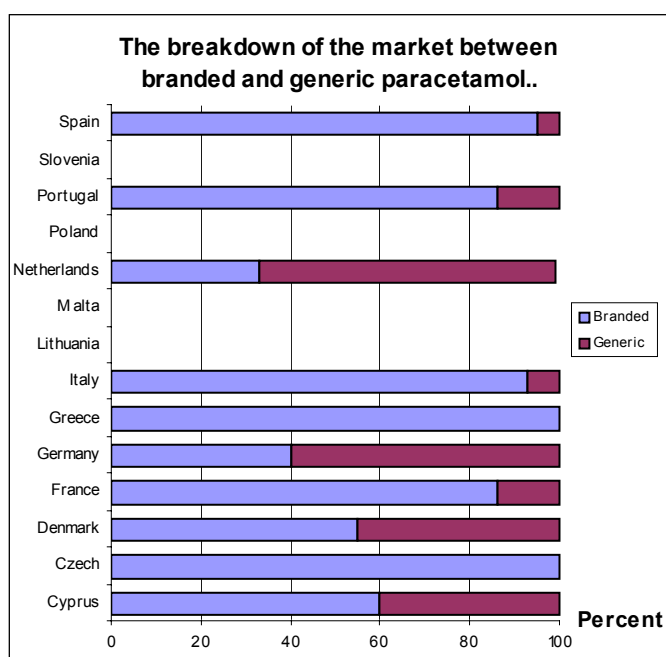
In eight of the 14 countries in the study, generic paracetamol was half the price of Panadol, and in some cases the savings were even greater. Despite these significant price differences, consumers do not necessarily buy the generic drug, even though the active ingredients are the same. The Netherlands and Germany were the only countries for which data was available where the market share of generic drugs was greater than of branded ones, which raises questions about how an improved market share of the sale of generic paracetamol in other countries can be achieved.



(German prices are for Benuron as Panadol was not available. French and Spanish organisations collected prices for Efferalgan because Panadol was not available)



Greek prices for Depon, and Czech Republic prices for Paralen as no generic paracetamol was available. These named products are not widely known or identified as 'brands' and were used as the nearest substitute for an unnamed generic



(‘Branded’ refers to sales of all branded paracetamol. Researchers in several countries found it impossible to obtain information on market share, as pharmaceutical companies were unwilling to provide it and it was not available elsewhere without incurring unacceptable costs.)

There were no significant differences in the cost and availability of paracetamol between urban and rural areas.

A single market?

The research showed that the markets for paracetamol are overwhelmingly national. Market structures vary greatly, as do consumer habits (for example, in Poland there are high levels of self-medication, and over-the-counter sales are strong; in France very little paracetamol is sold without a prescription). Consumer behaviour may also be affected by the public health system and by subsidies from the state. Cross-border trade is minimal - the relatively low cost of the medicine, which is also generally an infrequent purchase, mean that there is likely to be no advantage in buying cross border once postage costs are taken into account. Differences between countries in how paracetamol is sold have greater implications for the single market than the issue of cross-border trade.

National regulatory differences impact on the market

During the preliminary background research, almost all participants reported concerns about the market. Although paracetamol was commonly available in very similar formats (active ingredients, strength, soluble/non-soluble, pack size) there were many variations in the methods of sale.

The most important difference, was between countries where paracetamol is available in **pharmacies only**, and those where it is more widely available in **shops** such as supermarkets, mini-marts and kiosks.

The method of sale of Paracetamol

	Paracetamol restricted to sale in pharmacy only	Restrictions to non-pharmacy sales	Price control?
Cyprus		Panadol only	No
Czech	Yes		Max price fixed but strong price competition
Denmark		10-pack only	Yes in pharmacies
France	Yes		Yes
Germany	Yes		No
Greece		Depon only	Yes in pharmacies
Italy		Only in presence of qualified pharmacist	In some cases
Lithuania	Yes		No
Malta	Yes		No
Netherlands		Small pack only	
Poland		Up to 12-pack only	No
Portugal		Authorised shop only	No
Slovenia	Yes		Yes
Spain	Yes		No

In some countries, controls on the sale of paracetamol have recently been reduced, or such a change is currently being considered. Liberalisation of the OTC medicine market is an important issue for consumers. However, participants in this research reported that, although many interest groups have been involved in policy debates, the consumer perspective has not been strongly enough represented. In particular, negotiations about actual changes to regulations have often been dominated by the pharmaceutical industry. For example:

- In Slovenia, pharmacists vehemently opposed proposals to extend the sale of OTC medicines to non-pharmacies. A list drawn up by the National Drugs Agency of 230 medicines proposed for sale in other stores was reduced to 17 after the commission decision (this discussion was not open to the public.) None of these 17 contained paracetamol. There were even proposals to ban the sale of herbal teas outside pharmacies.
- In Germany, pharmacists have made various legal challenges to the decision to allow Doc Morris, a Netherlands-based pharmacy chain, to open stores. Doc Morris claimed that that it would offer savings of up to 30% compared with traditional German pharmacies.
- In the Czech Republic, the Chamber of Pharmacists was fined in 2006 for anti-competitive arrangements in its professional code, which tried to prevent price-based advertising of OTC medicines.
- In Poland pharmacists lobbied for a ban on on-line medicine sales, and also to limit the number of pharmacies operating in a particular district.
- In Malta, the government recently decided not to lift restrictions on pharmacy licences, a decision public opposed by consumer bodies.

Another concern in the regulation of the OTC medicines market is **online sales**. Online pharmacies are allowed in Malta, the Netherlands, Poland, Denmark, Germany and Slovenia. In Germany sales of paracetamol are restricted to pharmacies, and can be purchased online via pharmacy websites this provoked some initial controversy. In all the other countries in the study, internet sales from websites registered in the countries are not permitted.

Paracetamol can be purchased online in the following countries	
Cyprus	NO
Czech	NO
Denmark	YES
France	NO
Germany	YES
Greece	NO
Italy	NO
Lithuania	NO
Malta	YES
Netherlands	YES
Poland	YES
Portugal	NO
Slovenia	YES
Spain	NO

Consumer choices

Why is generic paracetamol not more popular with consumers? The research suggests that the principal market supply (competition) problem is that choice is restricted by the way paracetamol is **displayed and made available**:

In France, all OTC medicines are not displayed on shelves but are kept behind the counter. The pharmacists tends to make recommendations and consumers may not be aware of the existence of cheaper generic alternatives. Generic paracetamol is not in the directory of generic medicine (the list of medicines for which the patent for the active formula has expired) because there was no patent on it; this may affect awareness of the alternatives to recognised brands. In addition, some consumers may get their paracetamol on prescription, and therefore doctors have a powerful influence on the choice of brand; since access to alternatives is restricted either because they are not displayed or because of restrictions on sales outside pharmacies, there is little to mitigate the possible impact of this influence.

In Malta, the recommendations of doctors are a strong influence on consumers, who may then not consider cheaper alternatives; and consumers do not have access to paracetamol through retail outlets besides pharmacies.

In Germany, paracetamol is kept behind the pharmacy counter. Consumers cannot see the range on offer, or the prices. It is the pharmacist who makes the choice on behalf of the consumer, unless asked for a certain brand.

In Lithuania, prices are not displayed in shops.

In Cyprus, Panadol is the only brand, which can be sold away from pharmacies. Supermarkets and convenience stores/kiosks are popular places to buy paracetamol, so it is not surprising that Panadol dominates the market.

In Greece, Depon is the only brand that can be sold away from pharmacies.

Restrictions and other policies on imports may also affect the introduction of generic drugs. In Malta, for example, the cost of meeting EU requirements on the registration of imported medicines may have deterred the introduction of generic products.

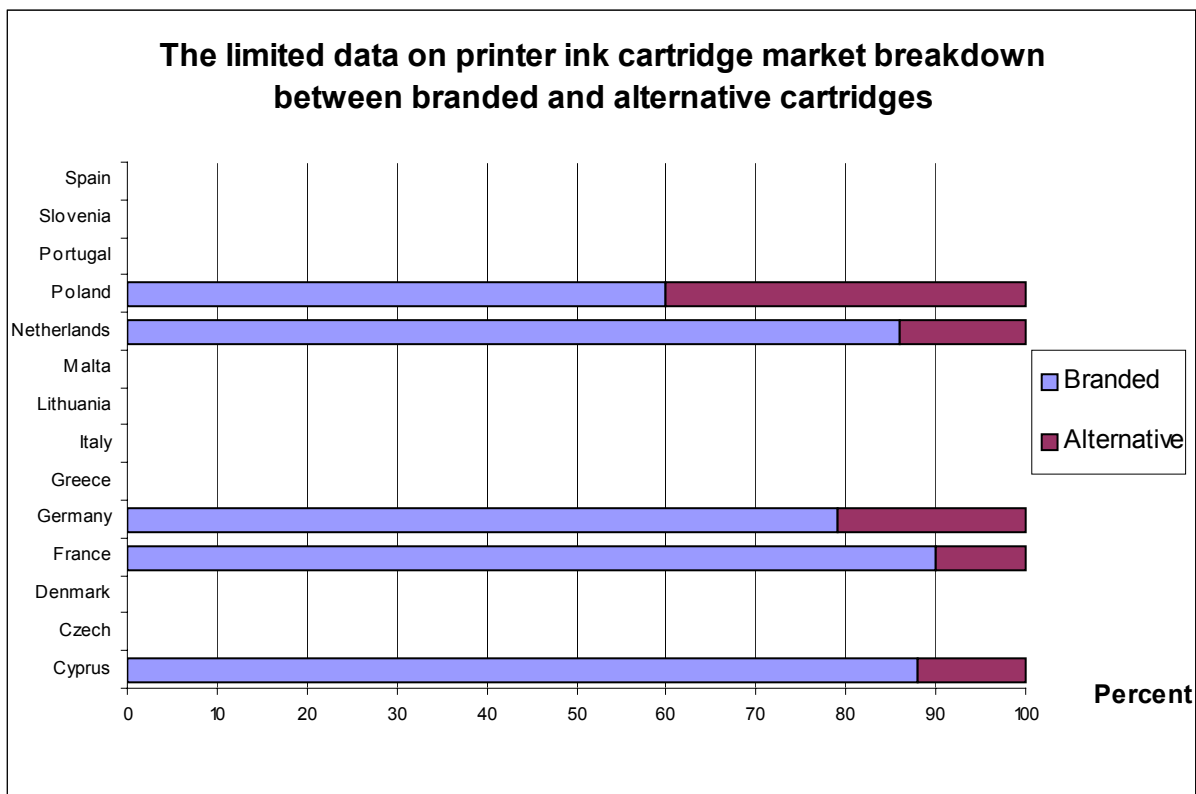
Consumer awareness on the differences between branded and alternative paracetamol is important in order to assist their choice of purchase. Some of the factors discussed above are will be significant in shaping opinion and expectation. In countries where paracetamol is restricted to pharmacies, and where a range of products is not on display, consumers may be more likely to seek or follow the recommendations of the pharmacist or doctor. Routine recommendations from these professionals for named-brand products may reduce confidence in the quality of cheaper alternatives even though they are for practical purposes identical, and encourage 'default' purchase of the same brand over-the-counter subsequently. Moreover, many branded OTC medicines are heavily advertised, while generics are not; in the absence of effective other sources of guidance this will have a substantial influence on consumer purchasing.

Printer ink

The inkjet printer cartridges market was examined because initial research identified concerns about product bundling (that is, printer makers seeking to tie buyers in to the use of their cartridges). The investigation sought to establish the availability of other brands of cartridge (and unbranded products) through a variety of distribution channels (specialist ink shops, supermarkets, online) and also price differences

Market Share

Participants in most countries found it impossible to obtain information on market shares for ink cartridges. Manufacturers were unwilling to release this information and it was not obtainable elsewhere, despite extensive research. This highlights an important general problem for consumer organisations in monitoring competition, identifying markets which do not serve the interests of consumers, and seeking action from competition authorities.



Figures for Poland based on an estimation

The sale of printer ink cartridges is unrestricted, and preliminary research established that they were available from a wide range of outlets, including computer shops, office supply shops, supermarkets, and an increasing number of specialist ink shops. In addition, alternatives to Hewlett Packard's (HP) and Canon's own cartridges were easy to find in almost all countries.

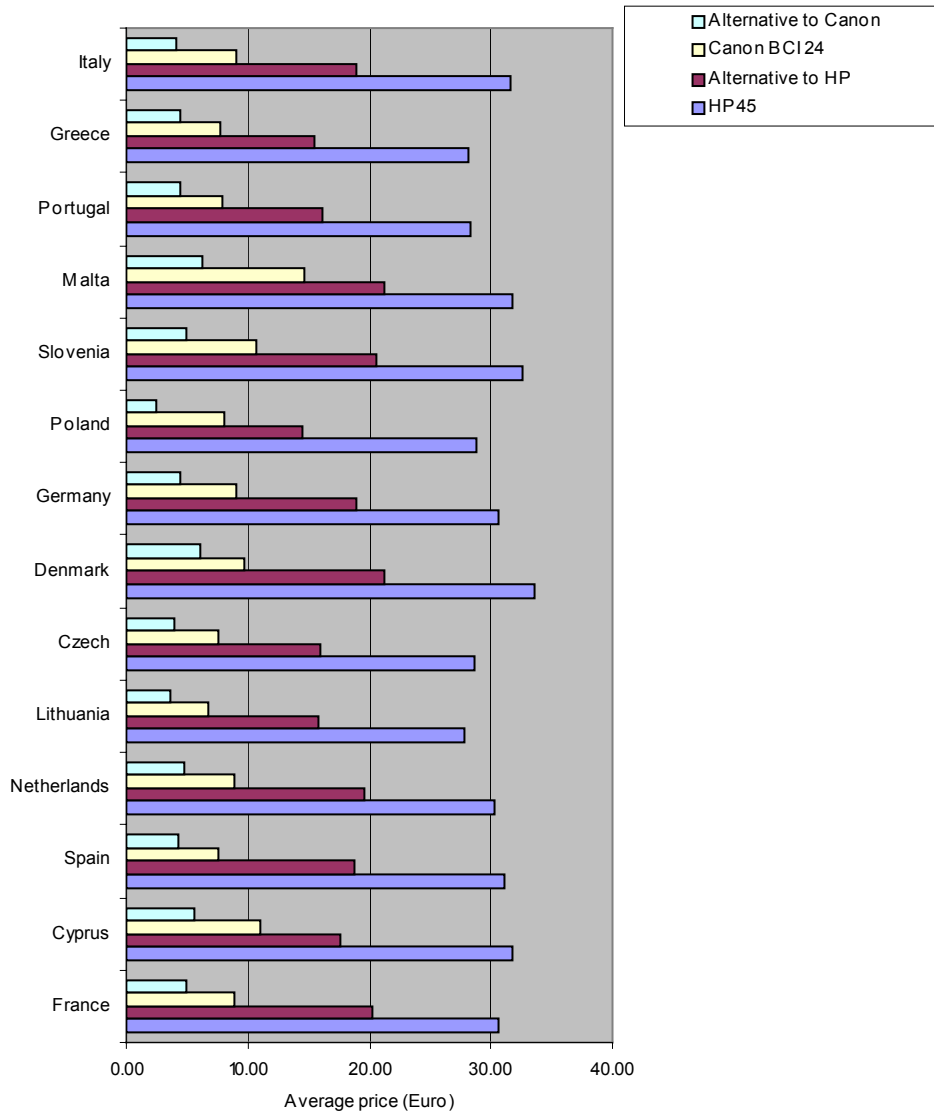
Alternatives invariably cost less than printer-makers' own ink cartridges

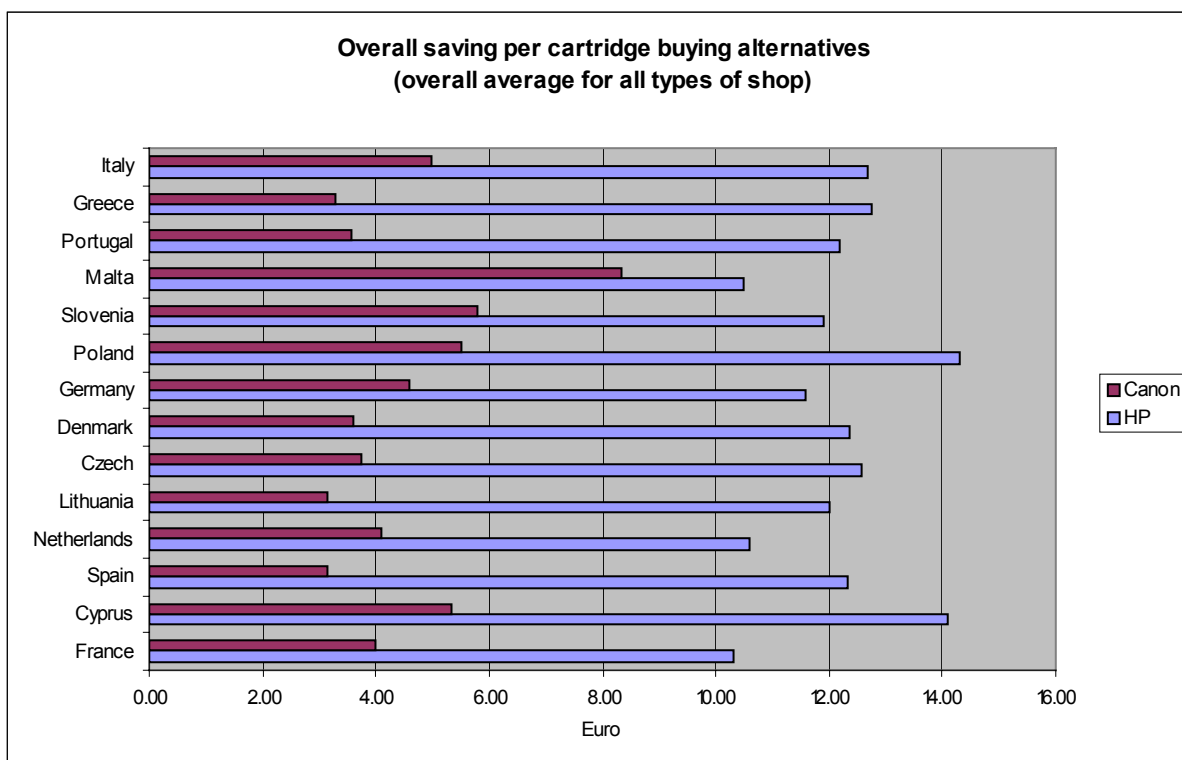
Market surveillance in all 14 countries established major price differences. Alternatives to both HP's and Canon's cartridges were almost always cheaper, and often less than half the price. Table 7 and 8 compare the average cost of the manufacturers' cartridges with alternatives.

Average savings per cartridge were between 10 and 14 euros for the HP cartridge, and between 3 and 6 euros for the Canon. (The volume of the HP cartridge is 42ml whereas the Canon is 8ml.)

Alternatives mostly had the same volume of ink although in Poland and France the volume could vary. Based on the use of two HP cartridges a year and the ink-volume equivalent 5.25 Canon cartridges, savings from the use of alternative cartridges would be 20 to 28 euros for the HP and 31 to 63 euros for the Canon per year. A recent study by Which? in the UK (Ink Cartridges, Which? February 2006) calculated that someone printing one photo and four text pages per week over three years could save £121 (Euros 180) with a Canon printer by using alternatives to Canon's own cartridges.

Average price of branded and alternative ink cartridges





Does price reflect quality?

In the other markets included in this study (paracetamol, petrol) the quality of competing products is not an issue - for practical purposes they are identical. But consumers could have more reason to be wary of possible quality differences with ink cartridges. Tests and surveys carried out by some consumer organisations have produced varying results. Which? in the UK (Ink Cartridges, Which? Feb 2006) found that printer manufacturers' branded cartridges worked well; many of the alternative cartridges performed almost as well, but some poorly. Altroconsumo in Italy and colleagues in Portugal, Spain, and Belgium, surveyed 2,000 consumers in the four countries and found that only 37% of those questioned had used an alternative to their printer maker's cartridges, but that two thirds of those who had were satisfied with the quality of the print. (Altroconsumo Issue 196, September 2006). Stiftung Warentest in Germany (Test, June 2006) found that, while alternative cartridges could cost as little as one third of the price of originals, they often performed less well.

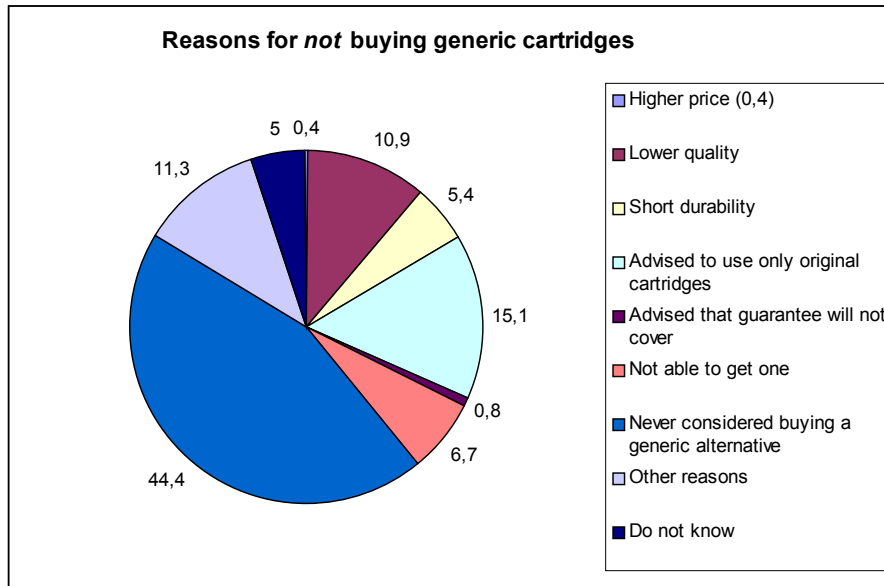
There are other factors that may influence the quality of the print, including the *type of printer* (model within each brand) and *the type of driver* the printer uses. For example if a particular HP cartridge is used on two different models of HP printer, the ink yield is likely to be different. Variations in printer driver can have the same effect. These factors make judging relative value for money very difficult.

Standardised information giving price per printed page would certainly help consumers make good choices, but this would ideally need to be provided for each printer model and software variation which a particular cartridge could be used with. Internationally accepted assessment methodologies are available for inks (ISO/IEC 24711:2006). Consumers International would like to see cartridge makers obliged to give ink-use figures in accordance with this.

The standards provides 'quality-adjusted' use costs, but these do not include assessments of print quality on the page. Consumer concerns about possible differences in this aspect of print quality, and also the longer-term effect of cartridges on the printer itself, are more difficult to deal with. Advertising and other marketing information is rarely neutral and objective, and it is in the interests of printer manufacturers and perhaps some retailers to encourage consumer concern about alternative cartridges. Consumer organisations publish periodic test-based assessments, as also do some

commercial magazines (though since the latter carry advertising, their objectivity is open to reservation).

At present, evidence suggest that many consumers do not know about or think of buying alternatives to printer-makers' cartridges at all. The Danish Consumer Council surveyed 692 people from representative consumer panel in January 2007 and found that nearly half of those who did not buy alternative cartridges had never considered them.(Danish Consumer Council internal report). Other reasons are shown in the Chart below:



At present, too, consumer choice remains restricted since alternative cartridges are not always widely available. In particular in France, researchers had difficulty finding alternative cartridges in shops, although specialist and on line outlets are expanding.

Barriers to competition

The research suggested a number of potential barriers to competition that may discourage consumers from buying alternative cartridges. Some appear to be deliberate attempts by the printer manufacturers to restrict competition in their 'aftermarket'. Anti-competitive practices may include:

- Technological devices (chips) built in to printers and/or cartridges, which make the production or use of alternative cartridges difficult or expensive. This may infringe a 2002 European Parliament Resolution, which prohibits the introduction of such technical barriers; Consumentenbond (the Dutch consumer organisation participating in the research) plans to raise this issue with the Netherlands Competition Authority.
- Printer warranty conditions which stipulate that damage caused by other makes of cartridge will not be covered. The risk of damage could be low but the warranty clause could discourage the exercise of choice, not only during the warranty period but also long after.

Petrol

Petrol was included in the study because some of the consumer organisations were concerned that competition was being limited by market concentration, abuse of dominant position, and/or explicit price fixing agreements or tacit collusion.. There was particular concern about prices and lack of

competition on motorways and about how (and how quickly) changes in crude oil prices get reflected at filling stations.

In principle, the petrol market is vulnerable to collusion because of its nature - a homogenous product, transparent prices that are easy to adjust, similar companies, and high barriers to entry.

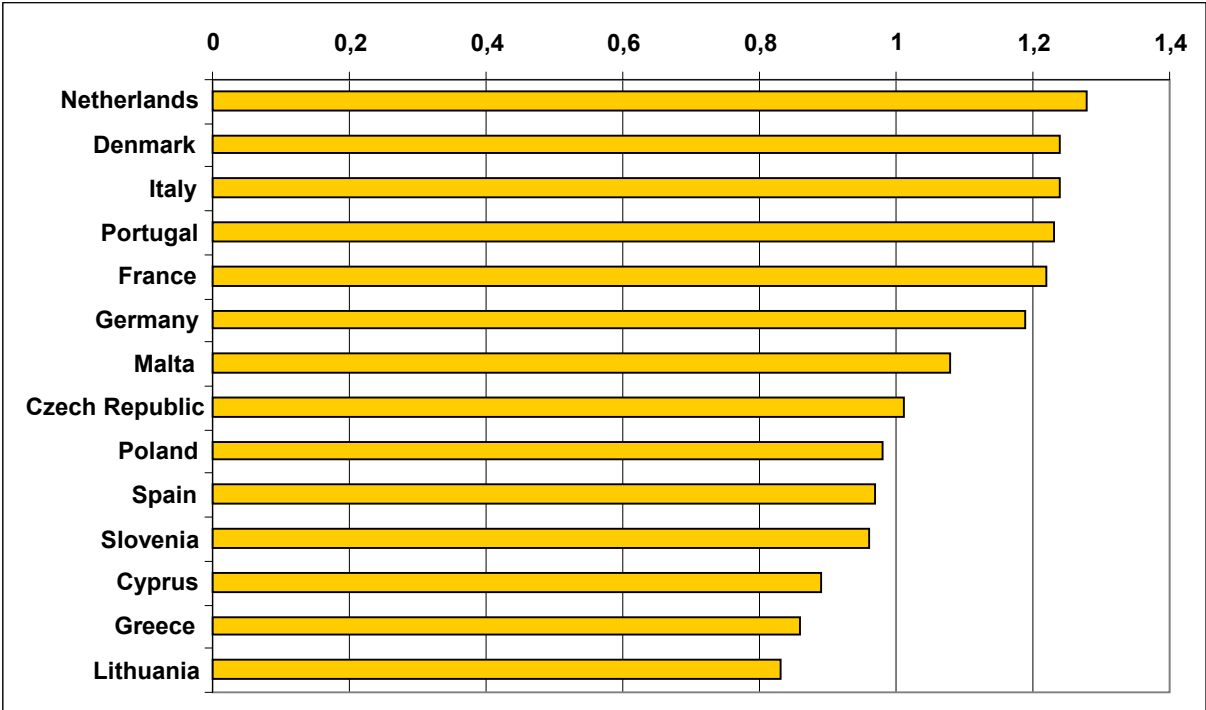
There have been many investigations in these countries into competition in the petrol market (successfully proving anti-competitive behaviour in Lithuania and the Czech Republic, inconclusive in Denmark and Cyprus, for example). This project conducted a relatively simple investigation, seeking a snapshot of price variations on a particular day, with particular reference to differences within small localities and between types of area (urban, rural etc). Motorways and border areas were included where appropriate.

Some local price competition was found in most countries

The market in every country is dominated by between one and five major companies. There tends to be little national variation in prices, but there is often competition within local areas. The sale of petrol through hyper- and super-markets seems to have a beneficial effect on local competition - prices were often low in the immediate vicinity of a supermarket. In some countries supermarkets are only just entering the market and may have a similar impact the longer term.

Prices are often highest on motorways. This may be because consumers are 'locked in' and reluctant to exit from the motorway to shop around for cheaper petrol. Since there may also be licence-based restrictions on operating motorway filling stations, which may raise the normal - and already high - costs of market entry even further and even deliberately restrict the number of outlets, motorways should be treated as a separate market for antitrust purposes.

Average petrol prices (euros per litre 95 RON unleaded)



Detailed National Petrol Results can be found in Annex II.

A single market?

The research was not intended to illuminate the EU market for petrol. National price differences are heavily dominated by variations in tax, so that the underlying retail prices are complex to calculate.

By its nature, petrol cannot be purchased at a distance and cannot be readily transported by consumers in large quantities. The retail cross border market is therefore likely to be limited to small areas very close to national boundaries. The research provided evidence of some cross-border trade where prices locally justified it.

Concern about the cross border market was raised in France (where high taxes and therefore high retail prices encourage buying abroad) and in Lithuania where high prices compared with other Baltic countries have resulted from abuse of a dominant market position - for which the oil company has been fined.

Stimulating competition in the petrol sector

Recognition of the effect of the market structure on competition in this sector has led the Dutch government to introduce new rules requiring that every 15 years all petrol stations will be put up for auction; large oil companies were also forced to give up half of the petrol stations that they held. These reforms demonstrate an attempt to overcome competitive problems resulting from market concentration and vertical integration between suppliers and retailers. Consumentenbond's research suggests that there has been some opening of the market, with a few successful newcomers, but that the big oil companies still dominate. Another possible way of encouraging competition is to look at the national planning regime and if necessary relax planning permissions to facilitate entry.

The national results of the petrol investigation demonstrate a range of market structures.

Cyprus: a very small market with only four petrol companies. Price differences are almost non-existent. The same-day research found identical prices in six urban, suburban and rural areas. Petrol companies have been seen to act together, raising prices instantly when world prices rise and delaying a reduction when world prices fall. The Cyprus Consumers Association has raised the question of collusion with the Commission for the Protection of Competition, which is currently investigating the issue.

Czech Republic: The market is dominated by big companies, most of them non-domestic, which tend to own the best-situated petrol stations. Supermarkets have recently entered the market and are competing successfully. The main price differences were between motorways (most expensive), and areas with hypermarket petrol stations (cheapest).

Denmark: Has a relatively high number of petrol stations for a small country. As a result most consumers live within 5km of a one and are not prepared to travel far for petrol. The survey showed that prices varied very little; however the two largest companies had lowered their prices where their stations were located close to those of other, cheaper, chains. This indicates that competition exists, but at a local level. The market is characterised by a practice of 're-setting' prices to recommended list prices once or twice per week, thereby temporarily neutralising competition. Competition then sets in and is fiercest before prices are re-set again. This practice has been investigated by the Danish Competition Authority.

France: Hyper- and super-markets are very important, having a 55% market share (2004 and 2005). There is tough competition between oil-company owned and hypermarket stations. At the end of 2006 the Ministry of Economy started a website which allows consumers to compare prices for all petrol stations in France. The only issue of concern from a competition point of view is the motorway network. In general, petrol prices were lowest where a super- or hyper-market was operating. But they were highest on the motorways, where hypermarkets have little impact, and in Paris, where hypermarkets are not allowed.

Germany: The market is dominated by large chains; the top three take just under 50% of the market. The survey found that prices vary between regions and in rural areas.

Greece: The last few years have seen various official investigations into the petrol market, the latest of which (by the Hellenic Competition Commission) is still ongoing. Three large oil companies dominate the market. The survey found price variations, particularly in rural areas and frontier islands.

Italy: One large group (ENI) dominates the market, which is characterised by vertical integration. Independent retailers are very limited. The Italian Antitrust Authority has recently (January 2007) called for barriers to competition to be removed. This will open up the market to supermarkets and other players. The Antitrust Authority is also investigating nine oil companies for possible anti-competitive pricing agreements.

Lithuania: Prices are elastic and react rapidly to world oil prices. All the main petrol chains have websites which show their prices. A distinctive feature of the Lithuanian market is the lack of petrol stations linked to super- and hypermarkets; only one is under construction.

Malta: Petrol prices are determined by a committee set up by the Maltese government. This committee developed a formula to link the price of petrol with the price of oil; the price of petrol is published at the beginning of each month. According to the Accession Treaty between Malta and the EU, the import of fuel for internal consumption had to be fully liberalised by January 2006. After a warning from the EU this has been promised by the second half of 2007.

Netherlands: Five big oil companies dominate the market. In particular they own all the petrol stations on motorways, where 25% of all petrol sales are made. The research showed that motorway prices were about 5% higher than in other areas (1.33 euro per litre compared to 1.27-1.29). There was very little variation in price on the motorways.

Poland: Petrol prices are high in relation to salaries. Close to Belarus many people cross the border to buy petrol. PKN Orlen dominates the market. Hypermarkets tend to offer lowest prices. In some areas prices vary by as much as 7%.

Portugal: There is competition between the vertically integrated oil-company-owned stations, independents and hyper/supermarkets. Highest prices were found on motorways, lowest prices in petrol stations close to commercial areas such as hyper/supermarkets. The existence of hyper/supermarkets seems to increase local price competition. There is some concern about the concentration of supply (over 90% of fuel comes from GALP). Consumers have tried to change to inferior petrol (95) as a reaction to the high prices.

Spain: Three big companies dominate and their market share has changed little over the last few years. There have been various fines levied on them for fixing prices. A European Court of Justice decision in December 2006 to allow hypermarkets to open petrol stations could have an impact on the market. The research found few price differences.

Slovenia: Supply is dominated by the state-owned company, Petrol, which has a 68% share of the retail market. It has the largest number of stations and owns all those in prime locations. Only one supermarket chain has decided to sell petrol. Retailers rarely depart from a recommended retail price. Prices are influenced by a government 'model formula', including a standard distributors' margin, which few choose to depart from.

COMPETITION POLICY AND MONITORING

Aim

The objective of this component of the project was to develop expertise within European consumer organisations to analyse, from a consumer perspective, competition law and policy, and other policies and cases with competition implications, at the national and EU levels. In particular, the research on competition regimes aimed to:

- Increase knowledge in the partner organisations about the most important competition law requirements in their countries and the most important competition law issues for consumers.
- Provide partner organisations with opportunities to demonstrate their understanding of basic competition law rules/issues; and identify those aspects of competition law in which they need more training and experience.

The survey of competition regimes examined the institutional frameworks in which national competition authorities and partner organisations operate, and developed partners' understanding of their national competition rules. These include: the treatment of restrictive practices; exemptions from the competition rules; definitions of dominance; abuse of a dominant position; and the assessment of mergers. In addition, the survey considered procedural issues, especially in relation to consumer organisations' avenues for participation in competition policy. To complement the market surveillance research, competition concerns were examined in the three product areas investigated in the market research (see previous section) in order to provide a complete overview of these sectors.

Methodology

Two legislation surveys were completed by each of the national consumer organisations participating in the project. These surveys covered the main competition laws and the principal competition concerns for consumers in each of the partner countries. Competition issues in each of the specific markets chosen by the partners (petrol, printer-ink, paracetamol) were also examined. More subjective questions were also asked which aimed to assess the general level of awareness of the importance/substance of competition law rules among both consumers and the business communities.

Phase I: First Competition Legislation Survey

The first survey, drafted by the CI project leader during the early months of the project, consisted of a set of 10 questions about the institutional structure of the competition regimes, the general nature of the competition laws, and the case-load of the relevant authorities. It was designed to address the scope of each partner country's competition law and to focus the partner organisations on the most important competition law rules in their countries and their interaction with EC competition rules. The questionnaire subsequently formed the basis of the second legislative survey and helped inform the final choice of the (three) products to be researched. It was completed by each partner organisation during November-December 2005.

Phase II: Second Competition Legislation Survey

The second survey was drafted by BIICL and was a more detailed request for information than the first survey. Its main purposes were to gather information on national competition cases on the three products being researched in the market surveillance phase, and to assess the extent of media coverage and awareness of competition issues and of involvement of consumer organisations in competition cases. It was completed by all 14 partners in May-June 2006. After submission of the answers, additional information was occasionally sought from the partners by BIICL when required (eg to clarify the meaning of statements, to request additional cases, to ensure answers were as detailed as possible).

Analysis of Results

The results from both questionnaires were verified, compiled into a database and then reviewed by BIICL. They form the basis of their report '*Competition Law and the Consumer: Results of the Legislative Survey on Fourteen European Competition Law Regimes*'. The first draft of this report was completed by October 2006 and was sent to the expert consultant for comment. A final draft was submitted to CI by BIICL in March 2007.

The report contains a separate chapter for each country, with sections covering: Overview of the Partner's Competition Law; The Institutional Framework; Substantive Provisions of the Competition Law; Sanctions and Enforcement; Legal Protection; Consumer Organisations and their Influence in Competition Cases; Important Competition Concerns in the Partner's Jurisdiction; and Perceptions Revealed in the Legislative Survey. The report is not intended to be a detailed statement of the applicable competition laws (or competition concerns) in the partner countries; rather its purpose is to present the findings of various consumer organisations in their attempts to understand and interpret their national competition rules and issues arising from them. The national legislations have been reviewed from a regional perspective and are presented in this report.

Key Findings

Within the EC, national competition laws are not harmonised and differ substantially

Although each Member State has incorporated equivalent national provisions in conformity with Articles 81 and 82 of the Treaty of Rome, evidence from the project shows that there are still substantial differences between national competition laws. These differences were found both in substantive law and in procedural rules in relation to:

Definitions of dominance, abuse, and substantive legal tests for assessing mergers

Some national laws use a definition of **dominance** which is based on the market share possessed by the dominant undertaking (for example, a proxy of 40% market share in the Czech Republic, Lithuania and Malta), while other countries do not use any definition of dominance (Italy). Definitions of **abuse** (of a dominant position) may extend to the prohibition of the abuse of economic dependency (Greece, France, Italy), or unfair competition (Lithuania).

Some countries assess **mergers** solely against a market share test of the merged parties (Greece, Lithuania, and Netherlands), while others in addition take into account the volume of the sales of merged businesses (Germany, Italy, Slovenia, Spain, Portugal).

These variations are fundamental because they suggest that different standards of 'harm' to other market participants and/or consumers may be applied when determining competition cases in different Member States. Accordingly, countries which use precisely specified market thresholds in their merger control tests and in defining dominance tend to concentrate on the structure of the market rather than on the effect on competition, and hence the benefits or losses obtained by consumers.

Similarly, differences arise with the inclusion of the concept of economic dependency - the abusive exploitation by a seller of economic dependence of a customer or supplier, which has no equivalent alternative available to purchase. Such abuse can occur where there is a refusal to supply, tied sales, discriminatory conditions of sale, or the break off of established business relations on the sole ground that the other party does not accept unjustified conditions of business.

The design of the enforcement mechanism

The survey found substantial differences in the design of enforcement mechanisms. For example, in eight out of 14 Member States a single authority is in charge of the enforcement of both consumer

protection and competition laws; in the others these laws are enforced by separate authorities. Likewise, while in some Member States the competition rules are enforced by several authorities, in others they are enforced by a single authority. These diverse institutional structures may reflect, or result in, different views of what constitutes the consumer interest and lead to inconsistencies between enforcement authorities operating in the same country. They may also cause an additional problem for consumer organisations where they have to deal with several authorities. Furthermore, the enforcement of consumer protection laws and competition laws by separate authorities may limit the scope of remedies which can be sought by consumer organisations.

Consumers' procedural rights

The procedural rights of individual consumers and consumer organisations vary between countries. For example, while in some Member States consumer organisations can only bring actions to stop infringements of the competition rules or to stop anti-competitive practices (injunctive relief) on behalf of consumers and cannot pursue claims for damages on behalf of consumers, in other countries consumer organisations can only seek damages but cannot take legal action to halt anti-competitive practices. Even when a consumer organisation brings an action for damages its effectiveness may be hindered if interested parties are required actively to join the case (the opt-in model), as used in Spain, Lithuania and the UK. A further obstacle may arise if consumer organisations cannot pursue stand-alone claims but only follow-on claims for damages after an infringement has been determined by the competition authority.

The recognition of the role of consumer organisations

The survey established inconsistencies in the definition of consumers' 'legitimate interests' between the Member States and even within the same country (eg different interpretations by German courts). The recognition that consumer organisations have a legitimate interest is essential for their participation in competition cases/ the competition arena. However, while some Member States consider consumer organisations to have a legitimate interest, which enables them to represent consumers in legal proceedings and in front of competition authorities, this is not the case in others (eg Slovenia).² When the definition of a 'legitimate interest' in a competition case requires a party/ claimant to have suffered substantial financial injury, to be at serious risk of suffering a substantial financial injury, or be placed at a competitive disadvantage, consumer organisations that do not themselves suffer any harm may not be considered to qualify to seek redress on behalf of directly affected consumers (especially when the latter may have only suffered minor harm individually).

The extent to which consumer organisations are accorded 'legitimacy' also varies within countries - for example, they may be able to represent consumers in front of the competition authorities but not in legal cases; or they may be able to take legal action to end infringements of competition law but not to bring claims for damages, because they have not suffered any direct harm (eg in the Netherlands). Under an opt-in model consumer organisations are also dependent on the willingness of individual consumers to take part in a case.

The protection of consumer interest is not recognised as a distinct objective in some national competition rules

National laws corresponding to Articles 81 and 82 of the Treaty of Rome define 'consumers' not only as end-consumers but also as intermediate customers (businesses which acquire products in the course of their trade).³ In addition, the accepted national interpretation of EC competition provisions is that if

² Under Article 74 of the Slovenian Consumer Protection Act, consumer organisations can challenge all kinds of illegal contractual terms, but not including cases where there are breaches of the competition law.

³ Kamiel Mortelmans and Stewart Watson, "The Notion of Consumer in Community Law: A Lottery?" in Julian Lonbay, ed., *Enhancing the Legal Position of the European Consumer* (BIICL, London 1996), p. 38.

a case is made that a restrictive practice will produce benefits for consumers, it is not necessary to show that these will all go to the end consumers but only that a 'fair share' will be offered to them.

In contrast to the wording of Article 82 of the Treaty of Rome, not all national equivalent legislations refers to consumer detriment as a result of an abuse of a dominant position (eg in Italy) This omission reflects the emphasis in some countries on the protection from anti-competitive practices of the interests of intermediate customers rather than of end-consumers.

Consumer organisations can participate in various ways in the competition arena

Consumer organisations' opportunities for participation can be divided into:

Ex-ante (prior to a potential infringement). These include participation in legislative procedures and consultations, and the submission of observations about a proposed merger or a request for exemption.

Ex-post (after the alleged infringement occurred, or in existing cases which were brought, for example, by a competitor or an intermediate customer). Participation may include: lodging complaints with competition authorities; seeking redress on behalf of consumers (such as bringing claims for damages or actions to stop anti-competitive practices); appeals against decisions of competition authorities; preparing amicus briefs - submissions of information or interpretation by a third party not directly involved in a case (Italy, Slovenia and Spain), and the possibility of joining an existing case (France, Denmark, Portugal).

The survey indicates that **participation of consumer organisations at the ex-ante stage could be as successful (if not more) than ex-post intervention** (legal actions and formal complaints). This is because of the relatively lower costs and the relatively lower burden of proof required for consultation submissions - where the issues are in the public domain (eg the implications of a prospective merger when this is notified to the competition authorities) - in comparison with legal proceedings. Ex-post participation of consumer organisations is also important and one key finding of this survey regarding the difficulties consumer organisations had in obtaining market share information on paracetamol and ink cartridges, reinforces the need for consumer organisations to have access to relevant information in order to represent consumer welfare in discussions over suspected infringements. With limited resources and powers of investigation, consumer organisations are likely to face difficulties in obtaining sufficient evidence to demonstrate the existence of anti-competitive practices (such as the operation of price fixing agreements and other restrictive practices abuses of dominant position) and their effects on consumers.

Effective participation at the ex-ante stage in issues such as merger control or the exemption of anti-competitive agreements can help prevent the creation of anti-competitive market structures or the establishment of restrictive practices in the first place, so that the need to seek redress after abuses have occurred (ex post) will be reduced. Ex ante involvement can also help strengthen the attention given in competition law, and by competition authorities, to the importance of the recognition of the consumer perspective in the process of making and implementing competition policy.

An example of successful ex-ante participation of consumer organisations in legislative procedures has been the involvement of the French partner in the amendment of rules about pricing in the retail sector (the *Loi Galland* case).

However, despite the potential effectiveness of ex-ante engagement, the research showed that consumer organisations tend to operate mostly by filing complaints (that is, ex-post). Reasons may include the limitations resource and expertise shortages place on responding to multiple demands and short fixed time limits on responses to consultations, and the absence of a clear formal or informal structure for ex ante participation.

Unbalanced **representation of interest groups on the board of the competition authority** may indirectly result in a bias in its priorities and actions. For example, in Denmark, only one of 17 members of the Danish Competition Council is appointed on the basis of recommendations of consumer organisations, while seven are nominated by trade organisations. On the other hand, the Polish Council of Good Economic Practices (an advisory and opinion-making body) has equal numbers of representatives of businesses and consumer organisations (five each out of 15 in total) and the rest of the members are chosen for their knowledge and expertise.

There are national inconsistencies in the relations between national competition authorities and consumer organisations

The relationships between competition authorities and consumer organisations varies from country to country. In many Member States (for example, Cyprus, Czech Republic, Denmark, France, Italy, Lithuania, Netherlands, Poland, Spain and the UK) the relationship is institutionalised. Arrangements include: a memorandum of understanding between the competition authority and the consumer organisation (Czech Republic, Lithuania)⁴; participation of consumer organisations in the council/advisory board of the competition authority (Denmark, France, Poland); participation in regular meetings (Netherlands) and formal consultations (Spain); appointment of a national consumer liaison officer (Netherlands, Italy); and the right to submit expert testimonies (France) and reports (Italy and Malta).

There is no formal link between competition authorities and consumer organisations in Malta, Slovenia or Germany.

Consumer organisations face obstacles in participating in the competition arena

Despite the various avenues for participation described above, consumer organisations do not all engage in competition issues because of limited resources and/or limited access to information (in some cases there is no legal procedure for their participation). As a result, many consumer organisations concentrate on providing legal advice and education to individual consumers, giving less emphasis to involvement with the work of competition authorities or in legal cases about competition.

In some countries they are directly hampered by **procedural rules**. These may include the need for plaintiffs to:

- Seek the consent of many individual consumers where their involvement is necessary for a claim for damages (the opt-in model, described above)
- Prove 'direct harm' in order to establish a legitimate interest in an issue or case; this may prevent a consumer organisation representing consumers because it has not itself suffered any loss. For example, in Slovenia the consumer organisation cannot participate in competition authority procedures or take legal action on competition issues. Since individual consumers may well not take action themselves because of the potential cost and difficulty, this situation can mean that there is no effective means of redress.⁵

⁴ European Consumer Consultative Group (ECCG), Sub-Group for Competition Group A on "Dialogue with Competition Agency" (15 November 2006) unpublished report a copy is saved with the author.

⁵ Individual consumers will be unlikely to seek redress due to the relatively high costs of seeking redress (including time and money) in comparison to the minor damage incurred by each individual consumer; the tendency of consumers to concentrate on their producing activity (or income) and the uncertainty concerning the standing right of indirect purchasers in antitrust claims. Orit Dayagi-Epstein, "Representation of Consumer Interest by Consumer Associations – Salvation for the Masses?" (2007) 3(2) *Competition Law Review* 209, 211-212, 229, 234 and the references there.

- Show that they have suffered ‘substantial’ financial injury. This also provides a procedural barrier as consumers individually may suffer only minor financial damage, even though the loss to them collectively is substantial.
- Satisfy criteria designed to ensure that bodies claiming to represent consumers actually do so in practice. For example, in Germany, only consumer advice centres and consumer organisations that are supported by public funds are recognised as legitimate representatives of consumers in competition authority procedures (and then provided that their interests are, or are likely to be, substantially affected). As well as excluding some German consumer organisations from engaging in competition issues, this would also prevent Which? In the UK and similar consumer organisations in other EU countries from doing so, since they receive no public funds.

Even when consumer organisations are recognised as legitimate representatives of consumers there may still be **formal restrictions** (procedural limitations) on their participation. For example, they may be limited to action to stop an anti-competitive practice (and not able to make claims for damages, see above), or be unable to seek damages unless the competition authority has decided that market abuse has taken place.

Consumer organisations may still face difficulties in pursuing a representative damages claim on behalf of named individuals (as required under the opt-in model) as consumers will most likely be reluctant to join such a claim. The existence of an **opt-out model** (which was adopted in Portugal and Cyprus), according to which consumer organisations can bring actions on behalf of the general interest of consumers without the need to join to the action, may overcome this obstacle

In other instances, consumer organisations will be granted a standing right (ability to seek redress in judicial procedures) only after it has made ‘sufficient attempts to achieve the objectives of the actions through consultation with the defendant’, or when the competition authority has failed to act (Czech Republic).

Consumer organisations' role may be affected by procedural barriers where decisions made by competition authorities about complaints are not subject to **judicial review** (eg Denmark); or when consumer organisations can lodge a complaint only when they were part of the initial procedure; or when an appeal is made in first instance to the competition authority, the body that made the original decision.

The ability of complainants and other third parties to challenge the competition authority's decision not to deal with a specific complaint through judicial review is very powerful, since it ensures that it will consider more carefully its decision, knowing that it may have to be defended in court. Furthermore, even when consumer organisations are officially permitted to **appeal against competition authorities' decisions**, this can be difficult to do if the competition authority is not obliged to publish its decisions but only to inform the parties concerned; consequently, consumer organisations may not even be aware of such decisions (for example when they did not issue the initial complaint).

Consumer organisations' powers under competition laws tend to be limited in comparison to their powers under consumer protection laws

In some Member States some of the obstacles faced by consumer organisations have been remedied in relation to consumer protection legislation, but not for competition legislation. For example, the Enterprise Act of 2002 enables a consumer organisation in the UK to be given enforcement powers for some aspects of consumer protection, but not for competition issues. The Polish Code of Civil Proceedings enables organisations to present their views to the court in a form of resolution or statement only in consumer protection cases and not in competition cases. Consumer organisations' greater procedural rights under consumer protection law may signal a higher degree of recognition

(legitimacy) of consumer organisations' participation in their 'traditional' territory.

Competition authorities will tend to consider the harm to consumers only when the market under consideration is directly oriented to final consumers

Competition authorities tend to concentrate on the interests of end consumers only when a particular practice is expected to have direct implications for them - such as those related to utilities and telecommunication, including mobile phones (for example in Denmark, Cyprus and the Czech Republic) and specific retail markets (the retail food sector in Cyprus and Denmark). Consumer organisations, understandably, also mostly make complaints when ordinary consumers have apparently suffered direct harm. For example, in November 2005, three French mobile phones operators were accused and found guilty of exchanging strategic information in order to stabilise their respective market shares between 2000-2002 and for simultaneously increasing their retail prices. The French Competition Council ordered them to pay a global fine of 543 million Euros. Following this development the French consumer organisation UFC-Que Choisir brought private actions on behalf of the French consumers in October 2006.. In other instances, competition authorities will concentrate on the effect of a practice on the interests of intermediate customers and competitors.

Generally, participant organisations understand the important competition issues in their countries.

Organisations will benefit from further training about the concept of consumer 'harm' and its interpretation by their national legislation, competition authorities and the courts. This is not surprising since the issues are technical and covered by competition laws which are still vigorously debated by experts.

Improving public information and awareness

As part of the research for this programme, participating organisations assessed aspects of public awareness of competition law and cases. They did not carry out new field surveys but reviewed their own observations and experiences of the press and of consumer attitudes, rating the latter on a five point scale.

Media coverage was reported in all countries, but considered most comprehensive in France, Cyprus, Lithuania, Slovenia and Portugal, and least so in the Czech Republic, Denmark, Germany, Malta and Poland. Potential consumer 'rip-off' stories on popular products and services tend to get most attention - for example, match tickets and replica kit for football, gas suppliers, tour operators, mobile phones, retailing, taxis and dentists. The start and end of cases received most cover, as did those involving major national industries or interests. General media reporting most often emphasised price issues, with complex cases and legal analysis likely to be confined to the specialist and economic press. This can limit consumer awareness - in France, for example, anti-competitive agreements between banks received modest media coverage even though their effect could have been to restrict the availability of credit for consumers.

Participants noted that media reporting did not always endorse the views of the consumer organisations.

Participants in eight Member States reported a good level of awareness of competition issues (scoring 4-5 from a scale of 1 out of 5), while in other countries the level of awareness was relatively low (1-2).

In general, consumer awareness was lower in new Member States than in the older Member States. Understandably, awareness of competition cases was mostly considered higher than of competition law and principles, but no significant connection was found between this and the comprehensiveness of media coverage.

This overview illustrates the importance for consumer organisations of seeking, targeting and managing media coverage of competition issues and cases. Public awareness and support are important factors in their work in informing consumers on their actions and raising consumer awareness on the importance of competition to their daily life. .

CONCLUSIONS

Institutional and legal framework

The institutional and legal framework for promoting competition and eliminating restrictive practices should encourage consumer involvement in setting policy, in monitoring the market for abuses, and in seeking rectification and compensation when they occur.

The research carried out by consumer organisations in 14 EU countries for this programme identified significant **differences in competition law** which directly affect, and limits the role which individual consumers and consumer organisations can play. Governments and national competition authorities should recognise the positive contribution which consumer action can make to promoting competition and where necessary change laws, regulations and procedures to remove barriers to participation..

The **institutional structures of competition enforcement and consumer protection** agencies also varies from country to country, and this affects the manner in which consumer interest is considered. A unified approach consumer protection and competition could be one solution in addressing this issue. Simplifying the responsibility for enforcement by bringing together relevant authorities will reduce the burden on consumer organisations which seek to support and encourage their work. The benefits of an integrated approach to competition and consumer protection has been recognised in 8 out of the 14 Member States where a single authority is responsible for both functions.

Evidence from the survey about **consumer organisations' participation** in legislative procedures, consultations and submission of reports suggests that ex-ante involvement has been more successful than ex-post (judicial procedures and complaints). This is due to the lower costs and burden of proof of consultations procedures in comparison to judicial procedures. Regarding ex-post procedures, consumer organisations also face difficulties in obtaining evidence of anti-competitive infringements such as restrictive practices and abuse of dominant position therefore they need better access to relevant information in order to fully participate.

The **underdevelopment of collective redress** leads to a greater dependency of consumers on the activities of competition authorities. Public enforcement mechanisms cannot operate as a substitute for private initiatives as private and public enforcement often have different objectives. Public enforcement is more concerned with the removal of impediments to competition and hence concentrates on termination of the infringements, structural remedies or punishment of the infringers private enforcement, concentrates on the protection of consumers' property rights which were harmed by anti-competitive conduct and seeks remedies based on private law branches (eg tort and restitution). Accordingly, the absence of collective private remedies may harm the the protection of consumer interest, especially when it is unlikely that individual consumers will be able or willing to seek redress.

Specific recommendations are made for improvements at the national and EU levels. Practical support for consumer organisations, which are mostly very short of resources to take on competition issues in the public interest, should also be considered

Specific markets

Studies of the availability and prices of three consumer products across the 14 countries identified regulatory barriers to competition. They also illustrated the importance of improving consumer information and advice to encourage and enable individuals to be proactive in seeking best value (ie making informed choices).

Paracetamol

Generic paracetamol is usually significantly cheaper than branded products such as Panadol. However consumer awareness of the generic product is low in most countries, and so sales tend to be modest.

The research leads us to consider two important questions; firstly how important the need is for a harmonised EU policy on the sale of paracetamol and secondly if harmonisation is important which factors should be considered in this process in order to ensure the highest standards of consumer rights are respected. The research shows that in the Netherlands where generic paracetamol is freely available, and consumers are aware of its existence, it is more popular than its branded equivalent. However in this market, other factors such as consumer protection, access to independent information as well as price, and availability need to be considered and balanced within the debate over whether EU harmonisation over the sale of paracetamol is desirable or even feasible. It is essential that Consumer Organisations, as experts and representatives of consumers are involved in this discussion and assurance required that all relevant stakeholders, not only those with vested interests – such as pharmacists or drug companies - can participate equally in the debate.

Printer ink cartridges

Alternatives to printer-makers own branded cartridges are increasingly common and mostly much cheaper. The market thus appears to be openly competitive. However take-up of alternatives is low and research shows that many consumers do not consider other brands or unbranded products as directly equivalent substitutes for the printer-makers' products.

Printer makers may seek to secure their 'after market' for ink cartridges by the use of electronic chips to prevent copying or remanufacturing - a direct barrier to competition - and by warranty conditions which seek to discourage the use of other cartridges. For consumers, direct value-for-money comparisons are not straightforward since cost in use and print quality are difficult to assess.

Petrol

Petrol prices vary less than those for paracetamol and printer ink within individual national markets because a high proportion of the pump price is tax. Where taxes vary significantly, there is some cross-border shopping.

The sale of petrol through hyper and supermarkets seems to have a beneficial effect on local competition. In many countries prices were low in the immediate vicinity of a supermarket. Prices are often highest on motorways. This is likely to be explained by the fact that, once on the motorway, the inconvenience of seeking alternatives to its service areas makes consumers a semi-captive market.

RECOMMENDATIONS

To improve the competition environment:

Governments and national competition authorities should:

Provide consumer organisations with more avenues for participation

- Formally **recognise** representative **consumer organisations** as legitimate stakeholders (ie as parties with a 'legitimate interest') in competition authority procedures and in the judicial system. Consumer organisations should be involved in deciding the criteria for recognition
- Introduce effective collective **redress mechanisms** such as representative follow-on claims and stand-alone claims. Collective action should not require the direct participation of a large group of individual consumers - an 'opt out' approach should be adopted. Collective redress should not be limited to seeking compensation after an infringement has occurred but include actions to stop on-going infringements (injunctive relief).
- Ensure that consumer organisations can **appeal** against decisions made by the competition authorities.
- Ensure that consumer organisations play a significant and meaningful role at the ex-ante stage in **legislative procedures consultations procedures**.
- Introduce a '**super-complaint**' mechanism, such as that provided for in the UK Enterprise Act 2002, giving designated consumer organisations the right to make formal complaints about general detrimental features or practices in the market and about specific alleged infringements of competition rules. This provides them with a statutory role in setting the competition authorities' agenda if, as in the UK, it is obliged to respond to a complaint within a fixed period.
- Commit to actively supporting **co-operation between consumer protection and competition enforcement agencies**, for example by building common information resources on consumer behaviour and consumer complaints.
- Strengthen institutional commitment to ensuring that **consumer perspectives are taken into account**. Mechanisms should include formal agreements (eg memorandums of understanding) with consumer organisations setting out expectations on both sides, and the designation of a consumer liaison officer, with appropriate resources, within the competition authority to act as a single point of contact for consumers and consumer organisations.

Remove obstacles to effective participation by consumer organisations

- Ensure that the **time is allowed** in consultation, appeals and other procedures recognises the limited resources available to consumer organisations
- Enable consumer organisations to receive **funding** for their competition activities, for example through fines received for competition infringements, awarding compensation damages to the organisation itself, or legal processes such as legal aid and conditional and contingency fees.
- Establish mechanisms to improve consumer organisations' **access to market information** currently restricted on grounds of commercial confidentiality or because of the high cost of acquiring commercial market research.

Give full weight to the interests of the end user - the ordinary consumer - in competition analysis and cases.

- Ensure that competition law and the framework for investigations refer specifically to impact on the **demand side of market** activity in general, and the final consumer in particular, to avoid bias towards the supply side or intermediate customers.

Support and encourage action to raise public awareness of competition issues, the proactive contribution which consumers can make through their shopping choices, and their rights if they are the victims of restrictive practices.

- Establish joint **consumer education and awareness** projects with consumer organisations
- Encourage **media** understanding of, and interest in, competition principles and individual competition cases.

The European Commission should:

Encourage Member States to recognise the ‘legitimate interests’ of consumer organisations in competition regulation and to adopt national measures consistent with the above recommendations.

Adopt similar measures in relation to competition regulation at the EU level:

- Establish collective redress mechanisms and remove obstacles for effective consumer participation in judicial procedures.
- Establish a ‘super complaint’ mechanism.
- Support co-operation between EU consumer protection and competition agencies, for example by building common information resources on consumer behaviour and consumer complaints.
- Give consumer organisations a formal role in the development of competition policy, for example through transparent consultation procedures.
- Appoint and allocate resources to the consumer liaison officers for competition and consumer protection and fully integrate these positions in departmental policy making.
- Encourage and support, with financial help, national consumer education and information programmes to raise awareness and understanding of competition issues.
- Encourage and support, information sharing and research collaboration between consumer organisations on prices, product availability, consumer complaints and other factors related to the operation of transparent and competitive markets.

Consumer organisations should:

Maintain and improve their technical abilities and understanding of competition law in general and of the principles and interpretation of consumer detriments in particular.

Develop media strategies to improve consumer awareness of the existence and content of the competition rules and their day-to-day implications in the high

street and to encourage competition authorities to operate in the consumer interest.

Establish constructive formal and informal relations with competition authorities, emphasising the mutual benefits of such cooperation, such as partnership in competition advocacy and consumer education campaigns

Facilitate and encourage consumers' to exercise informed choice in the market and assist them to switch to better providers.

To improve specific markets

Paracetamol

Governments and competition authorities should reconsider the need for, and consequences of, **restrictions on the sale** of paracetamol (and other over-the-counter medicines), taking full account of advice from consumer organisations as well as other stakeholders.

Consumer organisations should encourage the **use of generic paracetamol** (and other over-the-counter medicines), raising consumer awareness - through the media and other means available to them - that they are direct equivalents of branded products, made to internationally recognised formulae and quality standards

Printer ink cartridges

Consumer organisations should continue their regular tests and comparisons of cartridges and seek maximum publicity for the results.

Governments, consumer protection and competition authorities should therefore encourage cartridge manufacturers to provide **comparative information** on their packaging and in advertisements, computed in accordance with internationally agreed assessment methods (ie as formulated by the International Organisation for Standardisation – ISO).. If producers will not do this on a voluntary basis, it should be a mandatory requirement at national and/or EU level, following the precedents set by, for example, energy labels, nutrition labels, car fuel consumption data, and true interest rates.

Petrol

Governments and competition authorities should **monitor the petrol market** closely since, in most countries, distribution is dominated by a small number of major companies. They should also review the basis on which licences are granted for motorway petrol stations and the freedom which suppliers have to set high prices at them.

Governments, competition authorities and consumer organisations should support and publicise **new sources of consumer information** about petrol prices, such as internet sites listing prices forecourt by forecourt.

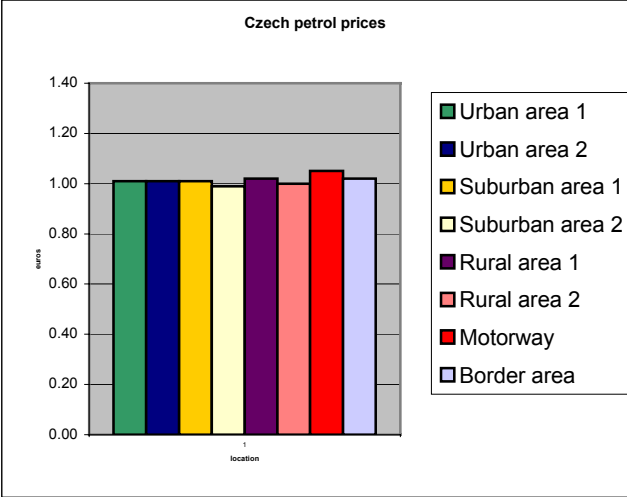
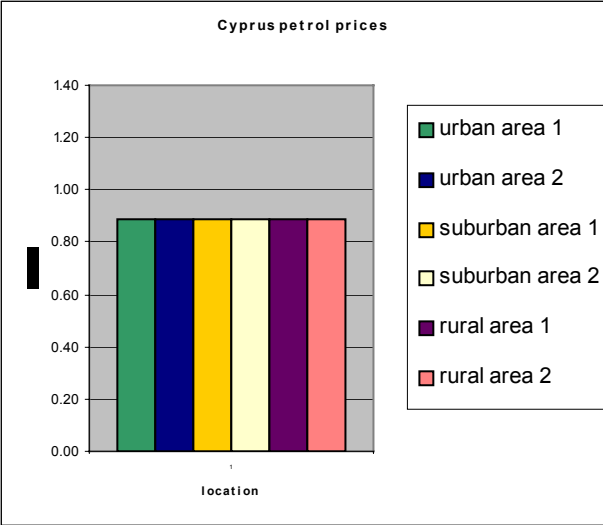
APPENDIX I

Project Participants

<i>Cyprus</i>	Kypriakos Syndesmos Katanaloton (Cyprus Consumers Association)
<i>Czech Republic</i>	Sdruzeni Obrany Spotřebitelu Ceske Republiky (SOS Consumers Defence Association Of The Czech Republic)
<i>Denmark</i>	Forbrugerrådet (Danish Consumer Council)
<i>France</i>	Consommation, logement et cadre de vie (CLCV)
<i>Germany</i>	Verbraucherzentrale Bundesverband (VZBV - Federation of German Consumer Organisations)
<i>Greece</i>	New INKA (New Consumers' Institute)
<i>Italy</i>	Centro Tecnico Regionale Di Ricerca Sul Consumo Europeo (CTRRCE – Regional Technical Centre For Research On European Consumption)
<i>Lithuania</i>	Lithuanian National Consumers Federation
<i>Malta</i>	Ghaqda Tal-Konsumaturi (Consumers' Association)
<i>Netherlands</i>	Consumentenbond (Consumers' Association of Holland) (national participant and project expert in research methodology)
<i>Poland</i>	Stowarzyszenie Konsumentow Polskich, Skp (APC - Association Of Polish Consumers)
<i>Portugal</i>	Associação Portuguesa Para A Defesa Do Consumidor (DECO - Portuguese Association For Consumer's Protection)
<i>Slovenia</i>	MIPOR – International Consumer Research Institute
<i>Spain</i>	Mag Estudios De Consumo, S.L. (Mag Consumers Studies Centre)
<i>UK</i>	Which? (project experts in economic analysis)
<i>UK</i>	The British Institute Of International And Comparative Law (BIICL - project experts in competition law)
<i>UK</i>	Kate Scribbens - (project expert in research methodology) Orit Dayagi-Epstein (project expert in consumer participation in competition policy)

APPENDIX II

Petrol Prices Collected in the 14 Countries participating in the survey (euros per litre 95RON unleaded)⁶



⁶ The organisations aimed to collect 5 prices for each area but where this was impossible as there were not a sufficient number of stations, they collected as many as possible.

