



# GCLC Annual Conference 2021

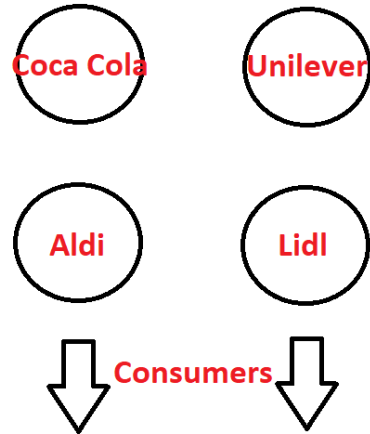
## Buyer power in merger control

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- I. A few comments on the paper
- II. Globally renewed interest in buyer power theories of harm in sectors other than supermarkets
- III. The Aurubis/Metallo copper scrap recycling merger theories of harm
- IV. Legal Framework for buyer power mergers in the EU

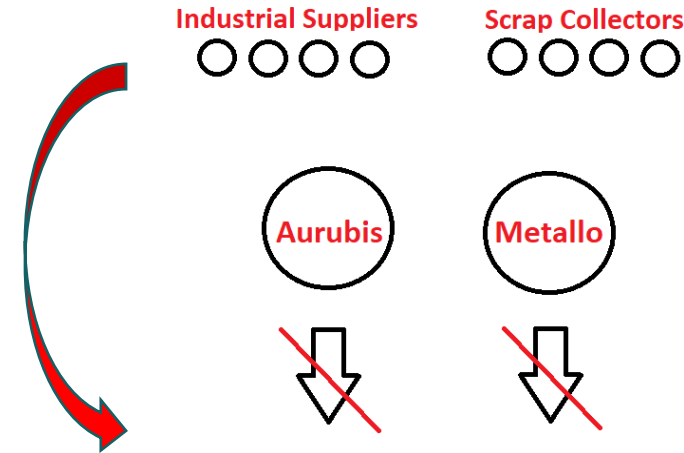
# M.9409 Aurubis/Metallo: Theories of Harm

## Supermarkets



- Concentration on both sides of the market
- Supermarket Merger → more bargaining power
- But: no output restriction upstream, as Supermarket has incentive to sell more output at higher margins
- Pass-on to consumers: lower prices through output expansion

## Copper Scrap for Smelting and Refining



- Demand concentrated, supply fragmented
- Aurubis/Metallo Merger → more monopsony power on scrap market
- Suppliers will hardly reduce quantity if faced with lower prices → strong incentive for Parties to reduce scrap prices
- No pass-on to consumers: full capacity, commodity
- → harm 1: industrial suppliers' marginal costs will increase, possible pass-on to consumers
- → harm 2: Reduced incentives for scrap collectors to invest in innovation, machinery, sorting

# M.9409 *Aurubis/Metallo*: EU legal framework

- Paragraphs **8 and 61-63 HMG**: Both suppliers and buyers can have market power and a SIEC can arise in mergers creating or strengthening buyer power
- Paragraph **61 HMG**: **Downstream harm to consumers** and **foreclosure of rivals** are merely **examples** of possible ToH, not necessary conditions
- As a matter of law, Paras 61-63 HMG do **not** establish an express **precondition** requiring to show in **all** buyer power cases **harm to consumers** for finding a SIEC
- Par. 62: Buyer power mergers **may** sometimes be good for competition



Paras 61, 62, 63 HMG require a **careful sector specific assessment and balancing of all the negative and positive effects** of a merger of competing buyers

# Thank you



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