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Exercising power in asymmetric relationships: The use of private rules

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Research Highlights

- *We demonstrate how companies exercise power in asymmetric relationships through private rules*
- *Private rules are typically expressed in General Terms and Conditions agreed by counterparts*
- *By framing, standardizing and legitimizing exchanges between counterparts, private rules institutionalize power asymmetry*
- *Stronger actors exercise power through intervention-enforcement-sanctioning practices codified in private rules*

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Exercising power in asymmetric relationships:

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ABSTRACT

This study investigates the use of private rules in exercising power in asymmetric business relationships. In asymmetric business relationships, the stronger party is likely to be able to dominate and exercise power over the conclusion of contracts and, thereby determine the processes and outcomes of the relationship. The study demonstrates how companies exercise their power in asymmetric relationships through private rules. Private rules are typically expressed in the General Terms and Conditions of Trade (GTCT) of the more powerful actor in a business relationship and are continually adapted to changing business and market requirements. Drawing on an empirical investigation in the German grocery retail business conducted in the years between 2011 and 2013, the present study demonstrates that power is exercised by the stronger parties through intervention-enforcement-sanctioning practices that are codified in private rules. Private rules frame, standardize and legitimize the terms and conditions under which exchanges among counterparts may take place thus institutionalizing the inherent power asymmetry.

KEYWORDS: Power, Asymmetry, Risk, Relationship, Rules

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Exercising power in asymmetric relationships: The use of private rules

1. Introduction

Asymmetries of power are ubiquitous in business relationships regardless of the industry, country or time. Consider manufacturer-retailer relationships, where a large number of consumer goods manufacturers need to negotiate and conclude contracts with a small number of highly powerful grocery retailers (Lindgreen, Hingley & Trienekens, 2008; Hingley, 2005a, 2005b; Kumar, 2005). In these asymmetric relationships, the stronger party is likely to be able to dominate and exercise power over the conclusion of contracts and, thereby, determine relationship processes and outcomes (Buchanan, 1992; Gundlach, Achrol & Mentzer, 1995). Hence, asymmetric business relationships are those relationships where there is an imbalance of power between the counterparts. The imbalance of power may be attributed to the control of valuable resources of one of the companies or in the way that those resources are used (Mouzas & Ford, 2007). The imbalance of power enables some of the counterparts to be more able to influence others to act in ways they otherwise would not (Emerson, 1962), to initiate change in the relationship, to determine relationship processes or to control relationship outcomes (Holmlund & Kock, 1996; Johnsen & Ford, 2005).

In this study we examine the use of *private rules* in the exercise of power in asymmetric relationships. We use the term *private rules* to refer to sets of business standards that are developed, codified in legal artifacts, enforced by legal and non-legal sanctions, and revised by individual or multiple companies with strong market positions. Private rules are typically codified in the General Terms and Conditions of Trade (GTCT) of the more powerful actor in the business relationship and continually adapted to changing business and market requirements. Given the increasingly global nature of businesses, *private rules* may govern whole supply networks across national boundaries; hence contrasting with typically geographically bound governmental standards.

Based on an empirical investigation in the German grocery retail business conducted in the years between 2011 and 2013, the present study aims at investigating how powerful retailers use 'private rules' to hedge against risks inherent in their business networks. Risks may emanate from supply shortage or untimely supply of goods and services, price increases due to changing global commodity prices, infringement of intellectual property rights, deficient products or force-majeure events such as strikes and natural disasters. Behind retailers' capacity to use private rules and hedge against possible risks lies a power asymmetry in the relationships between retailers and suppliers of goods and services. Therefore, the present study attempts to provide answers to two research questions:

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1) What risks are inherent in asymmetric business relationships?

2) How do companies hedge against risks in asymmetric relationships?

Power asymmetry between companies is itself the outcome of the interaction that occurs within each business relationship. Hence, we could posit that the way firms interact with each other to gain access to the resources and capabilities of other firms will affect interdependencies. Undoubtedly, interdependencies among firms are a function of a multiplicity of contextual contingencies, such as global competition, mergers and acquisitions, rapid and disruptive technological changes but also common practices that are specific to the industry that businesses operate in. Consider the interdependencies between car manufacturers and suppliers in the automobile industry. Although few car manufacturers depend on a large number of suppliers to source automotive parts, the power of the suppliers to determine the terms of a deal with a car manufacturer remains severely limited (Macaulay, 1974; Womack, Jones & Roos, 1990; Lamming, 1993). Similarly, car dealers are operating under a franchise system of rules. Car dealers are required to perform their business according to the rules created and imposed by manufacturers. In this way, car manufacturers create “contracts of adhesion” that hedge their own risks and pass on liabilities to both suppliers and to dealers (Macaulay, 1974, p. 18).

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2. Theoretical Background and Conceptual Framework

2.1 Risks in Asymmetric Relationships

The problem that companies face today is that they need to engage globally in asymmetric business relationships to deliver superior value to customers at competitive prices to meet shareholders’ requests for steady profit growth and regulators’ demands for high social and environmental standards. In their endeavors to meet the needs of multiple stakeholders, companies attempt to strike a balancing act between *lowest cost at any risk* and *no risk at any price* (Glendon, 2012, in Newing, 2012). Nonetheless, risks emerge in the form of supply shortage or untimely delivery of supply of goods and services, price increases to ensure profitability of business and disputes regarding intellectual property rights or deficient products. Risks may also emerge as a result of external factors and events such as natural disasters or financial crises. The question of liability for these risks can lead to conflicts, friction and power dynamics between business partners.

Previous research on distribution channels and vertically integrated administrative channels (Etgar, 1976; Stern & Reve, 1980; Heide, 1994) addressed the dynamics of power building on institutional economics, organisational theory, and political science and describing the exercise of power based on the interplay of internal and external political, economic and administrative structures in distribution channels. This approach was very influential in the evolution of

marketing theory in distribution channels, particularly in the areas of efficiency-driven distribution channels and the management of dyadic relationships, including co-operation and conflict management between buyers and sellers (see, e.g., Achrol & Stern 1988; Gaski 1984; Dwyer & Oh, 1987; Frazier & Summers, 1984). More recent marketing channel literature focuses on the management of "super middlemen" (Hingley, 2005a, p.72) or "channel captains" (Gripsrud 2004, p.195) aiming at designing and managing the efficient distribution of products through chosen intermediaries to retailers and end users.

Notwithstanding the validity and conceptual richness of existing research on power asymmetry, there is paucity of discussion and lack of empirical research on how companies exercise their power to hedge against known and unknown risks. Undoubtedly, the globalization of markets, the reliance on sourcing and outsourcing to gain competitive advantage as well as the use of new information technologies make companies inevitably more vulnerable to previously unknown risks, higher risk probabilities and impact (Narasimhan & Talluri, 2009; Jung, Lim & Oh, 2011). Longer supply chains result in increased numbers of product touch-points in diverse geographical areas (Marucheck, Greis, Mena & Cai, 2011) and businesses face "subcontracting and subcontracting, until the company at the top of the chain might not be certain where it ends" (Noble, Chief Executive of the Chartered Institute of Purchasing & Supply, 2012). Disruptions in any part of the business network may result in a fall in market shares, decline in stock prices and operating performance, impede other business relationships with customers and suppliers or even cause a company to go out of business (Khan & Burnes, 2007).

Research interest in understanding risk in global markets has typically originated in the areas of finance research (Sedatole, Vrettos, & Widener, 2012; Bacchetta & Wincoop, 2013), supply chain research (Chopra & Sodhi, 2004; Jung, Lim & Oh, 2011), logistics research (Manuj & Mentzer, 2008; Khan & Burnes, 2007) and operations research (Kleindorfer & Saad, 2005; Knemeyer, Zinn & Eroglu, 2009; Narasimhan & Talluri, 2009; Marucheck, *et al*., 2011a). Extant research in these fields has elevated attention to risks inherent in global business networks by (1) outlining risk categories and (2) prescribing steps for reducing risk, in terms of supply chain disruptions. Categorizing risk is closely related to prescribing steps for risk mitigation, typically involving risk identification, estimation and evaluation (Harland, Brenchley & Walker, 2003; Khan & Burnes, 2007; Knemeyer, Zinn & Eroglu 2009).

Identifying relevant risk categories appears relevant because companies exercise their power within complex supply chains, involving multiple suppliers and customers and third-party logistics and transportation providers across the world (Baxter, 2007). Despite the recognition of high numbers of directly and indirectly interconnected actors, and the recognition that most types of risks cannot be addressed by a single company unilaterally; research on risk management focuses on the *single company* as the unit of analysis, rather than taking a more holistic view of business networks (Johnsen, Wynstra, Zheng, Harland & Lamming, 2000; Harland, Brenchley & Walker, 2003; Johnsen, Lamming & Harland, 2008).

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A network perspective can be useful in identifying how companies exercise power to hedge against relevant sources of risks. In previous research the term *business network* is used to provide a metaphor or picture of directly and indirectly connected actors involved in the supply of products or services (Johnsen, Lamming & Harland, 2008). The view of business relationships as webs of networks is increasingly popular considering the recent proliferation of the companies involved in the food industry, such as specialized transport and logistics service providers, certification businesses, insurance companies and laboratories. At a managerial level, a network view enhances companies' capability to identify "dynamics that have their origin over the horizon from its normal operations" (Ford, Gadde, Hakansson & Snehota, 2002, p.20). Nonetheless, this capability would require the development of a *network insight* (Mouzas, Henneberg & Naudé, 2008) that amalgamates dispersed knowledge about opportunities and risks which are not, and cannot be, known by an individual business actor (Hayek, 1945; Tsoukas, 1996). Considering that empirical research in business networks is limited (Harland, Brenchley & Walker, 2003; Hallikas, Karvonen, Pulkkinen, Virolainen & Touminen, 2004; Johnsen, Lamming & Harland, 2008) an investigation of risk hedging in global networks offers tangible benefits. Taking a network perspective resembles more closely real-life complexities (Tikkanen, 1998) of risk hedging practices and allows moving our focus beyond a single focal company perspective. In this way, the simplified view of companies to *manage away* risks independently is replaced with a more realistic and fine-tuned picture of how companies maneuver around risks in global networks. In particular, a network perspective (Ford, Gadde, Hakansson & Snehota, 2002) provides a useful tool for examining risk-hedging practices in real-life contexts, because risk hedging involves "action, reaction and re-reaction, based on a company's network pictures, its own and other's networking and the outcomes of this" (Ford *et al.*, 2002, p.21).

Risk hedging practices can be divided into two broad groups based on the chosen level of analysis: At an aggregated business network level, risks can be addressed by different supply network configurations (Blois, 1972; 2006; Mason, Doyle & Wong, 2006). At the dyadic, inter-organizational level, risks can be addressed through contractual means (Mouzas & Ford, 2007; Roxenhall & Ghauri, 2004; Mouzas, 2006; Mouzas & Furmston, 2008; Mouzas & Ford, 2006, 2012). Much can be gained by looking at the rules of the game in business networks and the attempts of stronger parties to intervene but also enforce and sanction private rules in asymmetric business relationships.

2.2 Private Rules as a Means of Exercising Power

To make sense of how companies exercise their power to hedge against risks at both dyadic and network levels, we can use the concept of private rules. The term *private* defines sets of business standards that are developed, enforced and sanctioned through business codifications and third-party audits and certifications. Typically, private rules are recorded in the General Terms and Conditions of Trade (GTCT) of the more powerful actor in the business network and

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continuously revised to adapt to changing business and market requirements. Therefore, private rules are a constitutive element of the inherent power asymmetry in business relationships.

At a time when "the authority of national governments largely ends at their borders" (van der Meulen, 2011, p.49) private rules span national boundaries, as the only "set of rules that [companies] at opposite sides of the world have in common, are the rules they created for themselves by contract including the private systems they include in their relations" (ibid). Even global organizations, such as the World Trade Organization (WTO) set regulations only for national governments, not trading businesses (van der Meulen, 2011). Hence, we can assume that the current private rule practices have risen over the last 40 years from quasi-integrating direct business partners (Blois, 1972) by contractual means to that of quasi-integrating whole supply networks, including direct and very distant, indirect business relationships.

The business network configuration resulting from the *de facto mandatory* implementation of private rules resembles that of *quasi-states* (Busch, 2011). To better understand the link between private rules and power asymmetry, we briefly introduce the concepts of quasi-integration and business contracts that our current research builds on. Recent studies on supply chain configurations suggest that most supply chains are not simply linear assemblies of actors, but rather form "web-like structures of interdependent firms …[where] integration is being achieved through the development and management of inter-firm relationships instead of through total ownership […also known as full vertical integration]" (Mason *et al*. 2006, p.142).

Between the extremes of purely transactional relationships and full vertical integration reside 'quasi-integrated' (QI) structures, which include long-term relationships, buyer-supplier partnerships, strategic alliances and network organizations (Webster, 1992). Vertical QI describes "a type of vertical integration without legal form" (Blois, 1972, p.268). Companies choosing the quasi-integrated structures aim to "build *supply chain influence* in order to integrate the various supply-chain stages *without* the financial commitment of ownership" (Mason *et al*., 2006, p.143). Supply-chain influence results from an actor's power at one stage of the supply network to have an effect on decision variables of another actor in the supply network. Supply chain influence manifests typically by way of the more powerful actor *intervening* into the business of his counterpart by, for instance (1) acquiring access to his plant and records to take quality checks or examine the cost breakdown; or (2) by dictating 'recommended' sub-contractors for raw material acquisition (Blois, 1972). Intervention allows the more powerful company to gain greater control over a supplier's business and reduce the *probability* of risks resulting from sub-contracting. However, intervention alone cannot nullify all risks and certainly cannot mitigate the *impact* risks have if they do occur.

Yet, quasi-integrated structures allow stronger parties in asymmetric relationships to maneuver around risks associated with "rigidity of ownership" (Blois, 1972, p.253) *and* risks associated with arms' length relationships akin to purely transactional forms of interaction. Quasi-

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integrated structures allow stronger companies combining the advantages of vertical integration, such as the "certainty of supplies of materials and services, better control over product [sourcing and] distribution, tighter quality control, prompt revision of production and distribution policies and better inventory control" (Blois, 1972, p.254) and transactional relationships, such as enhanced choice of business partners, low switching costs, no costs of ownership and hence greater flexibility in configuring a supply network that has the flexibility to adapt quickly to changing consumer preferences, regulatory conditions or economic pressures. These advantages hold true as long as the business partners understand to use contractual agreements to reap the benefits of quasi-integrated structures.

Taking a closer look at quasi-integrated structures reveals that the areas benefitting from quasi-integrated arrangements are also high on companies' risk agendas, including risks related to the output such as product quality, safety and quantity; and risks related to processing products, such as production and distribution policies, just-in-time delivery and flexible changes in both products and processes (Nestlé Investor Seminar, 2011; Unilever Annual Report and Accounts, 2010; PepsiCo Annual Report, 2007).

In quasi-integrated structures, the scope of power and control no longer ends with the legal boundaries of the company (Blois, 2006; Mellahi, Jackson & Sparks, 2002) and requires contractual relationships to coordinate, plan and safeguard value-creation activities between network actors (Bazerman & Gillespie, 1999; Dekker, 2004). Hence, *capitalizing on quasi-integrated structures requires securing the benefits of this configuration and hedging against risks inherent to quasi-integration by wisely employing business contracts* (Ring & Van de Ven, 1992; Lusch & Brown, 1996; Ring, 2008).

Research on the role of business contracts in continuing long-term relationships in the context of the fast-moving consumer goods industry provide some intriguing insights about how stronger counterparts exercise their power (Mouzas, 2006; Mouzas & Ford, 2006; Mouzas & Blois, 2013; Mouzas & Furmston, 2008). For example, umbrella agreements provide a frame for future transactions and facilitate re-negotiation in "regular, stable and established business relationships" (Mouzas & Furmston, 2008, p.40). Hence, umbrella agreements do not address specific transactions, such as volume, delivery time and payments due, but rather provide a constitution-like set of explicitly stated norms and principles within which future exchanges *must* be conducted (Mouzas, 2006, Mouzas & Furmston, 2008). This appears to be more useful for the stronger party that is able to develop, enforce and sanction these norms and principles.

Questions pertain about how companies use private rules in asymmetric relationships to hedge against risks that do not emerge from their direct business partners, but from some distant part of the business network. The challenges emerging from this situation are that (1) the companies elsewhere in the business network may operate in a totally different business environment, where the legal, social and environmental requirements do not match Western standards; (2)

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the distant business partners must not be accountable for their conduct to another company at the other end of the business network, and there is no legal safeguard that provides for damages in case one party suffers losses from the actions of a company in a distant part of the network. Ignorance of risks can become very expensive and may result in unfavorable business insurance terms and damages to company and brand reputation (Felsted, 2012; Lutz, 2013).

2.2.1 A conceptual framework for the study of how power is exercised

We posit that business partners exercise their power by intervening, enforcing and sanctioning private rules and that this is an iterative process of active adaptation, design and imposition. The three practices -*intervention, enforcement and sanctioning*- are strongly interwoven to enable minimizing risk probability and impact on insurable and uninsurable assets. This can be depicted as a process model of three practices as contingent and dynamic concepts that are constantly subject to adaptation in light of new regulations, food scandals, changes in governmental regulations and consumer demands (see figure 1).

Place Figure 1 Here

Specifically, we posit a feedback loop between three practices. First, there is an intervention into suppliers' businesses to minimize risk probability. Parties consent to private rules as a pre-condition for an exchange relationship and subsequently, third parties are activated to certify and audit an active adaptation of business processes. Second, private rules are enforced, liabilities are transferred and compliance with private rules is monitored. Third, private rules are established as legitimate grounds for imposing legal and non-legal sanctions. The legitimacy is sought through punitive capabilities that activate non-legal as well as legal sanctions through contract law. The codification of private rules in the GTCT appears significant as this enables enforcement and sanctioning under the aegis of European and national private contract law. Moreover, the codification of private rules provides significant impetus to the creation of collective industry standards and proprietary retailer standards with global application. Hence, the private rules span the geographical boundaries of national jurisdictions, making the intervention, enforcement and sanctioning practices valid tools to address supply network risks. The feedback loop implies an ongoing process and constant adapation to the dynamics of the dynamics of environment. We will use the process model presented in figure 1 to create a theoretical structure and we will use the analytical tools –*intervention, enforcement and sanctioning*- to make make sense of the empirical evidence.

3. Methodology

3.1 Research Design

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We conducted multiple embedded case study research (Ragin & Becker, 1992; Halinen & Törnroos, 2005) to examine how private rules are used to exercise power in asymmetric business relationships. Combining a realist epistemology (Sayer, 1992; Reed, 2005; Easton, 2010) with case study research was a conscious decision to capture the complexity and richness of researching global business networks. Specifically, this approach facilitated the systematic tracking of changes over time and allowed us to triangulate multiple sources of empirical evidence (Yin, 2003; Easton, 2000). This enabled us to draw our conclusions from rich, contextualized analysis, which was pivotal given the limited research conducted to date on the phenomenon of private rules and power asymmetry in business networks.

We applied theoretical and purposeful sampling (Gobo, 2004, Dubois & Araujo, 2007) to generate four cases, which illustrate the function of private rules as risk-hedging practices in asymmetric relationships. The sampling decisions and data collection were informed by ongoing data analysis as the research progressed (Dubois & Gadde, 2002). Given the increasing consolidation of German food retail, leaving effectively six retail chains, we chose four cases for this paper that illustrate risk-hedging practices of so-called hard discounters and regular supermarket chains. The comparability of the cases was established by applying common research questions, derived from a common theoretical framework across the cases and analyzing data from similar case networks, the same industry, country and time frame (Halinen & Törnroos, 2005).

The outcomes of this research are the conceptual framework for the study of private rules in asymmetric business relationships (figure 1) on the one hand, and the identification of the operation of a causal mechanism we term 'risk mitigation' on the other. In suggesting the causal mechanism of 'risk mitigation' we add to the rigor of the case study, as it is the identification of a context-sensitive "operation of some identified theoretical principle that distinguishes case study research from an account of a series of events" (Dubois & Araujo, 2004, p.210).

3.2 Data Collection

Our primary empirical data comprises 32 semi-structured in-depth interviews with key actors involved in the food chain; eleven recent and confidential General Terms and Conditions of Trade (GTCT) valid for the period of 2008-2013; six sets of framework contracts; ordering specifications and insurance policy agreements.

We used the evidence from 32 interviews with manufacturers and retailers, advisory lawyers, strategic consultants and audit experts to understand what risks are inherent in asymmetric relationships, how these risks are reflected in GTCT and how companies hedge against these risks. Triangulating these verbal accounts with material evidence from the analysis of eleven confidential GTCT has been critical, since "material traces of behavior give important and

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different insights from that provided by any number of [accounts]” (Hodder, 1998, p.114). For example, the study of documents-in-use, such as the GTCT (Table 2) included the study of annotations and changes to the rules written into the documents by one or both parties. This has shed light on the types of private rules relevant to the institutionalization of power asymmetry in business relationships and helped us to track changes in private rules over time.

In addition, we gathered relevant secondary data, such as the documentation of proprietary retailer standards, private industry standards including the International Featured Standards (IFS) and the Business Social Compliance Initiative (BSCI). We actively sought access to these documents to complete our analysis of the private rules codified in GTCT, which frequently reference these documents in the preamble. Finally, we have drawn on 84 media and industry reports and relevant legal texts issued by the German and European Union governments. This has helped us to contextualize the analysis of our primary data and specifically, advanced our understanding of the adaptation of private rules in relation to environmental dynamics. For example, by following the reporting of environmental changes of relevance to the food industry through the media reports over time, we were able to contextually understand changes in the private rules.

Triangulation of multiple data sources helped us in gaining insight into new dimensions of the research problem by understanding the central role GTCT for the more powerful companies when hedging against risks in global networks. Consequently, data analysis focused significantly on the anatomy of GTCT, comprising the examination and categorization of GTCT clauses across the major German retail chains. We concluded our data collection, once ongoing data analysis confirmed significant overlaps in the interview accounts and content of the documents (Piekkari, Plakoyiannaki & Welch, 2010).

3.3 Data Analysis

We adopted the abductive approach to data analysis termed “systematic combining” (Dubois & Gadde, 2002). This allowed us to develop our conceptual framework (figure 1) through multiple, iterative cycles of moving between the empirical evidence, the identified theoretical concepts and research questions (Strauss & Corbin, 1998). Considering the limited research dealing with private rules in asymmetric business relationships to date, systematic combining facilitated the simultaneous evolution of the theoretical framework and increasingly fine-grained mapping of our empirical data. Moreover, this approach allowed us to capitalize on the convergent analysis of multiple sources of evidence. Accordingly, after preliminary analyses, we proceeded in the following ways:

We started with multiple cycles of content analysis to make sense of the verbatim transcribed and translated interviews, GTCT and contract clauses. Our approach of systematic combining

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allowed us to complement the analysis of GTCT with the documentation of proprietary retailer standards and private industry standards including the International Featured Standards (IFS) and the Business Social Compliance Initiative (BSCI). We actively sought access to these additional documents, because they were frequently referenced in the preamble of GTCT. Next, we confronted this evidence with our preliminary categorization of private rules emerging from GTCT and interview data.

Specifically, we applied manual axial and selective coding (Neuman, 1994) to analyze our interview and document data in order to identify and link data fragments to first, and later second –and third-order concepts. The resulting three over-arching concepts – *intervention, enforcement and sanctioning* – form the pillars of the process model of exercising power in asymmetric relationships (figure 1). Moreover, this analytic approach allowed us to systematically categorize different types of risks and identify how retailers use private rules codified in GTCT to address these risks in asymmetric relationships (table 2).

Next, based on 84 media and industry reports published between 2011 and 2013, and relevant legal texts issued by the German and European Union governments, we systematically developed categories of contextual contingencies to make sense of the *process* of exercising power through private rules in its real-life industry context. Applying again systematic combining, we triangulated evidence from specialist trade press, leading German newspapers and industry associations, in order to identify emerging categories of contextual contingencies. Such categories of contextual contingencies include for instance the reporting of food scandals, changes in consumer demands or regulatory changes, which we refer to collectively as 'dynamics in the environment' (figure 1). This form of active and systematic combining of theoretical concepts and empirical findings in their real-life industry context allowed relevant issues to emerge as convergent lines of inquiry.

In section "5. Discussion of Empirical Findings" we present and embed each concept – *intervention, enforcement and sanctioning* - in their real-life context using illustrative quotations. In that way, we use thematic cross case analysis (Miles & Huberman, 1994; Yin, 2003) to condense evidence from four cases and present an analytical synthesis of the findings in a conceptual manner, while avoiding replication and preserving close relations to the original empirical data.

4. Industry Context

The German food retail business is characterized by an increasing concentration and consolidation of retailers who face high demands from consumers, governments and NGOs to offer safe food at the lowest possible globally competitive prices. The mixture of complex, long and highly interconnected food supply and distribution networks and the hazardous impact of

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food safety problems on consumers, the retail businesses and the strictness of looming governmental regulations drive retailers to engage in sophisticated, yet highly efficient risk hedging practices. At the center of risk-hedging practices is the power of retailers to introduce globally certified schemes which are operated by independently accredited certification bodies and impose them in the general terms and conditions of trade (GTCT). To understand the private rules and power asymmetry in these business networks, it is necessary to present the key contextual parameters of the German food retail business.

Germany has a unique, highly concentrated food retail sector, shaped by tight regulations, price- and quality-conscious yet exceptionally suspicious consumers, strong consumer groups and an elaborate hierarchy of industry associations. In order to survive in a fiercely competitive industry, retailers and manufacturers are forced to increase efficiency, effectiveness and productivity through joint projects driven to meet increasing demands for cheap and safe products (Kavanagh, March 2012). Nongovernmental organizations (NGOs) such as *Foodwatch* or the state sponsored *Stiftung Warentest* strongly influence consumer behavior via private and public media campaigns, often promoting enhanced consumer scrutiny. Moreover, consumer groups closely monitoring the food market frequently influence governmental regulations passed in response to market developments, such as rising awareness for product 'misleading' labeling and packaging practices or demanding full disclosure of sourcing and manufacturing conditions.

The two distinctive features of German food retail are deeply rooted in (1) consumers' high price sensitivity, which triggers intense price competition and the proliferation of retail brands and growth of 'hard discounter chains' (Commerzbank Report, 2013); and (2) the noticeable absence of foreign retail chains (Stiegert & Kim, 2009) due to high entry barriers and the frequent failure of foreign companies such as Walmart or Inter-Marche, to cater to these consumer needs.

As can be observed in other European countries, the major trend in this industry is the increasing consolidation of retailers who aim at developing "exclusive relationships with fewer, favored, single source or dedicated partnerships" (Hingley, 2005b, p.852). This trend results in high power asymmetry and is nourished by the consumers' preference for retail brands, which boosts the retailers' power to exert supply-chain influence via intervention strategies and settling the terms of contracting (Blois, 2003; 2006). Retail label manufacturers are increasingly prone to substitution by competitors who agree to better conditions for the retail chain, thus requiring the manufacturers to consent to most of the retail chain's demands, such as higher margins, product recipe and label rights and the rights to terminate the contract at any time.

Hence, on the one hand, increasing consolidation raises the power of retail chains over suppliers; yet, on the other hand, consolidation enhances competition among the chains drastically. In order to survive in this highly competitive environment, retail chains turn to

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global sourcing, sophisticated food-quality requirements and the unfailing hunt for even incremental cost savings. To increase efficiency, retail chains capitalize on engaging globally in economies of scale and bulk-buying: Sourcing from all over the world and selling in multiple countries, thus operating in and through multiple jurisdictions, spanning national borders. Companies who supply these global chains are less concerned with fulfilling the requirements for accessing national markets and protecting their presence in certain countries, but are rather interested in fulfilling the requirements set by a global retail chain that will open doors to multiple markets. In competing for the position of supplying a retail chain, companies typically perceive the relationship to bear little mutuality. Rather, due to the imbalance of power, suppliers perceive most of the "risk as being unfairly born by them [that] the risk present in vertical supply chains [is] asymmetric, that is, the width and depth of a retailer's business facilitates its survival if a supplier is lost; whereas the consequences for a supplier losing a retailer account can be much more serious" (Collins & Burt, 1999, in Hingley, 2005b, p. 852). The GTCT serve as a platform for retailers to efficiently ensure compliance with private rules across the business network, reaching even indirect business actors operating in any part of the world. How this risk- hedging system works in detail shall be outlined next by presenting the findings from an in-depth analysis of the GTCT of four major German retail chains involved in global networks.

5. Discussion of Empirical Findings

This section discusses the empirical findings from four cases involving Alpha, Beta, Gamma and Delta[1]. The cases represent the top four retailers in Germany, ranked by business volume and market share (see Table 2). The retail chains operate globally in sourcing and retailing, as is evident from the distribution of store outlets the retailers operate. The private rules governing these retailers' global operations comprise a retailer's selection of proprietary standards and industry standards, such as the International Featured Standards (IFS) and the Business Social Compliance Initiative (BSCI).

Place Table 1 Here

Alpha and Beta are the strongest 'hard discounters' on the German market (Axel Springer, 2012) whereas Gamma and Delta are the two largest supermarket retail-chain operators, each reaching an annual turnover of over EUR45 billion.

Over the past five years, these retailers have faced a number of high-profile food scandals that proved that the practice of merely transferring risks to direct suppliers via contracts was

[1] The names of the retail companies had to be disguised for reasons of confidentiality.

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dangerous to the retailers' profits and reputation, especially in the course of retail brand proliferation (Dunne & Narasimhan, 1999; Commerzbank Report, 2013). Transferring risks to suppliers only offered the chance of lowering the *impact* of the risk, such as the liability for product quality, but did not actually lower the *probability* of the risk appearing in the first place.

In order to address the issue of risk *probability*, the retailers Gamma and Delta unilaterally decided to develop and launch private rules and specified in detail the product quality, processing, packaging, transportation and labeling requirements and, in addition, required suppliers to prove adherence to these requirements via retailer audits. These private rules are communicated via GTCT and serve as the sole basis for all contracting undertaken by the retail chains. Hence, suppliers working for these German retailers had to undergo up to 17 audits a year (Wellik, 2012) and the retailers had to create whole divisions dedicated to monitoring supplier compliance. Private rules were initially implemented by each retailer individually. It became apparent that transaction costs, however, were too high:

First, the cost in terms of time and effort to develop, update and monitor the compliance of all (direct) suppliers proved to be significant given that retailers operate in price-sensitive markets with thin operating margins.

Second, the need to capitalize on global sourcing exposed the necessity to ensure *suppliers anywhere in the business network* operating in different countries and subject to other jurisdictions were adhering to the same high product and processing standards as those audited by the retailer directly. The urgency to ensure whole supply networks were adhering to retailers' standards increased as consumer groups and individual buyers demanded higher transparency of where the products came from, how they were processed and, increasingly, under what *social and environmental* conditions they were produced.

Third, German retailers were finally held accountable by consumers for offering unsafe products or products produced under unethical conditions, even if the products were correctly purchased according to German trade law and the retailer had no power or legal right to interfere in the plantation owners' or manufacturer's working policy. Retailers were subject to the attention of media and NGOs; they feared further damages to their reputations and that of their retail brand products triggered by food safety and quality lapses anywhere in the supply network.

Finally, governmental regulations in the EU and elsewhere passed in response to food scandals had significant time lapses between the proposal of new laws and their implementation and turned out to be porous when applied to global food chains.

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Hence, responding to leaky public regulations and competitive pressures, retailers started to rely more heavily on flexible private rules that know no geographic boundaries and address those risks that globally operating retail chains were exposed to. Codifying the private rules in GTCT, German retailers aim to hedge against risks that emanate from:

(1) Deficient product safety and quality;

(2) Deficient packaging, labeling and transportation;

(3) Supply shortage or untimely supplies;

(4) Price increases due to changing global commodity prices;

(5) Infringement of their intellectual property rights (brands, recipes, data);

(6) Inadequate social and environmental standards of sub-suppliers;

(7) Changes in supplier structure or a supplier's subcontracting networks;

(8) Force-majeure events;

(9) Dependence on single suppliers, logistics or packaging partners;

(10) Differences in jurisdictions and regulations.

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In order to better understand the ways the top four retailers exercise their power to hedge against risks, we provide a number of illustrations in Table 2. Consider retailers' private rules with regard to risks related to intellectual property rights, which define that "*The retailer reserves property rights over any documents, calculations and pictures. No third party may see or access these materials without the retailer's written consent…The retailer owns the products even in case of recall until all payments are fulfilled. The supplier frees the retailer of any claims for damages, material defects, product liability, and compensation for personal suffering from third parties, when the cause for the claims can be attributed to the supplier.*" Moreover, in the area of product liabilities and insurance policy, Beta's private rules state that "*The supplier is*

liable for any product defects and has to cover all costs for product recall, removal from stock and shelves. The supplier has to provide us with the extended product liability insurance that has to cover a reasonable product volume and has to reach the minimum of EUR 2.5 million. The supplier has to provide the insurance within 4 weeks of the request". With regard to pricing, retailers impose maximum prices and thus hedge against the risk that suppliers will pass on price increases to them as a result of price increases in energy or raw materials. Specifically, retailers state in the GTCT that "*the prices agreed …are fixed maximum prices that are valid for the duration of the contract*".

Place Table 2 Here

Let us now examine how private rules codified in GTCT and imposed in asymmetric relationships correspond to three types of practices: (1) intervention, (2) enforcement, and (3) sanctioning. Private rules incorporate all governmental regulations *and a retailer's selection* of collective industry standards and his own proprietary standards. Therefore, private rules reflect the EU and German national law, the International Featured Standards (IFS) and the Business Social Compliance Initiative (BSCI) in addition to retailers' own expectations. The IFS and BSCI are collective industry standards, also referred to as voluntary standards or even the "private food law" (van der Meulen, 2011) that have been developed by a European retailer consortium including, among others, Alpha, Beta, Gamma and Delta. Both initiatives were established in 2003 as a response to multiple food scandals across Europe in the 1990s and the European Union's proposal for a new European Food Law that came partly into force in 2004.

5.1 Intervention: Mitigating Risk Probability

Retailers Gamma and Delta intervened by developing private rules that require adherence to BSCI, IFS and their own proprietary standards. The IFS is a horizontal standard that provides detailed specifications for different parts of the food supply network, such as IFS Logistics, IFS Broker, IFS Packaging or IFS Cash & Carry. Companies operating in the food supply network around the globe wishing to supply retailers Gamma and Delta must be certified according to retailer's private rules prior to being considered for negotiation. Whereas retailers prior to 2003 tried to audit their direct suppliers through own retailer-certification schemes, now retailers outsource the certification process to third parties, such as Det Norske Veritas (DNV) to carry out the auditing at the expense of the contracting party. A closer analysis of the certification schemes shows that achieving compliance with these schemes frequently requires voluntary intervention into the contracting party's business. Retailers' intervention aims at mitigating risk probability resulting from product safety and quality issues, deficiencies in packaging, labeling, transportation and the adherence to EU social and environmental standards. These consented private rules allow retailers to effectively intervene into a business suppliers' production or even management system by dictating best manufacturing practices that are subject to audits.

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The power asymmetry allows retailers to impose proprietary standards in addition to industry standards to retain a competitive advantage in terms of product quality specifications in comparison to other retail chains. These *proprietary standards* are stricter than public food law requirements and even some industry standards. Consider private rules that state to accept *"a maximum of 70% of the legally permitted maximum residue levels (MRLs). For the retailer's own brand, the retailer has stricter regulations: The maximum accepted residue levels are 50% of those legally admitted in Germany. ... To monitor the MRL development, the retailer runs a proprietary database where all values are plotted and can serve as a rapid alert system in case any values increase."*

In addition to standardizing the product quality and processing requirements, this certification system helps retailers hedge against dependencies on single suppliers and, in fact, minimizes switching costs, as quality, processing and business conduct are standardized.

Johnsen and Ford (2005) as well as Johnsen *et al*. (2008, p.74) refer to the intervention strategy as a "customer intervening in the supplier's operations to tell it how to conduct its business. While it is welcomed by the supplier in many cases as a genuine opportunity to learn from a better equipped organization, the principle behind the intervention … [is still one of control]". Indeed, adherence to private rules has contributed in particular in developing countries to higher social and environmental standards and significantly reduced the number of recalled products (Wellik, 2012). Elaborating on Blois' (1972) concept of quasi-vertical supplier integration, it is reasonable to say that the nature of the current intervention strategy moves beyond quasi-integrating first-tier suppliers to quasi-integrating whole supply networks with the help of third-party certification schemes based on standards developed by the retailers. Indeed, the system of private rules, enhanced by high power asymmetry in the food retail sector resembles the formation of quasi states, where the retailers define the rules, enforce the rules and sanction accordingly for non-compliance.

Metaphorically speaking, retailers take over legislative powers, the certification bodies perform the executive force and the judicative force is performed collectively by retailers, certification bodies and national jurisdictions. Despite the powerful quasi-state formation, relying on private industry standards *only* reduces the probability of risks occurring, and does not yet minimize the risk impact when adverse events happen.

5.2 Enforcement: Minimizing Risk Impact

Enforcement aims to minimize the negative impact of risks which may have already been identified and addressed through intervention strategies. In this way, enforcement reduces the

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impact of risks. This happens by enforcing those rules that govern the transfer of liabilities when adverse events happen.

The enforcement practice elaborates on the concept of private contract law that lies at the heart of framework contracts (Mouzas & Blois, 2013). Enforcement practices help institutionalize power asymmetry between two business actors in three ways: First, the more powerful actor may ensure exclusivity of and compliance with private rules by setting *compulsory* and *non-negotiable* terms and conditions. Second, the more powerful actor may design the rules in such a way as to transfer liabilities for occurring risks to its counterpart. As a result, the more powerful actor passes on liabilities and uses them as a mechanism for compliance. Finally, enforcement includes monitoring and control processes: The more powerful party may require its counterpart to provide regular reports on and documentation of implemented processes, frequently entailing confidential business data, such as accounting or cost-breakdown information or the counterpart's performance with other customers.

The ability of the more powerful party to transfer liabilities to its counterpart is a practice that is often referred to as "cascading" (Johnsen, Lamming & Harland, 2008, p.74). The aim of enforcement practices is thus to ensure the shift of liabilities for risks occurring to the contract partner, who, in turn, may shift the risk further down (to further sub-contractors), depending on the relative power of counterpart. Consider, for instance, changes in raw material prices. A private rule that all agreed prices are fixed, requires the business partner to absorb the price changes or transfer this change further down. Similarly, retailers fearing the infringement of their product quality specifications such as their product recipes or packaging requirements can transfer the impact of this risk upon their business partners and sanction infringements happening anywhere in the business network by holding the business partner financially responsible for the losses. This mechanism is particularly evident in private rules defining the parties' liability in cases of product-quality issues or negative media coverage. Hence, the retailer aims to minimize the negative impact of risks in terms of costs by quantifying the business partner's liability for the consequences of risks. The GTCT of Gamma (2011) illustrates such a case in stating that *"if the product is subject to a warning or recall by the supplier or transport partner, his subcontractor or manufacturer, the supplier will be liable for any costs resulting from this action, including the recall of the product".*

Moreover, designing their own rules allows the retailers to enforce agreement from its counterpart even on such terms that allow retailers to quickly dissociate from business partners who may tarnish the retailer's company or brand reputation and even reserve the right to ask their current counterpart for alternative suppliers.

5.3 Sanctioning: Legitimacy and Protection of Uninsurable Assets

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The sanctioning practice combines legal sanctions imposed through contract law (Furmston, 2001) as well as non-legal sanctions, such as delisting products, delaying payment, or imposing higher trade allowances (Charny, 1990; Blois, 2003). Sanctioning by means of contract law refers to the punitive capabilities that a national jurisdiction provides to parties in case of breach of contract. Although most companies refrain from exploiting legal sanctions because of the involved uncertainty, cost, time, and potential for reputational damage, the looming possibility of litigation is an effective exercise of the power of threat. Moreover, the mere threat of litigation demonstrates the symbolic power of legitimacy and the exploitation of legal artifacts, such as GTCT.

The power of legitimacy is inextricably linked with the punitive capability that may take on various forms (Macneil, 1985; 2001; Macaulay 1963, 2003; Kumar, 2005), such as threatening current suppliers with immediate contract termination in the case of infringing the retailer's requirements for data protection, temporary delisting of products, imposing substantial payments for damages for estimated reputational damages or losses in sales, or coercing the counterparty to avoid conflict settlement by means of litigation. The latter locks the counterparty into the realm of private law and its respective rules.

There is a pervasive link between the two preceding practices of intervention and enforcement, and sanctioning. While intervention and enforcement practices provide effective means for retailers to minimize risk probability and impact, there are still risks affecting intangible assets that are difficult to quantify and yet may have a devastating effect on the retailer's business. Uninsurable assets include the business' reputation, stock price volatility and brand value; the market value of these assets has significantly increased over the past years. Prime threats to uninsurable assets are public scandals and litigation, which question the company's or its products' legitimacy, credibility and integrity. While compliance with private rules helps to lower the risks to uninsurable assets, non-compliance poses serious threats to the more powerful party, who has a reputation, brand name and market share at risk. It is non-compliance with private rules that requires sanctioning and that activates the 'feedback loop' leading to changes in the intervention and enforcement practices.

Non-compliance may result in 'food scandals' such as the 'horsemeat scandal' in 2013, the alleged organic eggs scandal or the outbreak of Escherichia -bacteria in Germany in 2012. These cases have in common that retailers and manufacturers suffered severe damages to company and product reputation, sales losses and consumer demand for greater transparency in labeling. This experience triggered rapid adaptations to the retailers' private rules. In the case of the horsemeat-scandal, changes to the IFS (and hence all GTCT referring to this set of standards) became effective globally within one month. In contrast, regulatory responses by the German and EU governments were still in the state of debating propositions. The effect of the horsemeat-scandal on retailers' private rules is illustrative of the speed and type of changes happening in response to other food scandals. Typically, such changes *further institutionalize*

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power asymmetry in that these adaptations of rules allow retailers to adapt intervention and enforcement practices in light of the 'lessons learned' from the respective scandal.

In terms of intervention, changes typically require relevant suppliers to immediately change business processes and consent to adopting these changes as a precondition for continuing or initiating business exchanges. To illustrate, in response to the horsemeat scandal, IFS rules were changed to request from all relevant suppliers the implementation of additional 'authenticity checks': *"IFS expects that manufacturers develop a risk based control plan to check authenticity of incoming raw materials and/or semi-finished products. For example, visual checks can be done if the raw-material nature can be clearly identified. If not, for example for frozen minced meat, further tests like DNA tests have to be performed" (IFS, March 14th, 2013).*

In terms of enforcement, the suppliers bear the responsibility to adopt the changes and carry the liabilities (per contract clause) resulting from failure to adopt the changes: "*The main objective of these amendments is to ... place the focus of the companies on the point that they have the responsibility to check the authenticity of their raw materials and/or semi-finished products" (IFS, March 14th, 2013).*

Hence, private rules posit a mechanism capable of constant adaptation of practices to address dynamics in the environment. These dynamics may originate from food scandals, related changes in consumer demands or looming regulatory requirements. Therefore, we can posit that *situations triggering sanctions will lead to dynamic adaptations* in the intervention and enforcement practices to prevent re-occurrence of non-compliance.

6. Conclusion and Implications

This study demonstrated how companies in the context of the German food retail business use private rules to exercise power in asymmetric relationships. Power is exercised by the stronger parties through an iterative process of intervention-enforcement-sanctioning practices codified in private rules that govern asymmetric business relationships. Private rules frame, standardize and legitimize the terms and conditions under which exchanges among counterparts may take place, thus institutionalizing the inherent power asymmetry.

The presented process model enhances our understanding of how companies roll-out *intervention-enforcement-sanctioning* practices and explains them as risk-mitigation efforts. Risk mitigation circumscribes actors' exercise of power to minimize the probability of identified risks and to reduce the impact of these risks by passing on liabilities to business partners that they have chosen to work with. Specifically, stronger parties can exercise power to ensure (1) global sourcing at competitive prices, yet allowing a mitigation of the *probability*

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and *impact* of risk; (2) development of proprietary requirements and efficient implementation of auditing and certification schemes; (3) a broad range of safety, high- quality suppliers enabling retail chains to switch suppliers; (4) and flexibility to adapt to rapidly changing regulatory requirements and diverse consumer preferences.

This research is one of the few ventures to enhance understanding of the exercise of power in networks of asymmetric business relationships. The study provides evidence that intervention-enforcement-sanctioning practices codified in private rules and communicated via General Terms and Conditions of Trade of stronger companies apply not only to dyadic business relationships but to whole business networks. This is attributed to globally strong competitive pressures, retail consolidation, increasing consumer demands for low price yet high quality food and regulatory demands for sustainable and accountable business practices.

Whereas previous forms of quasi-integration and business contracts addressed interventions in quasi-vertically integrated relationships with direct business partners, the concept of private rules enables the quasi-integration of whole supply networks. The theoretical implications of this empirical insight are intriguing. Indeed, the codification of exchange requirements, their enforcement through certification schemes and sanctioning through public contract law and private rules suggest that, increasingly, private rules function as constitutions of quasi-states that exercise power and govern whole networks across national borders. Constitutions of quasi-states imply that it is at the junction of codified private rules and the historically situated outcome of interactions that business networks are governed. Our study highlights the role of institutions such as contract law, certifications through third parties, and industry standards in the regulation of power asymmetry in business networks. Institutions are relevant in understanding power asymmetry in business networks because interactions were structured within institutions. Institutions ensure behavioral regularities reflecting the interests of the actors that created them (Coase, 1988). More formally, institutions supply business networks with the rules of the game that shape business interaction (North, 1990; Sabel, 1993). The present study contributes to the discussion of institutional underpinnings of business interaction by shedding light on *private* arrangements which legitimize and shape power asymmetry.

The study of private rules in asymmetric relationships has relevant managerial implications for business practice. Based on multiple types of up-to-date empirical evidence, this study provides insights on risk-hedging practices with direct business partners and addresses the potential of private rules in addressing risks emerging from managing in global networks. As most companies are embedded in global business networks and information and communication technologies facilitate a transparent, networked business landscape, the managerial implications for business practice are twofold: First, companies need to understand and identify the sources of relevant risks before they undertake any attempt to hedge against them. For this reason, managers need to identify risks that may be looming beyond their direct business partners. In the case of the food industry, even feed suppliers need to be considered as potential risk factors by retailers, as the quality of feed may decide over the meat quality that retailers will be finally

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held accountable for. Second, managers are advised to review the tools and the dynamic, iterative processes which they employ for risk hedging. The common belief that if "I have an expectation of how risk should be managed through the supply chain, everybody should be managing it that way" appears to be an erroneous assumption because it presupposes similar standards across global markets (Wilding, in Gray, 2012, p.1).

As this research demonstrates, rather than assuming standards, companies can make use of valuable tools for creating and communicating their own standards such as through General Terms and Conditions of Trade that can help to hedge against risks resulting from global businesses based in different national markets and jurisdictions. The food sector provides one example of power asymmetry where private rules function as constitutions for whole business networks. Nonetheless, the idea of private rules that codifies intervention, enforcement and sanctioning practices remains valid beyond the food sector. Although intervention has been delineated as an imposition of best practices from one company onto another, intervention may also take more friendly forms of mutual risk hedging by raising standards across the supply network and strengthening the 'weakest link'.

7. Limitations and Suggestions for Future Research

The phenomenon of private rules in business networks is a rich and recent field for business network research that promises a fruitful avenue in the investigation of power asymmetries in business relationships. The scope of the present study allowed us to only tap into the complex concepts such as collective industry standards, proprietary standards and certification schemes, behind each of which opens up a new network of relationships between companies, industry associations, EU regulatory bodies, NGOs and certification and accreditation businesses.

Building on the network perspective on power asymmetry, it would be interesting to study the different stages of the interaction *process* leading to the creation and adaptation of private rules. This may enhance our understanding of how, when and why large multinational companies decide to pour their knowledge of proprietary standards into collective standards and hence share their valuable proprietary knowledge with competitors or third parties, such as the government.

We need more empirical insights on the *power dynamics* involved in the interaction of private business rules developed by multinational companies and public laws .The phenomenon of hedging against risks in asymmetric relationships is inextricably linked with actors' behavior and, therefore, much can be learned about actors' biases and errors by developing a behavioral network perspective that accounts for systematic imperfections in the way that business actors interact with each other.

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For management practice, further research on power in business relationships would significantly enhance the understanding of dealing with risks in business networks. This research avenue is more feasible if we take a network perspective on power, because the network view pays invaluable attention to the inherent interdependencies, asymmetries of resources and capabilities as well as the implications of considering indirect effects of more distant relationships.

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Tables and Figures

Table 1. Performance Data of Analyzed Retailers.

	Discounters		**Regular Supermarkets** with strong retail brand proliferation	
	Alpha	**Beta**	**Gamma**	**Delta**
Annual turnover (in billion EUR) in 2012	52	42	48	45
Number of stores in Germany	4305	3 232	15700	13 000
Number of stores internationally	4017	5813	1000	300 remain in Scandinavia
Market share in Germany (in %)	app. 21	app. 21, 4	15,7	21
Private rules: Proprietary and industry standards	Business Social Compliance Initiative (BSCI)		BSCI, International Featured Standards (IFS), Proprietary Standards	

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Table 2. Example of Private Rules Codified in GTCT.

Retailers' chosen standards	Business Social Compliance Initiative (BSCI), International Featured Standards (IFS), Proprietary standards.
Scope of application *Risks: 1,2,6,10*	(1) GTCT are applicable to all further contracts. (2) Retailer's GTCT supersede any contract partner's (CP) GTCT. No terms of CP's GTCT are accepted, unless the retailer decided otherwise in writing. (3) The CP must not pass on the performance of agreed duties to a 3rd party.
Delivery *Risks:2,3*	(1) Delivery dates are fixed. (2) The CP must immediately inform the retailer in case of delivery disruptions. (3) The retailer may claim damages on top of the right for compensation. (4) The CP must stock product deliveries for up to 10 retail outlets.
Warranties *Risks:1,2,5*	The CP guarantees that the: (1) products conform to all retailer specifications and legal requirements of the destination markets; (2) products do not infringe any 3rd party rights. If the CP infringes any 3rd party rights, he must immediately free the retailer from any claims by that party.
Damages, recall, compensation *Risks:1,2,5*	If the product quality does not meet the retailer's or legal specifications, the retailer has the right to demand a (1) Full refund and/or rectification of defects, (2) Compensation deliveries, (3) Removal of products (at CP's expense).
Contracting alternative suppliers *Risks: 1,7*	If the CP must subcontract any of his contractual duties or change an ingredient supplier, he must obtain the retailers' written agreement first.
Crisis management *Risks: 1,7*	Crisis management and product recall: (1) The CP guarantees the implementation of a tested crisis management system. The retailer must have all updated contact details of the CP's crisis manager(s). (2) In case of product recalls, the CP manages the recall and covers all costs. (3) The retailer may refrain from any future transactions (a) if public authorities criticize a product for health risks or (b) the health risks are alleged but have reached the public media. (4) The CP owes the retailer lump-sum payments per retail outlet for every product recall and for reputational damages.
Product quality, composition, documentation *Risks: 1,2,5*	(1) The retailer demands stricter product specifications than required by German or EU laws. (2) Compliance with product specifications must be tested by independent laboratories. (3) 1st, 2nd and 3rd party inspections: The retailer reserves the right to conduct CP audits himself or instruct 3rd party audits. The CP must provide evidence of own constant quality inspections. Raw materials used for the final product may be inspected separately. (4) The CP is exclusively liable for any deficiencies detected by any inspecting party.
Social, ethical, environmental standards; Quality Management Systems *Risk: 6*	The CP has to ensure that all his CP's and sub-contractors comply with BSCI standards. The BSCI specifies among others: (1) employee and worker health, safety and payment standards; (2) environmental standards and (3) quality management systems.

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Transport, packaging *Risk: 2*	The CP is liable for any deviations from German or EU packaging regulations. In case of infringement, the CP frees the retailer of any claims. Disposal of packaging: The retailer disposes of transportation packaging at the CP's expense.
Traceability *Risks: 1,2,6*	(1) The CP guarantees the continuous and full traceability of all product parts according to current *and future* regulations. Objects of traceability in addition to the product itself, are all ingredients and packaging materials. (2) The CP must provide all requested information to the retailer and the authorities upon request.
Information clause *Risks:1,2,6*	(1) The CP guarantees to inform the retailer immediately in case any product deficiencies are identified during 3rd party product tests. (2) The CP has to enter product data into a joint retailer database that functions as a private rapid alert system.
Force Majeure (FM) *Risk: 8*	(1) FM frees both parties of any duties for the time of the incident. Both parties are required to inform each other of the time, nature, scope and duration of the incident and to adapt their contractual responsibilities to the best of their knowledge and in good faith. (2) The retailer may reject any orders if the demand for the delivery changed due to the FM incident. (3) Other contractual and legal rights of the retailer are not affected by this clause.
Customer data *Risks:5,9*	(1) The CP guarantees to comply with all recent German data protection regulations. (2) The CP guarantees implementation of sufficient data protection measures to protect any confidential documents exchanged as part of the agreement. (3) The CP guarantees the retailer or a 3rd party chosen by the retailer to inspect its data protection measures at least annually. In case of non-compliance, the CP must pay damages constituting a portion of annual contract volume.
Severability clause *Risk: 10*	Invalidity of one or more clauses will not affect the validity of the agreement as a whole.
Termination *Risk: 9*	The retailer reserves the right to terminate contracts immediately in case the CP (a) breaches the contract, (b) or the CP is subject to insolvency.
Confidentiality *Risks:5,7,10*	(1) The CP must not share any trade secrets originating from contracting with the retailer with his CPs. (2) The CP agrees to return any documentation originating from exchanges with the retailer as soon as the contract expires. Data storage media must be destroyed using specified data eraser programs. (3) The CP is liable for any damages resulting from the leak of trade secrets or data originating from the exchange with the retailer. The CP is liable for the acts of all of his CPs, including employees, subcontractors, and freelancers.
Venue, court of jurisdiction *Risk:10*	(1) The exclusive court of jurisdiction is the German court of 'town *x*'. However, the retailer reserves the right to sue the CP at his local venue. (2) The GTCT are exclusively subject to the German law, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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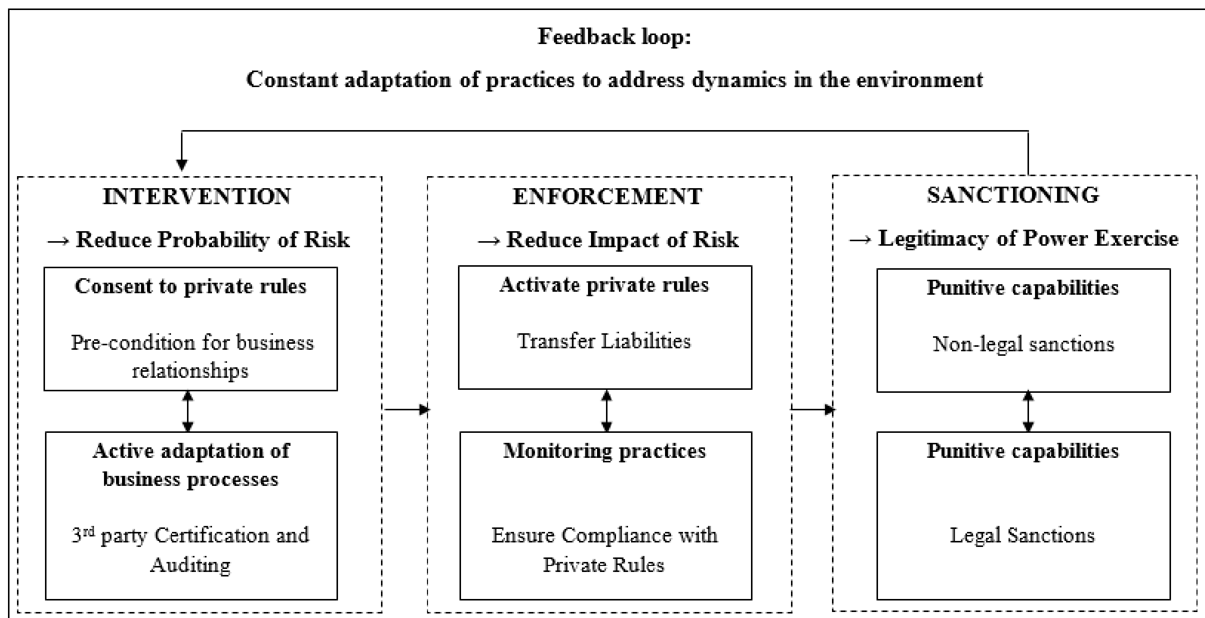

Fig.1. Process model of exercising power through private rules.

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