

SUPERMARKET PRACTICES

The need for EU wide action

1. Background

In many EU countries grocery retailing is dominated by a small number of supermarket chains. This concentration and the consequent increase of supermarket power has adverse consequences for farmers (both in Europe and in the Global South), food processors, manufacturers, wholesalers, smaller retailers, and of course consumers. Many consumers in practice have little alternative but to shop at one or two large supermarkets. In many areas, small shops and specialist retailers are rapidly declining, leaving consumers with little choice.

A number of recently published books¹ and articles² about retailer growth document the growing public concern with the spiralling power of the large supermarket chains.

2. The Negative Impact of Supermarkets

How supermarkets use buying power

Increasingly grocery suppliers (farmers and food processors) are dependent on large supermarket chains to sell their produce. Only the very biggest brand name suppliers have any real leverage on the terms of distribution and sales. In contrast, the supermarkets are to a large extent not dependent on any one supplier; for example the very largest grocery supplier in the UK accounted for less than 3% of Tesco's total purchases and the average supplier provided less than 100th of 1% of their purchases³. In the European Commission's decision to allow German supermarket chain, Rewe, to acquire part of Austrian chain, Meinel in 1999, the Commission said: "...when they lose a major customer, producers do not have much in the way of alternatives" and "Rewe and Meinel, on the other hand, are not dependent on individual suppliers."⁴

If a supplier is dropped by one of the big chains (de-listed), it is often difficult or impossible for the supplier to find another buyer. There are few other outlets for high volumes of grocery products, except the big supermarkets.

The threat of de-listing gives the supermarkets an overwhelming advantage in negotiating power over their suppliers. As the UK's Competition Commission (CC)⁵ put it, there is "a climate of apprehension among many suppliers in their relationship

¹ "Shopped" by Joanna Blythman and "Not on the Label" by Felicity Lawrence; C. Jacquiau, *Les coulisses de la grande distribution*, Paris (Albin Michel), 2003

² New Economics Foundation – "Clone Town Britain"

<http://www.neweconomics.org/gen/uploads/mrrefr55lroqjwrefpvg525528082004130712.pdf>

"Exploiting Buyer Power: Lessons from the British Grocery Trade" by Professor Paul Dobson, July 2004

³ see paragraph 2.457 of the Competition Commission Report on Supermarkets 2000 http://www.competition-commission.org.uk/rep_pub/reports/2000/446super.htm

⁴ see paragraphs 102-103 of European Commission's decision in Rewe/Meinel 1999

<http://europa.eu.int/abc/doc/off/bull/en/9901/p103089.htm>

⁵ The UK's Competition Commission was instructed by the government to investigate anti-competitive practices carried out by the big retailers and reported back in 2000.

with the large retailers”⁶. Suppliers give in to supermarkets' pressure out of fear of losing their main outlets.

Supermarkets’ effect on suppliers

Supermarkets regularly take unilateral action to the detriment of suppliers, for example, by requiring suppliers to make payments or concessions to gain access to supermarket shelf space. There are numerous examples described in detail in paragraphs 2.460-2.550 of the CC Report on Supermarkets 2000. The CC Report grouped these practices into 8 categories shown in Table 1.

Table 1: Supermarket practices concerning relations with suppliers

Category of Practices	Number of practices	Number of retailers engaging in practice (min - max)	% of practices against Public Interest
Payments for access to shelf space	8	5 - 13	50
Imposing conditions on suppliers’ trade with other retailers	2	1 – 4	0
Applying different standards to different suppliers	1	3	100
Imposing an unfair imbalance of risk	12	1 - 12	83
Imposing retrospective changes to contractual terms	8	1 - 7	75
Restricting suppliers’ access to the market	1	10	100
Imposing charges and transferring costs to suppliers	8	2 – 13	63
Requiring suppliers to use third party suppliers nominated by the retailer	2	2 - 11	50

Numerous other supermarket practices, in particular selling below cost⁷ and price flexing⁸, are also severely damaging to smaller retailers and smaller suppliers and have adverse knock-on effects for consumers.

Effects in the Global South

Fresh produce is a high priority for the big retailers who take large profit margins on fresh produce. Much of it comes from outside Europe. Research by Oxfam⁹ and partners in South Africa reveals how Tesco loads many of the costs and risks of its fresh-produce business onto farmers who are passing them on to workers in the form of precarious employment. The required standards and large volumes make it difficult for small farmers in the South to supply them, thus marginalising them from export opportunities.

⁶ see paragraph 1.9 of CC Report on Supermarkets 2000

⁷ Retail price resulting in a negative gross margin

⁸ In which a supermarket chain sells the same products in different shops at different prices in order to gain a competitive advantage locally (e.g. it may sell more cheaply where there is a rival supermarket in a locality and more expensively where there is not)

⁹ “Trading Away Our Rights”, Oxfam 2004 www.maketradefair.com

Concerns about choice of retail outlet

When a new supermarket opens, independent specialist shops are often forced to close. The decline in small specialist shops means that most consumers have little choice of where to shop and end up doing the bulk of their shopping, even including non-grocery items such as books, clothes and medicines at a supermarket, with some top-up shopping at smaller shops.

Social/community concerns

Many supermarkets are on edge of town or out of town sites, and may not be on bus routes forcing consumers to travel by car and thus contributing to increasing environmental costs. The distance travelled to shops in the UK increased by 60% between 1975-1990¹⁰.

Members of the community without access to private forms of transport are often forced to use the decreasing number of smaller town centre and neighbourhood grocery outlets. This decline in small shops means that particularly in poorer neighbourhoods there is very little choice of reasonably priced or healthy foods and what are known as 'food deserts' have been created¹¹.

Ability of smaller shops to compete

The large supermarket chains have enormous buying power, which smaller shops do not have. In 2000, the big three chains in the UK (Tesco, Sainsbury and Asda) had a cost advantage of between 6 and 8% compared to some of the smaller chains (see table 11.9 in CC Report on Supermarkets 2000). The differential between the price paid by the big three and smaller independent retailers will be much greater. These price differentials are far greater than can be justified on the basis of larger volumes. They make it impossible for small shops to compete on price.

Decline of the wholesale sector who supply smaller grocery retailers

Supermarkets have expanded into town centres and local neighbourhoods by establishing convenience stores or by buying existing convenience store groups e.g. Tesco bought 860 T&S stores in 2002 and 45 Adminstores in 2004, and Sainsburys' bought 145 Jackson's stores in 2004. As a result, the wholesale sector has become increasingly marginalised. It is difficult, if not impossible, for the wholesale sector to compete on price terms with the big four. This price disparity creates an almost insuperable barrier to entry for new, smaller retailers.

¹⁰ Jones, A. *Eating Oil: Food supply in a changing climate*. 2001 Sustain: London

¹¹ Webb, A. *Food Poverty: Policy options for the new millennium*. 2000. Sustain: London

3. Responses to buyer power in the UK

In 2000, the UK Competition Commission reported on many of the supermarkets' unfair practices which were considered anti-competitive. To remedy these practices it recommended a Code of Practice and listed 12 provisions that such a Code should contain, for example:

- Retailers should ensure that the standard terms on which they do business are in writing, and are made available to suppliers;
- Retailers should not request suppliers to contribute to retailers' costs of buyer visits; or to contribute to the retailer's costs of artwork and packaging design; for consumer or market research; to the costs of store refurbishment or opening; or to provide hospitality;
- Retailers should not seek any form of compensation for profits being less than expected, whether on a promotion or otherwise, or for product wastage;
- Retailers should pay suppliers within the time specified within the agreement, and in any event within a reasonable time after the date of the invoice.

In response, the Office of Fair Trading (OFT) negotiated a voluntary code of practice to be entered into by the large four supermarkets. Many of the original 12 provisions recommended by the CC were weakened.

The OFT carried out a review in 2003 and concluded that this voluntary code is not working effectively, although there was little hard evidence in view of the absence of complaints. The OFT recognised that fear of complaining by the suppliers for fear of losing their main outlet was the main reason identified for the code's perceived lack of effectiveness. The OFT has since decided to commission a detailed independent audit of the code in order to "establish further how the supermarkets are dealing with their grocery suppliers after its review of the supermarket code of practice". The audit is now completed but not publicly available. The OFT are expected to release a response to the audit and recommendations on the future of the Code in February 2005.

The Breaking the Armlock Alliance

Civil society groups in the UK have organised and created a forum to share and identify new strategies to challenge the increasing power of supermarkets. In September 2003, 16 groups¹² representing farmers, environmentalists, workers and consumers agreed to work as an alliance under the banner of the 'Breaking the Armlock Alliance'¹³. In the short term, this new alliance agreed to focus its efforts on campaigning for a law which would put the Supermarket Code of Practice into statutory (legally binding) form (this can readily be done under the Fair Trading Act 1973 which still applies for the purposes of the Code). Although the Alliance recognised that structural remedies such as a cap

¹² Banana Link, British Independent Fruit Growers Association, FARM, Farmers for Action, Farmers' Link, Farmers' Union of Wales, Friends of the Earth, Grassroots Action for Food and Farming, IIED, National Federation of Women's Institutes, National Sheep Association, New Economics Foundation, Pesticide Action Network UK, Soil Association, Small and Family Farms Alliance, Wycycle

¹³ In March 2001 Tony Blair told farmer that "*the supermarkets have pretty much got an arm-lock on you people at the moment*"

(an upper limit) on market share would be the most effective way of preventing further concentration, it acknowledged that it would be politically very difficult to achieve such legislation. On the other hand it was felt that a statutory code was a 'winnable' goal, given that a voluntary code had already been introduced and that it had been widely recognised that this voluntary code was not working.

The Alliance's demand for a statutory code and independent supermarket watchdog secured political support and Andrew George MP has tabled an Early Day Motion (EDM) at the British Parliament. Leaflets were produced highlighting the negative effects of supermarkets on suppliers, small shops and local communities and included a tear off slip for people to send to their MP asking them to sign the EDM.

As well as political lobbying Alliance members have helped raise awareness of the issue by organising demonstrations at supermarket Annual General Meetings (AGMs); responding to the 'good news' stories put out by supermarkets e.g. profit forecasts; and using supplier case studies to highlight the 'human' story. These activities have increased media interest and coverage in press, radio and TV.

Alliance members share their submissions to the competition authorities, advise against any proposed supermarket takeover in collaboration with other Alliance members, and encourage more organisations to make submissions.

Four members of the alliance are making a submission to the OFT calling for the UK Grocery Market to be subject to a further investigation in the light of the increasing "consolidation" (i.e. concentration) in the sector since the CC report in 2000.

Although the Alliance specifically focuses on competition policy it also acts as a forum to discuss other strategies and ensure co-ordinated action. The Alliance website is www.breakingthearmlock.com. Communication amongst alliance members is via an email discussion list and through meetings. The Alliance and its activities are funded by individual members either by contributions of time or by funding specific elements e.g. website and leaflets.

4. Concern about buyer power in EU countries

Concerns about buyer power have been raised in a number of EU and other countries. The fact that the European Commission commissioned a major study on buyer power indicates the level of concern at the EU level; see "Buyer power and its impact on competition in the food retail distribution sector of the European Union" May 1999.¹⁴

An even broader study on buyer power in the retailing sector was carried out by the OECD in 1998 (see papers for Round Table on Buyer Power, October 1998).

Several countries have had laws regulating supplier/retailer relations for many years; these include laws banning below cost selling in a number of countries; laws against predatory pricing and price discrimination; and laws on dependency in trade relations. More recent reactions, including voluntary codes to control growing retailer power in individual European countries have included:

¹⁴ (<http://europa.eu.int/comm/competition/publications/studies/bpifrs/>)

- (i) **France:** Amendments have been made to the Loi Galland to try to redress the problems caused by buyer power and the imbalance in supplier/retailer relations. The law requires all the pricing terms agreed between a retailer and its supplier to be clearly stated on the invoice, with no hidden discounts. This law is in the process of being revised.

Following investigation by the European Commission and the French authorities of the Carrefour/Promodes merger in 1999, Carrefour agreed to adopt a code governing its relations with small and agricultural suppliers, entitled 'Nos actions pour les PME et l'agriculture francaises'.

There is also a retail industry commission in France which can issue non-binding opinions on the legality of certain commercial practices.

- (ii) **Sweden:** An inquiry has been carried out by the Swedish Competition Authority into retailer power concerns [The Convenience Goods Business – Structure, Form of Ownership and relationships with suppliers; Swedish Competition Authority December 2002]. This has so far not led to legislative or regulatory consequences.
- (iii) **Spain:** In 1996 a Commerce Law (Ley de Regulacion del Comercio Minorista) was passed to limit the market power of the major retail groups. Its' main provisions included a ban on selling below cost, provisions to prevent retailers stretching the terms of payment to suppliers and restrictions on construction of out-of-town supermarkets.
- (iv) **Portugal:** The Confederation of Portuguese Industry and the Portuguese Association of Retail Companies adopted a Code of Good Business Practice regarding transparency, non-discrimination and maximising value for consumers. The code was signed in the presence of the Minister of Economy in July 1997.
- (v) **UK:** The Competition Commission carried out an extensive inquiry into supermarket practices at both retail and supplier level and published a major three volume report in 2000 (cited above). This report concluded that 52 practices carried out by retailers in their dealings with suppliers were anti-competitive and recommended that the big four supermarkets comply with a Code of Practice in their dealings with suppliers.
- (vi) **Ireland:** a review has been carried out of the Groceries Order which, amongst other things, bans below cost selling. For the present, it has been decided to leave the Order in place.
- (vii) It is worth noting that outside Europe countries such as **Argentina**¹⁵ and **Australia**¹⁶ have addressed the problem in similar ways.

¹⁵ Representatives of suppliers and retailers signed a Code of Good Business Practice. The code covers such matters as equivalent treatment (non-discrimination), no unilateral debit notes to be issues by retailers, respect for contract conditions and other matters.

¹⁶ In August 1999 the parliamentary select committee on the retailing sector issued a report entitled 'Fair market or market failure'. Acting on the committee's recommendation a Retail Grocery Industry Code of Conduct was issued in 2000, administered by an independent ombudsman.

5. What is needed?

It is clear that there are concerns about growing retailer power throughout the EU and beyond. There is a need for responses to be decided, and appropriate measures adopted, at national level. However, as the larger supermarket chains (like Tesco, Carrefour, Ahold and Wal-Mart) are expanding to become pan-European and even global operators, rather than merely national chains, we believe that there is a need for NGOs and producer organisations to respond to this trend by themselves developing an international alliance, starting with Europe. This would need to focus, in particular, on the issue of buyer power, with the aim of influencing the European Commission to take action on some or all of the following points:

- Below cost selling (banned in many countries already);
- Predatory pricing;¹⁷
- Transparency of purchase prices (so that consumers can see the disparity between what farmers or other suppliers receive for their produce and what the supermarket charges);
- Unilateral changes in contract terms at short notice (which can devastate small suppliers);
- Demanding discounts which are not justified (a widespread practice, at least in the UK);
- De-listing without adequate cause (widespread in every country);
- Limiting acquisitions of smaller stores by large supermarket groups.

Also, NGOs could object to the European Commission's and the member states' support of the expansion of European supermarkets into developing countries through the current GATS negotiations in the World Trade Organisation.

Building alliances across Europe

Members of the UK Alliance would like to work with other organisations to curb supermarket power. In the short term, we specifically want to raise awareness of the issues at the EU Parliament and, in turn, exert pressure on the EU Commission to do something to address our concerns. Three UK MEPs from the Green Party, the Labour Party and the Liberal Democrats have expressed an interest in submitting a "Written Declaration" at the European Parliament. If 50% of MEPs support this declaration a debate in the parliament will be automatically triggered and the Commission can be pressurised to take action to address the concerns expressed. We hope that organisations in other EU countries will want to help us to encourage their national MEPs to sign up to the Declaration, so that this 50% target can be achieved.

¹⁷ Cutting prices aggressively to force short run losses on existing competitors

We are also keen to share our experiences and support others trying to introduce legislation at the national level. In return, we would welcome information on your national campaigns/initiatives to tackle supermarket concentration.

We are planning a meeting in Europe in **June 2005**, in conjunction with the Agribusiness Accountability Initiative (AAI)¹⁸ forum and would like to invite representatives from organisations concerned with supermarket power from as many EU countries as possible to attend this meeting.

We have established an email discussion AAIregulatingmarkets@yahoo.com to share strategies and help build an EU-wide alliance of civil society groups. **To join please email judith@jwhateley.fsnet.co.uk.**

¹⁸ AAI is an international network of activists and researchers concerned about the increasing concentration and market distortions in the agri-food industry www.agribusinessaccountability.org