

Media Briefing

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ALLIANCE CALLS FOR NEW SUPERMARKET CODE AND WATCHDOG

The Alliance: 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, New Economics Foundation, Pesticide Action Network UK, Soil Association, Small and Family Farms Alliance, Wyecycle

A new alliance of environmental, farming and consumer organisations is calling for a new statutory code of practice to be imposed on the biggest supermarkets and for a 'retail regulator' to be appointed to ensure that the new code is enforced and is working effectively. The Office of Fair Trading is due to publish a review of the Supermarket Code of Practice soon. The alliance considers that there is already enough evidence that the existing code has failed to protect suppliers, including farmers, and may even have made the situation worse for them. It is calling on the Government to act now. The Code was introduced in 2002 after the Competition Commission found that large supermarkets were abusing their power by engaging in unfair trading practices. It was heavily influenced by the supermarkets and widely condemned by suppliers as being useless as soon as it was introduced. A survey by Friends of the Earth and farming organisations last year revealed that UK farmers were still experiencing the sort of unfair practices the Competition Commission had sought to eliminate.

Supermarkets have also been criticised for their unethical treatment of overseas suppliers, who are also supposed to be protected by the Code. This has knock on effects as prices are squeezed further down the supply chain. For example, price cuts have had serious effects on the livelihoods of banana plantation workers. A properly enforced Supermarket Code of Practice, together with stronger corporate accountability legislation [1], is needed to ensure fair trading *at a global level*. Whether suppliers are in the UK or overseas the alliance is concerned that unreasonable trading terms can make it harder for suppliers to raise environmental or animal welfare standards or improve workers' conditions. If smaller suppliers go out of business there is ultimately a reduction in choice, as recognised by the Competition Commission in 2000.

The alliance is calling for the Code to be strengthened because:

- The existing Code is too weak and ambiguous
- Supermarkets are breaching the existing Code without sanctions
- Suppliers and farmers are fearful of bringing complaints forward

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Backing for a new Code has also come from the Competition Commission's report on the Safeway merger [2]. Industry experts and academics have backed the need for a retail regulator and the Environment, Food and Rural Affairs Committee (EFRA) report on 'Gangmasters' also acknowledges the weakness of the Code [3]. A stronger Code of Practice would address some of the ways in which supermarkets abuse their powerful position in the market and the appointment of an independent watchdog would provide the means by which wider impacts of supermarkets' power can be monitored and investigated on a regular basis.

Background

A Supermarket Code of Practice was introduced in 2002 to redress the imbalance in power between the big supermarkets and their suppliers. In 2000 the Competition Commission recognised that the multiple food retailers engaged in unfair trading practices and that when this was carried out by the biggest supermarkets (defined as those with more than eight per cent market share), this way of doing business operated against the public interest by reducing choice and quality of goods. Tony Blair said that supermarkets had farmers in "an armlock" [4] at the height of the foot and mouth crisis and the Government's Strategy for Sustainable Farming and Food recognised the need to redress the power imbalance between farmers and retailers. Although most of the discussion has focused on UK suppliers, the Code legally applies to suppliers anywhere in the world.

The biggest five supermarkets currently control more than 70 per cent of the grocery market in the UK [5]. The market leader Tesco controls 25.8 per cent. The Government's decision to allow greater concentration in the grocery market by clearing Morrisons to bid for Safeway will exacerbate this problem, leading to further weakening of the position of farmers and other small suppliers, the alliance believes. Other major supermarkets will also have the opportunity of increasing their market share by buying the 53 stores that Morrisons is required to sell by the Competition Commission if it buys Safeway. Greater concentration of market share tips the balance of power even further towards the retailers and away from suppliers and farmers.

The alliance believes the biggest supermarkets are also abusing their economic power in the way they treat suppliers. For example they have used predatory pricing practices with which smaller independent stores cannot hope to compete. In the five years between 1997 – 2002 specialised stores including butchers, bakers, fishmongers and newsagents closed at the rate of 50 per week [6]. The short term pursuit of the cheapest prices on a limited range of items is not in the long term interests of consumers, especially those without cars who find themselves without accessible local shops.

WHY A STRONGER SUPERMARKET CODE OF PRACTICE IS NEEDED

Since the Code was introduced, it has been strongly criticised for being too weak. The Code was much vaguer than the version recommended by the Competition Commission in their 2000 report. Evidence from a survey of farmers carried out jointly by Friends of the Earth and farming organisations in early 2003 [7] showed that the Code had made no difference to how the supermarkets did business with them (see below). Suppliers were also asked about the Code of Practice by the Competition Commission (CC) in connection with the Safeway merger inquiry. The CC reported that overall the responses indicated that suppliers "*believed the Code to have had little, or even a slightly negative, effect*". In addition large suppliers asserted that supermarkets were in breach of the Code and that "*because of its ambiguities it was a factor in causing behaviour it was*

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intended to curb” [8]

A major criticism of the Code is its ‘weasel wording’. Instead of setting out clearly a list of prohibited practices the Code is full of references to “reasonable” behaviour. As pointed out by one supplier *“if you are a small supplier negotiating with a retailer who has more than 15% of the market, you can bet it’s not you who defines what is ‘reasonable’” [9].*

This vagueness could explain the lack of complaints submitted to the OFT (no farmers have complained). This is also a clear indication that suppliers and farmers are fearful of reprisals from the supermarkets and simply do not have any faith in the complaints procedure (see below). As the British Independent Fruit Growers Association points out *“a complaint today will mean delisting tomorrow” [10].*

Survey of farmers and the Code of Practice

Friends of the Earth, with the support of farming and public interest organisations, carried out a survey of farmers in February 2003 to find out how farmers are faring under the Code and in general under current market conditions; 161 farmers responded.

- Less than half of the respondents (44%) were aware that a Code of Practice had been introduced in March 2002, and out of those that were aware, most had not seen a copy.
- More than half of the farmers who responded (58%) did not think that the Code of Practice had made any difference to the way in which supermarkets did business with them.
- All four supermarkets currently bound by the Code of Practice (Asda, Safeway, Sainsbury and Tesco) were named by farmers in connection with practices which are identified as being of concern by the Competition Commission.
- Specific practices mentioned by farmers, and which had been highlighted as a concern by the Competition Commission, included being asked to pay a rebate on an agreed price, waiting over 30 days for an invoice to be paid, incurring additional transport or packaging costs due to changes in supermarket specifications and meeting the cost of unsold or wasted products where quality of the product was not an issue.
- There is strong support from respondents for new legislation to prohibit the unfair trading practices of the supermarkets, and for an independent regulator to oversee the way in which supermarkets do business with their suppliers.
- About a third (34%) of respondents who had experienced problems supplying supermarkets said that ‘fear of delisting’ was their reason for not complaining.

WHY A RETAIL REGULATOR IS NEEDED

Under the current arrangements suppliers must first take their complaint to the supermarket. Suppliers are either afraid of doing this for fear of delisting, or they simply think it will not change anything. The Policy Commission on the Future of Farming and Food (the ‘Curry Report’) [11] recommended that the current dispute resolution process should be replaced by an independent mediation service.

There clearly needs to be an independent regulator suppliers can complain to in confidence about breaches of the code. This body should also proactively monitor the code by approaching suppliers and regularly publishing the results of all investigations, including naming the guilty retailers. The regulator must have the trust of suppliers.

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Because of the known abuses of power in the grocery market, the Retail Regulator should be appointed specifically to monitor and investigate the behaviour of the major supermarkets. However if abuses of power are found in other retail sectors the remit of the Regulator could be widened.

CALL FOR A STRONGER CODE OF PRACTICE AND A RETAIL REGULATOR

The organisations (and individuals) listed above call on the Government to:

Strengthen the Code of Practice in line with the original recommendations of the Competition Commission, and either include definitions of what is reasonable or remove such wording and specify what does and does not comply with the Code.

Impose the new Code on the supermarkets rather than invite further undertakings from companies.

Require supermarkets to inform all their suppliers worldwide about the Code and to issue them with copies of the Code.

Ensure that the new Code of Practice applies to farmers and producers who supply supermarkets via an intermediary such as a wholesaler or livestock market and ensure that the farmers are informed of which supermarket they are supplying by intermediaries.

Appoint an independent Retail Regulator to:

- Monitor compliance with the Code, including regular proactive liaison with suppliers, including overseas suppliers, who may be afraid to come forward with complaints.
- Review the effectiveness of the Code on a regular basis and make recommendations for changes to the Code or alternative mechanisms when problems are found
- Investigate and make recommendations about the desirability of extending the Code to other retailers (eg. supermarkets with less than eight per cent market share/other major non-food retailers) and intermediaries
- Report the outcome of all investigations to the public.

The Regulator must have the power to take legal action against, and require financial compensation from companies that breach the Code

The Regulator must be adequately resourced to monitor compliance with the Code including with respect to overseas suppliers and to carry out its wider duties.

The Regulator should also have a wider role in monitoring the grocery market. The Government would need to consult stakeholders on the proposed remit of the regulator which may for example include investigating price issues (eg. unreasonable mark up from farm gate to retail price), making policy recommendations to Government and references to competition authorities about other aspects of retail behaviour.

[1] Friends of the Earth is part of the CORE coalition which is campaigning for a Corporate Responsibility Bill that would make companies more accountable to their customers and the societies and environments in which they operate, see www.corporate-responsibility.org

[2] Competition Commission, 2003, Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc); Wm Morrison Supermarkets PLC; J Sainsbury plc; and Tesco plc: A report on the mergers in contemplation

[3] Environment, Food and Rural Affairs Committee, 2003, Gangmasters, Fourteenth Report of Session 2002-2003

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- [4] In March 2001 Tony Blair told farmer that *"the supermarkets have pretty much got an arm-lock on you people at the moment"*
- [5] TNS Superpanel Grocers Share of Trade, 12 weeks to 12th October 2003
- [6] New Economics Foundation, 2003, Ghost Town Britain II Death on the High Street
- [7] www.foe.co.uk/resource/briefings/farmers_supermarket_code.pdf
- [8] Competition Commission, 2003, Safeway plc and Asda Group Limited (owned by Wal-Mart Stores Inc); Wm Morrison Supermarkets PLC; J Sainsbury plc; and Tesco plc: A report on the mergers in contemplation – see chapter 6 'Relationships with suppliers'
- [9] The Grocer, 2002, "No cracking under code", 7th September
- [10] British Independent Fruit Growers Association, submission to the Office of Fair Trading, March 2003
- [11] Policy Commission on the Future of Farming and Food, 2002, Farming and Food, a sustainable future

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