

Dear Tim Oyler,

We welcome the opportunity to contribute to your consultation by the Competition Commission on the workings of the market for the supply of groceries by retailers in the UK. Please consider this letter as merely an outline of our areas of concern. We have substantial experience working with small enterprises and have conducted considerable analysis of the reasons behind the success and failure of local economies. We would, of course, be available to further elaborate on any of the points in this letter and have published a number of reports on the issue which we would consider relevant.

While we are relieved that the OFT believes that there is sufficient evidence of distortions in the market to warrant a full inquiry, we would urge strongly that the field of inquiry covers more than simply retail pricing and the specific factors that lead to pricing policy by supermarkets.

We believe that the scope of your investigation should be broadened to include the local economic, social and environmental impact of the big supermarkets. In previous inquiries the extra value that small, independent and genuinely local shops provide in terms of economic benefit, environmental distinctiveness and the social glue that holds communities together has not been assessed. The consequence has been an unrealistically narrow definition of consumer interest. In this circumstance, the prices at which supermarkets sell to consumers has been used as justification for inaction against a range of their anti-competitive practices. This, and the fact that supermarket prices are generated, in part, by the unfair externalization of costs creates an in-built bias in favour of the large supermarkets. In this light we would like you to include for your consideration:

- The choice available to consumers – which is not adequately measured simply by the number of different products, which may simply be small variations on a few lines. We believe there is evidence that supermarket groups are limiting suppliers in what they are able to sell to the corporate retail chains, and by substantially reducing the numbers of suppliers – a point strongly made by the last Competition Commission report – reducing the choice in terms of quality, price, variety and environmental impact of food, to consumers.
- The choice of where to shop. Proven 'predatory pricing' tactics, the accumulation of land bank sites, the move into convenience stores, have all effectively reduced choice for consumers in terms of the nature, ownership and scale of retailer available to them.
- The imbalance of power in the planning process. We are concerned that the legal muscle of supermarkets is simply too great for local community-based campaign groups, concerned civil society organisations and, crucially, for many local authorities to contemplate taking on. We would urge the Commission to examine in detail the situation in Sheringham in Norfolk,

where the local authority has been unable to contemplate possible legal fees of £1million if they decided to withdraw planning permission to Tesco, following revelations of secret agreements with former council officials.

In the Commission's previous report on supermarkets of 2000, many of the problematic issues raised by the OFT, and more besides, were already apparent. The retail grocery market was already highly concentrated and you reported on widespread pricing practices and behaviour towards suppliers that was anti-competitive and against the public interest. In urging the Commission to be robust and wide-ranging in its examination of a truly open market, we cannot do better than quote the 2000 report. This section, more than any other, indicates the problem which must be tackled by this inquiry:

"Most suppliers were unwilling to be named, or to name the main party that was the subject of the allegation. There appeared to us to be a climate of apprehension among many suppliers in their relationship with the main parties. We therefore put a list of 52 alleged practices to the main parties and asked them to tell us which of them they had engaged in during the last five years. We found that a majority of these practices were carried out by many of the main parties. They included requiring or requesting from some of their suppliers various non-cost-related payments or discounts, sometimes retrospectively; imposing charges and making changes to contractual arrangements without adequate notice; and unreasonably transferring risks from the main party to the supplier. We believed that, where the request came from a main party with buyer power, it amounted to the same thing as a requirement.

We conclude that five multiples (the major buyers—Asda, Safeway, Sainsbury, Somerfield and Tesco), each having at least an 8 per cent share of grocery purchases for resale from their stores, have sufficient buyer power that 30 of the practices identified, when carried out by any of these companies, adversely affect the competitiveness of some of their suppliers and distort competition in the supplier market—and in some cases in the retail market—for the supply of groceries. We find that these practices give rise to a second complex monopoly situation.

These practices, when carried on by any of the major buyers, adversely affect the competitiveness of some of their suppliers with the result that the suppliers are likely to invest less and spend less on new product development and innovation, leading to lower quality and less consumer choice. This is likely to result in fewer new entrants to the supplier market than otherwise. Certain of the practices give the major buyers substantial advantages over other smaller retailers, whose competitiveness is likely to suffer as a result, again leading to a reduction in consumer choice."

We consider that the situation was unacceptable in 2000. But the situation is now even less acceptable given subsequent, further market concentration and the persistence of anti-competitive practices regarding (but not limited to) pricing and supplier relations. The failure of previous remedial action in response to the 2000 report, such as the Code of Practice, provides still further cause for concern. As a direct result of a monopolistic situation has grown up in the grocery sector, in which the intimidation of suppliers is evident. We consider that suppliers' consequent fear of being named and unwillingness to take advantage of complaints procedures under the code is not evidence that such practices do not take place.

We have carried out some research about the impact of retailing on local money flows, and on comparative pricing – especially involving local markets, when tend to

be cheaper than the Big Five – which we would happily enlarge on to your Inquiry, and on other related issues that go beyond narrow price to the social, economic and political impact of the current anti-competitive situation.

We would like you to include the following points in your considerations, any of which we can enlarge on in greater detail:

1. We consider the enormous loss of local independent stores since the last Commission investigation to be prima facie evidence of there being distortions in the market.

The fact that surviving small independent retailers are seeing improved sales is evidence of the public demand for them, and that they are taking the place of those which have been lost. As there is no consumer rejection of small independents –the cause for their decline is therefore primarily the market power (and all that entails) of the large operators.

The threatened tipping point that will see the further dramatic decline of independents, to the great detriment of consumers, is clearly approaching, and it is up to the Commission to take action to prevent it, and maintain a diverse market, open to all. .

2. It is now quite clear that the distortions are caused partly by an artificial distinction between the national market and convenience shopping, which takes no account of different shopping styles competing with each other for business.

This can only benefit the biggest players, by allowing them to use the advantages of power over the supply chain and the other built-in advantages with suppliers and landlords to drive out smaller competitors, and to prevent new competitors emerging.

The fact that they also use predatory pricing and supplier funded promotions to target and undermine specific competitors is also significant. That alone, however, is insufficient to explain the enormous collapse in local competitors.

3. In spite of claims to the contrary – the current behaviour of supermarkets is not necessarily giving the best price to consumers (and that price is too narrow a criteria to assess consumer interest – see point 4 below)

Comparisons of local market produce with local outlets of the major multiples demonstrates that there is now a considerable gap between the prices charged by the Big Five with those charged in fruit and vegetable markets. These can be more than a third lower. In some cases the false perception of better value from supermarkets is leading to potentially perverse planning decisions – such as local council support in Newham, London, to favour the building of an Asda/Walmart branch on the site of a successful, and cheaper for produce, local street market.

4. We consider that the Commission was correct to pinpoint eight per cent as the market share beyond which buyer power can distort the market.

The Commission must see the logic of its own conclusion in 2000, with the Big Four enjoying considerably larger shares of the market, nationally,

regionally and locally. It is incorrect to argue that this situation is not causing damage to consumers. In some circumstances it does mean higher prices (although in others, supermarkets are able to undercut smaller competitors by unfairly externalising their costs, for example by using their buyer power to pressure suppliers into funding in-store product promotions). But, vitally, price is not the only interest that consumers have.

They have an interest that what they buy is of good quality and that there is choice. And consumers also have an interest that the planning system should protect their local environment and that their local shops continue to make their disproportionately positive contribution to underpinning social cohesion. In this broader definition of consumer interest, there has been a failure to compare like with like. Over-emphasis on price fails to recognize the less visible benefits that consumers get from smaller, independent retailers, such as the environmental benefits of local distinctiveness and community benefits of social glue.' The narrow consumer – only interested in price and nothing else – is a fantasy figure, who does not exist in real life. It is a self-serving invention of major supermarkets.

5. We consider that, for the purposes of this investigation, the definition of groceries is too limited.

The centrally planned nature of the big four supermarkets, taken together with modern patterns of shopping suggest that at least (but not limited to) where these goods are concerned it would make sense to extend the definition of groceries to include them (or to suggest another more useful collective term): pharmaceuticals, newspapers magazines, CDs, DVDs, videos and audio tapes, plants, flowers, books.

6. The tacit acceptance of such market distortions is having a knock-on effect in other markets, and is providing an apparent justification for dangerous consolidation – for example in the high street book trade and pharmacy trade.

If supermarkets were not allowed to sell the bestselling book titles at predatory prices, there would have been little justification for allowing HMV to take over Waterstone's, with the consequent distortions on the bookselling market which are already starting to constrain the range of what publishers feel able to publish in the UK.

Suggestions that small independents must combine their buying power together to compete with monopolistic buying by the big multiples is another example of that. Forcing all small independent survivors to buy in similar ways is precisely the kind of distortion that unregulated monopolies force.

7. The OFT's reasons show a complacent disregard for the real situation in many parts of the UK.

"A consumer wishing to purchase a basket of groceries will often enjoy a choice of a variety of stores from which to do so, including a large supermarket, the home delivery services operated by a number of supermarket groups, a number of medium-sized stores and a number of convenience stores..." In practice, of course, many communities in the UK do not have that choice – and would have that choice, for example, if the big four were, at least, the big ten.

Nor is it acceptable to assume that all consumers have access to a car. To do so would be to lock in a situation which is blatantly unfair to older and poorer people.

8. We believe that, since the current situation is quite clearly distorting the market, undermining local choice of stores, providing the most enormous advantages to a handful of large operators, the Commission must urgently consider:

- Insisting that the dominant supermarket groups sell their convenience store businesses, and to guarantee competition by selling them to a range of different competitors.
- Act to ensure the outlawing restrictive covenants on land and forcing the sale of land banks.
- Act to ensure the break up those supermarket groups that have most abused their monopolistic positions, to return the market to proper competition and – at the same time – enormously assisting regeneration efforts in marginal towns. And, in doing so, to take account of their own conclusion that an 8 percent market share is sufficient to exert abusive buyer power.

Yours sincerely

Andrew Simms
Policy director