

Groceries Investigation  
Competition Commission  
Victoria House  
Southampton Row  
London WC1B 4AD

Friday 2 June 2006

**Ref: CC//InqSec(2)/Groceries/150-06**

Dear Mr Oyler,

Thank you for this opportunity to provide information relevant to the Competition Commission's inquiry into the UK supermarket sector.

We welcome the Office of Fair Trading's decision to conduct a market inquiry, and are encouraged by the statement in the OFT's report that it "anticipates that the CC will, in carrying out its investigation, also wish to consider supermarkets' relationships with their suppliers and supermarkets' conduct in relation to the selling of non-grocery products."<sup>1</sup>

ActionAid feels strongly that the inquiry should include the supermarkets' dealings with suppliers based in developing countries, including suppliers of non-grocery items.

If the inquiry focuses on buyer power issues in relation to UK-based grocery suppliers only, it will exclude a large proportion of the relevant market, ignore important changes and trends in the UK's increasingly globalised supermarket sector, and will fail to cover the breadth and depth of the supermarkets' influence on UK consumers and overseas suppliers, to whom the Supermarkets Code applies.

Although precise figures are not easily available, UK supermarkets import billions of pounds-worth of products from suppliers based in developing countries, including large volumes of fruit, vegetables, flowers, meat, poultry, wine, clothes, toys, homeware and other goods. This in itself would appear to be a good reason to include overseas suppliers in the inquiry.

Furthermore, submissions to the OFT by a number of anti-poverty groups provide evidence that UK supermarkets continue to exert buyer power against suppliers based in developing countries, including breaches of the Supermarkets Code of Practice, leading to distorted competition in upstream markets and in the UK retail sector, with potentially negative effects for UK consumers.

The OFT has stated this evidence is anecdotal and not adequately backed up. However, we believe sufficient evidence has been provided to warrant further investigation by the CC, which – unlike the groups that conducted the initial research – has the authority and resources to carry out an in-depth investigation.

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<sup>1</sup> The grocery market: the OFT's reasons for making a reference to the Competition Commission

As such, we urge the CC to ensure the inquiry will examine the supermarkets' buyer power in relation to **suppliers based in developing countries, including suppliers of non-grocery items** such as clothing and flowers.

To this end we ask you to consider the following points in particular:

**1. The Supermarkets Code of Practice covers suppliers based outside the UK**

The OFT's decision report ('The grocery market: the OFT's reasons for making a reference to the Competition Commission') confirms that the Supermarkets Code of Practice applies to overseas suppliers. It also points out that many overseas suppliers are unaware of the Code and who or what it applies to.

**2. UK supermarkets continue to engage in anti-competitive practices against overseas suppliers, including violations of the Supermarkets Code of Practice**

Submissions to the OFT's Supermarkets Code of Practice review in 2005 made by the civil society groups ActionAid, Banana Link, Oxfam and Traidcraft presented evidence that UK supermarkets have continued to engage in anti-competitive buying practices with overseas suppliers, including some that breach the Supermarkets Code.

The OFT's decision report notes that this evidence is anecdotal. However, we wish to point out that:

- 1) ActionAid believes the evidence presented by civil society groups to the OFT is sufficient to warrant further investigation by the CC into the impacts of supermarket buyer power on suppliers based in developing countries, including suppliers of non-grocery products;
- 2) the groups who conducted the research do not have the authority or resources to conduct an in-depth investigation into misuses of supermarket buyer power, and have limited resources to assist suppliers in bringing cases; and that
- 3) the research was carried out partly in order to establish whether there are grounds for further investigation by authorities with the responsibility and resources to do so.

Note the evidence comes from only a small sample of countries compared to the number of countries UK supermarkets source goods in. Selected excerpts from these submissions to the OFT follow, and all the examples refer to overseas suppliers' dealings with UK supermarkets:

- **Price cuts without reasonable notice:** reductions in the prices paid to suppliers for bananas by most of the major UK supermarkets do not appear to have been negotiated but imposed instantly.<sup>2</sup> Another example comes from one South African apple farmer: "The thing with the fruit is that they have a projected price. Then a month later that is down: the price is down because of the [price] war, because there is too much fruit, whatever."<sup>3</sup>
- **Orders changed or terminated without reasonable notice:** agreement was reached by a UK supermarket and the supplier Traidcraft Exchange, including new line forms correctly submitted on time. Significant stock volumes were ordered but then the listing did not happen.<sup>4</sup> Another example comes from a South African wine producer: "They'll just drop you. Actually they don't really drop you they drop the label. Now we've got three years' of Shiraz and no market for it."<sup>5</sup>

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<sup>2</sup> Banana Link, submission to OFT, March 2005, page 5

<sup>3</sup> Oxfam GB, submission to OFT, June 2005, page 2

<sup>4</sup> Traidcraft submission to OFT, May 2005, page 2

<sup>5</sup> Oxfam GB, submission to OFT, June 2005, page 6

- **Threats to de-list:** one South African fruit farmer stated: “A buyer from Tesco picks up the phone and says [supplier X] is offering me apples for £1 a carton cheaper; meet him or I take you out of the programme.”<sup>6</sup>
- **Absence of written contracts:** a South African producer of high-end wine stated: “The business doesn’t have contracts; it’s all based on gentleman’s agreement. They [the supermarkets] are obviously in a better bargaining position. They dictate terms.”<sup>7</sup>
- **Excessive post-delivery time for payment:** one South African apple farmer stated: “payment terms for the supermarkets are 120 days, which is way too long – we want 14 days maximum. It’s always difficult to get money out of them. So we sell to someone else who will pay upfront, though you do lose the commission.”<sup>8</sup>
- **Raising requirements and forcing suppliers to meet the costs:** Tesco asked its suppliers to deliver bananas on wheeled trolleys instead of pallets, thereby reducing costs for the supermarket. It appears Tesco’s suppliers were required to pay for the new trolleys, which also took up more space in lorries and increased transport costs for suppliers.<sup>9</sup> A South African grape producer stated: “[Supermarket X] wanted us to change their grape packaging from open to sealed bags. The new bags were three times as expensive – from 2.8 rand to 8 rand per carton. And the productivity in the packhouse went through the floor because it took workers twenty to thirty percent longer to seal those bags. But the price stayed exactly the same – it wasn’t even discussed. And then the other supermarkets all demanded it too.”<sup>10</sup>
- **Agreeing the value of products after they have been delivered:** a South African avocado producer stated: “Currently, market prices, which are set while the avocados are being shipped, are extremely problematic for farmers who, having shipped, have no bargaining position. Under the current pricing structure, [supermarket X] is not provided with any proof of the price that the agent receives from the supermarket. He is only aware of the selling price once his payment arrives in South Africa, as told to him by the agent.”<sup>11</sup>
- **Attempts to restrict suppliers from selling to other supermarkets:** a Chilean fruit supplier stated: “[UK supermarkets] are interested exclusively in their own business, they do not want me to sell to another supermarket: either I sell to him or I sell to him. If I want to sell to another supermarket, I hear: “Well, then stay with them.”<sup>12</sup>
- **Cartel-like behaviour:** the Big Four do not collude to fix the retail price of bananas, but act in a way that is virtually indistinguishable in its consequences by cutting banana prices to the same or virtually the same price within hours of each other, then demanding that suppliers shoulder the cost.<sup>13</sup>

### 3. The market inquiry should include suppliers of non-grocery items

UK supermarkets are using their existing position of market power in groceries to move into the garments sector. Asda, Marks & Spencer and Tesco now control a large share of the product market: almost one-third of the UK’s clothing retail market by volume.

<sup>6</sup> ActionAid, submission to OFT, May 2005, by email

<sup>7</sup> Oxfam GB, submission to OFT, June 2005, page 6

<sup>8</sup> Oxfam GB, submission to OFT, June 2005, page 3

<sup>9</sup> Banana Link, submission to OFT, March 2005, page 5

<sup>10</sup> Oxfam GB, submission to OFT, June 2005, page 5

<sup>11</sup> Oxfam GB, submission to OFT, June 2005, page 2

<sup>12</sup> Oxfam GB, submission to OFT, June 2005, page 3

<sup>13</sup> Banana Link, submission to OFT, March 2005, page 4

There are indications that the entry of the supermarkets into the 'value' end of the clothing retail sector has led to the collapse of several discount clothing companies, including the Ethel Austin and QS/Bewise chains, and there are concerns about the negative effects of the supermarkets' entry into this sector on other retailers such as Matalan.<sup>14</sup> Asda enjoys a 20.5% share of this market by value, and Tesco 12.1%.<sup>15</sup> The latter's clothing sales are increasing in double digits.

However, ActionAid believes the investigation should not be confined only to the supermarkets' non-grocery sales and their impact on the retail market, and that it should also cover the effects of the supermarkets' buyer power on non-grocery suppliers, including suppliers of non-grocery products based in developing countries.

UK supermarkets buy large volumes of clothing from suppliers in developing countries (for example, Bangladesh), and rigorous studies have shown that retailers use their position of market power to engage in irresponsible buying practices against such suppliers. As in the market for groceries, these practices distort competition in the upstream stages of the supply chain, and are likely to distort competition at the retail level. They include:

- Delisting suppliers without reasonable notice
- Price cuts without reasonable notice
- Changing and delaying orders without extending shipping deadlines
- Restricting suppliers from selling to other supermarkets
- Demanding improvements in labour conditions without making the adjustments to price or delivery time required.<sup>16</sup>

#### **4. Irresponsible supermarket buying practices have negative impacts on poverty levels in developing countries**

Reports by ActionAid and Oxfam,<sup>17</sup> as well as a number of academic studies,<sup>18</sup> show that the pressures on suppliers generated by supermarket buyer power are often passed on to vulnerable farm and factory workers, the majority of them women, in the form of lower pay, excessively long hours, forced overtime, increased use of temporary contracts, and dangerous working conditions. Other academic research shows that supermarket purchasing practices also raise barriers to entry for small-scale primary producers in developing countries, and increase their livelihood insecurity.<sup>19</sup>

The OFT's decision report recognizes that the higher levels of market concentration in the UK supermarket sector since the 2000 CC report has led to greater power imbalances between supermarkets and their suppliers. This consolidation unquestionably leaves a declining share of value for the upstream participants in supermarket supply chains, including primary producers and agricultural labour in the developing world. Bernard Cornibert, CEO of the Windward Islands Banana Development and Exporting

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<sup>14</sup> Labour Behind the Label, submission to OFT, March 2006, page 2

<sup>15</sup> Mintel, Value Clothing Retailing, May 2005

<sup>16</sup> Oxfam (2004) 'Trading away our rights: women working in global supply chains', Oxford: Oxfam; Peter Gibbon (Centre for Development Research, Copenhagen), 'At the cutting edge? UK clothing retailers global sourcing patterns and practices and their implications for developing countries', paper presented at the Global Labor Standards and Living Wages Working Group Meeting, Political Economy Research Institute, April 19-20, 2002

<sup>17</sup> ActionAid (2005) 'Rotten fruit: Tesco profits as women workers pay a high price', London: ActionAid; Oxfam (2004) 'Trading away our rights: women working in global supply chains', Oxford: Oxfam

<sup>18</sup> Dolan, C & Sorby K (2003) 'Gender and employment in high-value agriculture industries', Washington: World Bank; Barrientos, B & Kritzing, A (2003) Squaring the circle: global production and the informalization of work in South African fruit exports', *Journal of International Development* 16 (1) p81-92

<sup>19</sup> Vorley, B & Fox, T (2004) 'Concentration in food supply and retail chains', working paper 13 for the Renewable Natural Resources and Agriculture Team, DFID; Tsutomu, T (2004) 'Smallholders and non-traditional exporters exports under economic liberalization: the case of pineapples in Ghana', *African Study Monograph* 25 (1) p29-43

Company, states that high levels of concentration at the retail stage of the supply chain for bananas – Britain’s top selling fruit – is leading to a “perverse transfer of wealth, by some of the supermarkets, from farmers and farm workers of developing countries to the consumers of developed countries.”<sup>20</sup>

## 5. An improved Supermarkets Code of Practice enforced by a proactive regulator is needed

The Supermarkets Code of Practice should:

- **Be extended up the supply chain to cover primary producers overseas:** as stated above, the Supermarkets Code applies to overseas suppliers. However, most supermarkets do not buy direct from overseas suppliers but purchase through a UK importer or intermediary. In such cases, the Code will apply to the supermarket’s dealings with the intermediary but it will not apply to the intermediary’s dealings with the overseas supplier.

To overcome this disconnect, the solution would be to persuade the supermarkets that in their contracts with intermediaries they will require the intermediaries to apply the same terms as the Code in *their* dealings with suppliers, and to require all the suppliers and intermediaries up the chain of supply to apply the same terms so that they are applied right back to the primary producer.

This would require no legislation – just pressure from the OFT to make this easy extension to the Undertakings given following the 2000 Competition Commission report.

- **Include a confidential complaints procedure and be enforced by a proactive regulator:** the introduction of a proactive regulator (i.e. one that performs random checks) would go a long way to solving the problem of suppliers’ fears of bringing complaints. The supplier must be able to make the initial complaint on a confidential basis, and there should also be a sufficient degree of post-hearing protection for suppliers against them being mistreated (e.g. de-listed) for bringing the complaint.
- **Be re-worded:** the current wording is so vague that it would be very hard to prove a breach of the Code, even if a supplier had the confidence to bring a complaint forward.
- **Be made statutory:** changes to the Code must then be put on the statute books. The Secretary of State for Trade and Industry has the powers to do this under the 1973 Fair Trading Act, without having to go through Parliament.
- **Apply to all the major supermarkets**

ActionAid believes that the evidence for the supermarkets’ misuse of buyer power against overseas suppliers gathered by civil society organisations and academics is more than enough to warrant further investigation of the supermarkets’ dealings with suppliers based in developing countries, including suppliers of ‘non-grocery’ items to supermarkets such as clothing and flowers.

Yours sincerely,

Dominic Eagleton

Policy Officer

ActionAid UK, Hamlyn House, MacDonald Rd, London N19 4NA

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<sup>20</sup> Eurofruit Magazines, April 2004