



**FPB response to the Competition Commission
investigation into the supply of groceries
by retailers in the UK**

June 2006

What is the FPB?

The FPB (Forum of Private Business) was formed in 1977 and is a pressure group fighting on behalf of private businesses. The FPB represents approximately 25,000 UK-based businesses employing in excess of 600,000 people, and is a powerful lobbying voice in both the UK and the European Union.

The FPB, as the only full UK member of UEAPME – the organisation which represents small and medium-sized enterprises (SMEs) in Europe – is the most prominent advocate of UK SMEs in Brussels and has a track record of positively affecting legislation prior to its introduction in the UK.

The FPB also provides a range of business services aimed at increasing member efficiency and profitability.

FPB research

All of the FPB's campaigns are based on the views of our members. We survey businesses by mail, over the telephone and face-to-face. We also collect data electronically, which enables us to source opinions from hundreds of businesses within a matter of hours.

The FPB works to bring businesses together with their own elected representatives. Members vote in a quarterly Referendum, adding comments for us to send to their MPs, MEPs, MSPs and AMs. Referendum is a tool that business owners have been using since 1977 to make their voices heard.

The FPB has more than 20 years' worth of experience of accredited research into the small business community. We have been using the Quarterly Survey since 1980 to track business growth, and the rise and fall of key issues, working in partnership with the Small Business Research Trust.

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General comment

As an organisation representing members across all sectors of the business spectrum, the FPB is in a strong position to assess the pressure on business in general. It is clear to the FPB that businesses in the retail sector and retail supply chain suffer a disproportionate amount of unfair competition.

The FPB welcomes this investigation as a result of the Office of Fair Trading's (OFT's) report into the grocery market. However, the investigation needs to place more emphasis on the unequal relationship between supermarkets and their suppliers.

The OFT highlighted a number of concerns including the planning system, land banks, unfair advantages through buyer power, below-cost pricing and the influx of the smaller outlets of bigger stores into the territory of the high street, but we felt it fell short of the serious issue of supplier treatment. This investigation must open channels of anonymity for suppliers to come forward and give evidence in confidence on the way in which the supermarkets are treating them.

The origin of this unfair competition stems from the demands of the 'retail giants' and the current regulatory and fiscal structure. It is true that retail businesses would have been under strong competitive pressure in any case, however, it seems iniquitous that the legitimate competition pressure should be compounded by unfair competition and a distorting regulatory environment.

Small shops are the very lifeblood of our community, providing job opportunities and vital services to local people, particularly those without transport such as the elderly and the disabled. With analysts predicting that Britain will have lost a third of its local neighbourhood shops by 2010, we cannot escape the reality that there is a crisis right here and now in Britain's towns, villages and cities.

The OFT has identified a number of features of the market which could be suspected of distorting competition and, in the case of some of the features, harming consumers. The structure of this response highlights the concerns of the FPB's members into these categories.

The FPB urges the readers of this submission to read and understand the concerns outlined and to take action. It is imperative that we act now to save our small retailers from having to permanently shut up shop.

1. Buying power of the big supermarkets

The concerns listed below highlight the consequences of the supermarkets becoming too dominant in the marketplace:

Imposition of extended payment periods

The *Guardian* newspaper reported on 3 March 2005 that about 100 suppliers had complained after Sainsbury's wrote to 1,400 suppliers to inform them it would now pay suppliers up to four weeks later than previously agreed. A Sainsbury's spokesperson confirmed to the newspaper that the terms were non-negotiable.

Sainsbury's claimed this move was prompted by the fact that other leading supermarkets are paying smaller suppliers late, therefore giving them the competitive advantage. This ignores two issues, firstly that the payment terms agreed will often have been negotiated with Sainsbury's taking other advantages on perhaps price, quality or security of supply. Secondly, we believe that this unilateral move may breach the requirements of the Late Payment Act.

Other unfair practices

- Some suppliers are still being charged loyalty payments – also known as slotting fees – for shelf space, in spite of denials by supermarkets; failure to pay can mean a lost contract.
- Fees charged for artwork and repackaging of a supplier's products are enforced by the supermarket, not negotiated.
- Supermarkets insist on approving any public statements or press releases by suppliers.
- Renegotiation of contracts is not always determined by price and quality of service – evidence has been given that contracts can be awarded to a supplier's competitor simply to remind the original supplier of the supermarket's power.
- Retrospective rebates being imposed on smaller suppliers without negotiation.

2. Pricing behaviour

Price establishment

In November 2004, the FPB revealed that Tesco was misleading customers by raising prices on some items, only to cut them a few weeks later, thereby allowing stores to advertise far steeper reductions than would otherwise be the case. The most extreme example of this tactic was seen in Tesco alcohol sales. In early September 2004, the chain raised the price of a 24-pack of 330ml cans of Carlsberg Export lager from £11.98 to £24.99. Soon after, the price was 'cut' to £12.48, with the offer promoted as a 'half-price' sale. This price hike tactic, it has been reported, has been used on at least half a dozen types of beer.

Predatory pricing

It has been reported that the supermarkets have entered into predatory pricing, that is setting the price of their goods extremely low to eliminate competitors and prevent new businesses from entering into the marketplace.

In order to combat the buying power and pricing behaviour of the supermarkets, the FPB is campaigning to:

- Introduce an 'anonymity clause' allowing small suppliers to speak out against large supermarkets which are imposing unfair practices on them without their contract being compromised.

3. Planning and land holdings

a) The planning system

It is critically important that the supermarkets' treatment of the planning system and intimidation of cash-strapped councils is investigated. As a result of the financial incentives offered to councils, the FPB believes the supermarkets are in a more favourable position when submitting planning proposals. These payments for infrastructure make it easier for the supermarkets to dominate new developments in particular areas.

The cost and bureaucracy involved for smaller businesses in submitting planning proposals acts as a barrier to their growth. The excessive cost and regulations involved in the process have been cited as the top two concerns amongst small businesses deterring their expansion, thus limiting growth and prosperity.

The FPB believes that the current Barker review should work on improving the efficiency and speed of the system as well as increasing the flexibility, transparency and predictability that smaller businesses require. To achieve these goals, the FPB would like to see a small business planning application process containing all of the aforementioned attributes.

The FPB reacted with alarm to John Prescott's announcement in March 2005 (Planning Policy Statement 6: Planning for Town Centres) that he is to loosen the reins controlling out-of-town shopping centres.

While reasserting the Government's commitment to town centre regeneration, the document provides supermarkets and developers with the ammunition to override planning objections and build or expand their out-of-town sites on the basis of 'enhancing consumer choice', 'supporting efficient, competitive retail', 'improving accessibility' and 'improving productivity'.

The FPB is concerned by the move to urge local councils to pay greater attention to the business arguments of developers wanting to build retail parks.

The Government should be trying to encourage people back to town centres, not giving them reasons to stay away. The FPB urges local planning authorities all over the country to deny out-of-town planning permission to large retailers and the supermarkets. City centres – and the small businesses within them – must take priority.

b) Business rates

Business rates is a key barrier to business growth. The overriding concern that there is a significantly disproportionate liability in the payment of business rates between large and small businesses is still a major consideration for many private businesses. The FPB continues to advocate the fact that business rates relief based on the size of the business, rather than the premises it occupies, would be a far fairer method of calculating any relief.

c) Upward only rent reviews

The FPB believes upward-only rent review clauses should be outlawed because:

- They are inflexible and result in empty properties as rents rise above market values. This hampers regeneration, development and enterprise. It also represents a market failure.
- They guarantee an income to landlords regardless of the economic climate. This can put intolerable strain on smaller businesses as they trim their margins in order to afford rents that are above the market value of the property.
- They put smaller businesses at a competitive disadvantage as they cannot afford to occupy prime properties in high streets and business parks because of the impact of the clauses.
- By legislating against upward-only rent review clauses, the Government is likely to increase the success of its regeneration and economic development strategies.
- By getting rid of them, the Government would be providing a fairer and more competitive market for businesses.

d) Car parking

Reducing parking spaces and raising charges, a common policy amongst councils, discourages tourists and shoppers from visiting towns. Workplace parking taxes must also be fought. Employee retention and local job creation are crucial to smaller firms in particular and the impact of this scheme on such businesses is unknown.

The National Parking Adjudication Service found that the top local authority parking ticket issuers outside London are:

- Birmingham 175,925
- Brighton and Hove 160,546

- Manchester 131,374
- Liverpool 114,268

The FPB is campaigning for an increase in the number of parking spaces on 'brownfield' sites near train stations and main bus stops.