



**The relationship between supermarkets and suppliers:**

**What are the implications for consumers?**



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## **Introduction and summary**

Consumers are the final link in food supply chains which are increasingly international. The processes and dynamics operating along such chains affect consumers in both positive and negative ways.

Over at least 30 years, supermarkets in developed economies round the world have acquired an increasing share of grocery markets, and in doing so have increased their influence over suppliers – what food is grown and how it is processed and packaged – with impacts reaching deep into the lives and livelihoods of farmers and workers worldwide.

At national level in many countries, a large share of the grocery market is frequently in the hands of only a handful of supermarkets. One of the consequences of this concentration is a growing imbalance of bargaining power within food supply chains. The economic and social effects on producers and processors are increasingly recognised. However, the consequences of the power of supermarkets over their suppliers also affect consumers, through impacts on innovation, reduction of choice and higher prices. These effects are often overlooked. So too are impacts on the sustainability of consumption and production.

Supermarkets characteristically say that they merely respond to consumers' wants and that, if they get it wrong, consumers will go elsewhere. However, it can be argued that they also play a key role in shaping consumer demand and that, because of the power they wield in the marketplace, they have a strong influence over what consumers buy, and how and where they buy it. Supermarkets can be seen as gatekeepers rather than passive transmitters of consumers' wishes, and their gate-keeping role can work to the detriment of consumers and suppliers alike.

The argument is sometimes advanced that the new phenomenon of "multi-channel shopping" will curb the market power of supermarkets; that this is apparent not just in the rise of farm shops and direct marketing but also in the wider use of on-line distribution of food products by non-supermarket businesses. Some also hope that the increased use of social media will intensify the degree of public scrutiny of retailers and indeed of all major businesses. But such developments are relatively small in scale and will take time to gather pace.

This paper introduces some of the key issues concerning supermarket buyer power and explores the implications for consumers and suppliers. It finds that more analytical effort is required among competition authorities, academics and independent commentators to develop methods of measuring buyer power and its effects more accurately, both theoretically and in practice. Buyer power is, objectively, a complex and difficult issue.

The paper concludes that effective measures to prevent unfair business-to-business (B2B) commercial practices and the resulting detriments to both small-scale producers and consumers are urgently needed. Remedies should be based on a fundamental principle of fair dealing and should be enforceable and binding. All suppliers (in national, regional and global supply chains) should have effective recourse to protection. Consumer organisations have an important role to play in mitigating the negative effects of buyer power.

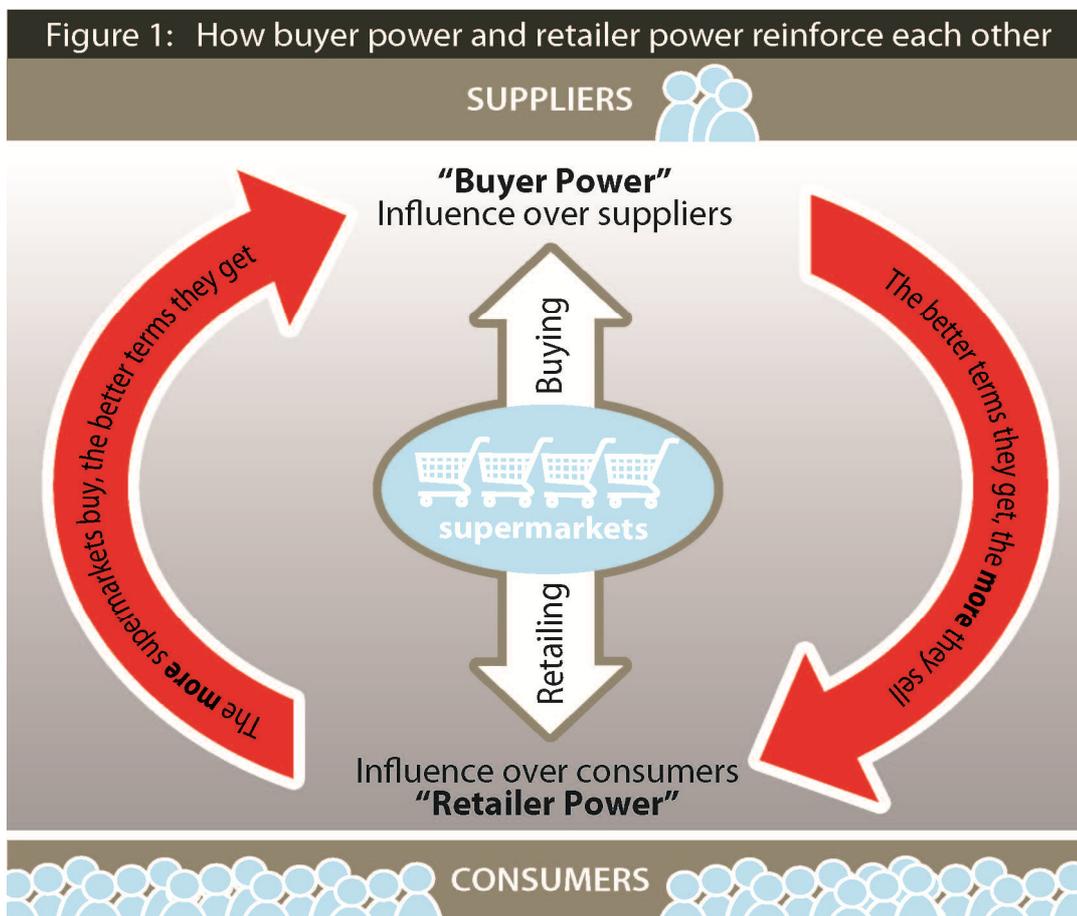
## **What is buyer power?**

Buyer power is essentially the ability of a buyer to obtain more favourable buying terms than would be possible in a fully-competitive market. Most people will understand that, in most traded goods markets, bigger buying volumes command better buying prices, but what explains the ability of large supermarkets to go on extracting better terms from suppliers after economies of scale have been exhausted? The explanation is abuse of buyer power.

Supermarkets' buyer power arises from their retailer power: often commanding upwards of 60 per cent of domestic grocery sales,<sup>1</sup> supermarkets collectively are of an importance to suppliers which enables them effectively to determine what will – and will not – be stocked, and on what terms: sources, quantity, quality, delivery schedules, packaging, returns policy, and above all, price and payment conditions.

There are, of course, other actors in grocery supply chains, some very large, such as Procter & Gamble, Nestlé, and Unilever. But even for these, the dominance of supermarkets is daunting, and the imbalance of bargaining power striking. Except through supermarkets, brand owners large or small have only limited access to end consumers. Producers of non-branded goods, most notably agricultural producers, have even less access and less ability to bargain for it.

Supermarkets' buyer power and retailer power are now mutually reinforcing. As their retail market share increases, they are able to secure ever better deals from their suppliers. And, as buying prices fall, retail prices fall too, giving them yet more market share. Buyer power would not exist without retailer power, and vice versa. Figure 1 below illustrates the circular relationship.



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<sup>1</sup> See Table 1. Such concentration is of long standing. See also *The Abuse of Supermarket Buyer Power in the EU Food Retail Sector: Preliminary Survey of Evidence*, Vander Stichele and Young, SOMO, 2008. The table on p.14 shows that, as far back as 2005, 14 EU Member States showed CR5 ratios (the market share commanded by the top five firms) greater than 60%, and 11 Member States with CR5 greater than 70%. Concentration has risen steadily every year since then.

The concentration of national grocery markets in a number of countries is shown in Tables 1a and 1b below. The right-most column in each table sets out the “concentration ratio” in each country. This represents the combined market share of the top X supermarkets. Table 1 shows, for example, that in Austria, 82 per cent of the grocery market is shared by the top three supermarkets.

**Table 1a: Selected national food market concentration ratios 2008 or later<sup>2</sup>**

Country	Year	Percentage of national food market	Concentration ratio
<i>European Union</i>			
Austria	2009	82	3
Belgium	2011	71	5
Denmark	2009	80	5
Finland	2011	88	3
France	2009	65	5
Germany	2011	85	4
Greece	2009	50	5
Italy	2009	40	5
Netherlands	2010	65	5
Portugal	2011	61	4
Spain	2009	70	5
UK	2011	76	4
<i>Rest of World</i>			
Australia	2011	71	2
Canada	2011	75	5
Norway	2011	81	3
Switzerland	2011	76	3

**Table 1b: Selected national food market concentration ratios 2005-2006**

Country	Year	Percentage of national food market	Concentration ratio
Estonia	2005	79	5
Ireland	2006	81	5
Lithuania	2005	76	5
Luxembourg	2005	72	5
Slovenia	2005	82	5
Sweden	2006	95	4
USA	2006	35	4

*Sources<sup>1</sup>*

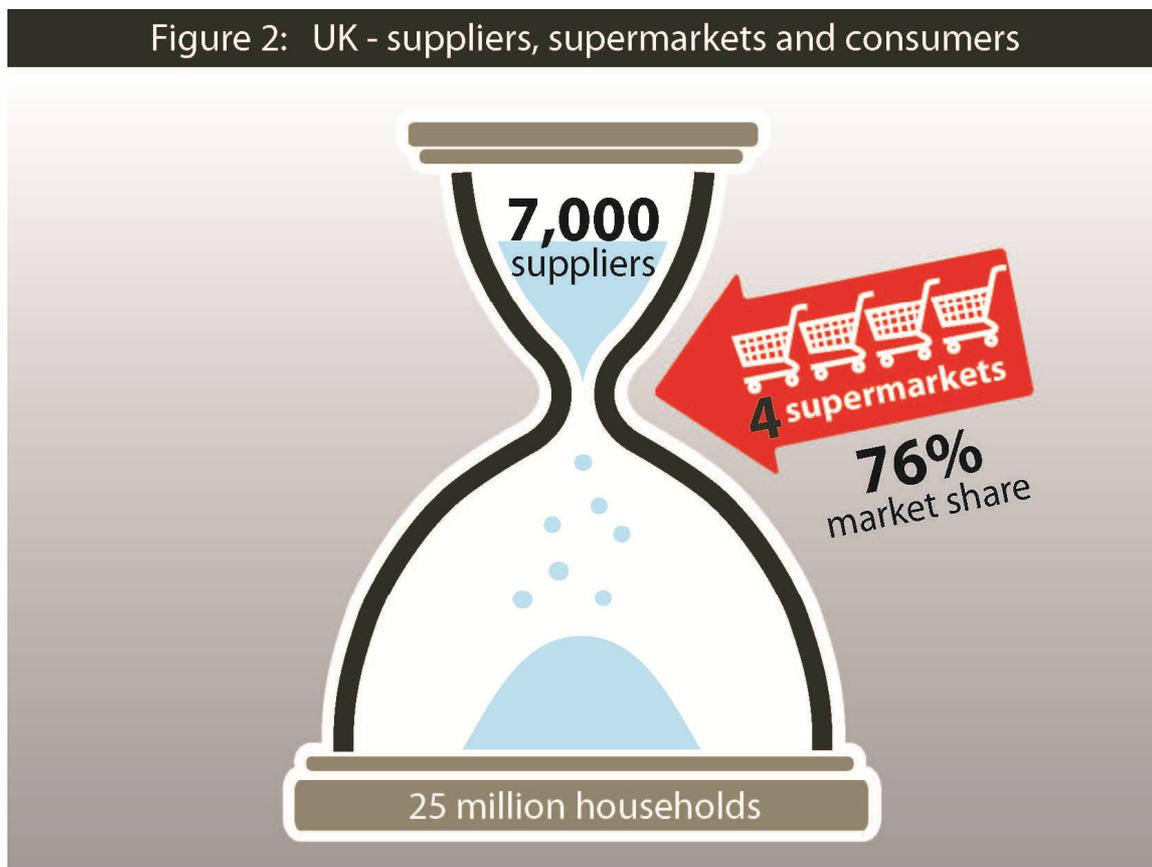
In the trade of agricultural products, the bargaining power of the supermarkets is reinforced by fragmentation on the supply side. Whereas the retail grocery market is characteristically served by only four or five large supermarket groups,<sup>3</sup> the number of food and food-product producers runs into

<sup>2</sup> It proved impossible to bring the figures to a single date, or to establish a common concentration ratio. Table 1a lists countries where figures for 2008 were obtainable, while countries with older data appear in Table 1b. The older data suggests that high concentration ratios are of long standing.

<sup>3</sup> In a number of EU Member States, buying groups have emerged to serve multiple supermarket groups across borders. The three largest such buying groups are EMD, based in Switzerland, AMS, based in the Netherlands, and Coopernic, based in Germany. They each trade in more than 20 EU or EEA Member States and had combined sales in 2010 estimated in excess of €400 billion. (Source IGD.) Vander Stichele and Young (*op.cit.*) estimated that in 2008, the top five European buying groups accounted for 42% of EU food retailing. Nevertheless, in practice it makes little difference to a small agricultural supplier whether or not a buying group stands in for the supermarket’s own buying function: the imbalance of bargaining power, and the magnitude of problems that spring from it, are the same.

thousands.<sup>4</sup> The fragmented nature of the supply side tilts bargaining power even further in favour of the supermarkets.

Relationships between numbers of suppliers, supermarkets and consumers are shown in the hour-glass diagram (Figure 2) below.



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Absolute figures for suppliers and households vary from country to country, but the hour-glass shape applies everywhere. Suppliers are characteristically numbered in the thousands, supermarkets on the fingers of one hand, and consumers in the millions.

The result is that supermarkets acquire an effectively impregnable role as gate-keepers between suppliers and consumers.

### **Abuses of buyer power**

Under EU competition law, buyer power is not *per se* objectionable:<sup>5</sup> it is the abuse of such power which is unlawful. The imbalance of bargaining power that exists between supermarkets and their suppliers fosters abuses, and the consequences for suppliers and consumers are considered next.

Table 2 presents the principal abusive buying practices identified in EU Member States and elsewhere. While the list is by no means exhaustive, it is remarkable how similar the abuses are across different jurisdictions.

<sup>4</sup> For example, the UK Competition Commission (*The Supply of Groceries*, 2008) reported that in 2004 there were about 7,000 UK enterprises supplying food and beverage products. The number was falling then, and has probably continued to do so, but it is safe to assume that such suppliers are still numbered in the thousands rather than the hundreds.

<sup>5</sup> EU law does not define dominance in quantitative terms. It is not possible to equate it with, say, a certain percentage market share.

**Table 2: Buyer power abuses and effects on suppliers**

<b>ABUSES</b>	<b>EFFECTS ON SUPPLIERS</b>
<b>Listing fees</b> To be on a list of suppliers	<ul style="list-style-type: none"> <li>• Additional costs to supplier</li> <li>• Risk of stocking new products passed to supplier</li> </ul>
<b>De-listing/threat of de-listing</b> When suppliers refuse to reduce prices or make other payments and concessions	<ul style="list-style-type: none"> <li>• Threats of de-listing create uncertainty, weaken suppliers' bargaining position and inhibit their ability to plan</li> <li>• Actual de-listing can mean substantial loss of volume to the supplier</li> </ul>
<b>Slotting fees</b> To gain access to shelf space	<ul style="list-style-type: none"> <li>• Additional costs to supplier</li> <li>• Risk of stocking new products passed to supplier</li> </ul>
<b>Demanding extra or unforeseen discounts or payments from suppliers</b> For marketing, store openings or remodelling, new packaging, and retailer initiated promotions	<ul style="list-style-type: none"> <li>• Unexpected costs, less than expected income and increased uncertainty passed on to supplier</li> </ul>
<b>Demanding retrospective payments, extra discounts, and after-sale rebates</b> Deducting a percentage of the total sales of a particular supplier for that year; compensation for profit margins being less than expected; 'managing [retailers'] profitability'	
<b>Return of unsold goods to supplier</b> At the supplier's expense, including fresh produce that cannot be resold	<ul style="list-style-type: none"> <li>• Cost and risk of retailers' forecasting errors passed back to supplier</li> </ul>
<b>Late payments</b> For products already delivered and sold	<ul style="list-style-type: none"> <li>• Adversely affects suppliers' cash flow</li> <li>• Leads to additional finance costs and uncertainty over how much they will be paid</li> </ul>
<b>Retrospective changes to agreed terms</b> Retrospective discounts on agreed price, changes to quantity and/or specification without compensation	<ul style="list-style-type: none"> <li>• Risk and cost of changes and/or retailer's forecasting errors borne by supplier</li> <li>• Leads to increasing costs and uncertainty</li> </ul>
<b>Below cost selling</b> Unscheduled promotions, to clear over-ordered stock or to outsell rivals	<ul style="list-style-type: none"> <li>• Puts suppliers' profits under pressure</li> <li>• May result in demands for lower prices from other customers</li> <li>• Distorts consumers' perceptions of product value</li> </ul>
<b>Influencing product availability to, or raising the costs of, other retailers</b> By demanding lower buying prices than all other retailers or demanding limitations on supplies to other retailers	<ul style="list-style-type: none"> <li>• Increases the costs to competitors, affects the availability of products to other retailers, and thus constrains the volumes available to suppliers</li> </ul>
<b>Promotion of retailers' own brands</b> Squeezing out third-party brands; some copy-cat packaging issues; requiring brand owners to divulge development intentions so that retailers can pass them on to their own brand suppliers	<ul style="list-style-type: none"> <li>• Loss of volume and profitability</li> <li>• Loss of IP rights, leading to a lower rate of innovation</li> </ul>

The 2008 survey by Vander Stichele and Young (see footnote 1, p4) reported that the payments referred to above:

“...can amount to up to 50% (Italy, Hungary) or even 70% (France) of suppliers' revenues. As a result, some suppliers have gone [out of business] or survived on very low profit margins. This survey found that small and medium enterprises (SMEs) in the food sector and farmers have been especially vulnerable.”

Two factors which make agricultural suppliers especially susceptible to abuses of buyer power are the labour intensive nature of production and the perishable nature of products. Labour intensive stages

of production can be regarded as a variable cost which can be squeezed when pressure is exerted on the supply chain. The nature of perishable products means that the supplier has only a short period of time before the product becomes unsaleable. Purchasers know this and can exploit it.

### **What do these abuses imply for suppliers?**

It would not of course be reasonable to assert that supermarkets have inflicted only abuse on suppliers: there have been benefits too.

The principal gain that supermarkets have brought to suppliers is volume. Also, there can be no question that the demands of supermarkets have in several respects forced suppliers to raise their game: the quality of their output, the variety of what they produce, and the condition in which it reaches the end user. However, as expenditure by consumers on food has increased, so has the share of that expenditure taken by supermarkets.

Nor is it reasonable to suggest that only supermarkets exert buyer power: the largest brand owners, themselves multi-national corporations, almost certainly possess buyer power, as do a number of very large European buying groups which act on behalf of major grocery retailers. But what makes supermarkets distinctive in the exercise of buyer power is the power they also exercise as retailers.

The question that this paper considers is not whether supermarkets are a good thing or not but whether, as gate-keepers controlling both suppliers and consumers, they misuse their power over both groups. The conclusion drawn here is not only that they can, but that they do.

### **The rise of retailers' own brands and the loss of independent brands**

It is unsurprising that, as supermarkets acquired increasing presence in the minds of consumers and economic power in grocery markets, they began to develop their own brands as a means of bolstering market share and profits. This has given retailers a new role – in addition to their traditional role as purchasers, they have become direct competitors to their suppliers.

To begin with, retailers' own brand goods<sup>6</sup> were generally low-price, basic versions of commodities such as (in the case of food) cereals or tinned vegetables. The rather crude packaging applied to the early retailers' own brands served to emphasise the cheap and cheerful nature of the products. Over time, however, own brands have extended outwards to cover a much wider range of goods, and upwards into premium segments. In Australia, the share of supermarket food sales occupied by retailers' own brands is now estimated at 25%. In the UK, it is estimated by the British Brands Group as double that.<sup>7</sup>

Given that shelf space is finite, branded goods are being increasingly squeezed out by retailers' own brands. It is profitable twice over for the supermarkets to do this. First, the promotion of their own brand products can be carried as part of their corporate promotional overhead, which implies substantial savings of indirect cost. Second, the closer control that supermarkets have over their own brand suppliers means that they can often achieve lower direct product costs too. Yet, as retailers' own brands have moved up market into premium and prepared foods, the prices they can command are often not far below those of independent, established brand owners.

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<sup>6</sup> The nomenclature used for the supermarkets' own brands is far from uniform. Some commentators use the term "own brand" or "own label". In Australia, "retailers' own brands", abbreviated to ROB, is preferred. The most common term in the UK is "private label", and that is what we use in this paper. The term "brands" or "independent brands" refers to the products of suppliers, whether large or small, that are not part of supermarket groups.

<sup>7</sup> British Brands Group, 2006, *op.cit.* and CHOICE Australia, 2011. CHOICE reported, "We spoke with several manufacturers and suppliers whose product lines have been deleted by the big two [Coles and Woolworths]. Many claim this was as a result of supermarket exerted pressure, including private label expansion. All but one refused to be identified, citing fear of retribution from the supermarkets."

In Australia, the loss of brands and rise of retailers' own brands has been comprehensively documented by CHOICE, a leading consumer watchdog. The evidence that CHOICE provides<sup>8</sup> suggests that the removal of branded goods from supermarket shelves and their replacement by retailers' own brands is driven by the commercial interests of supermarkets rather than consumer choice:

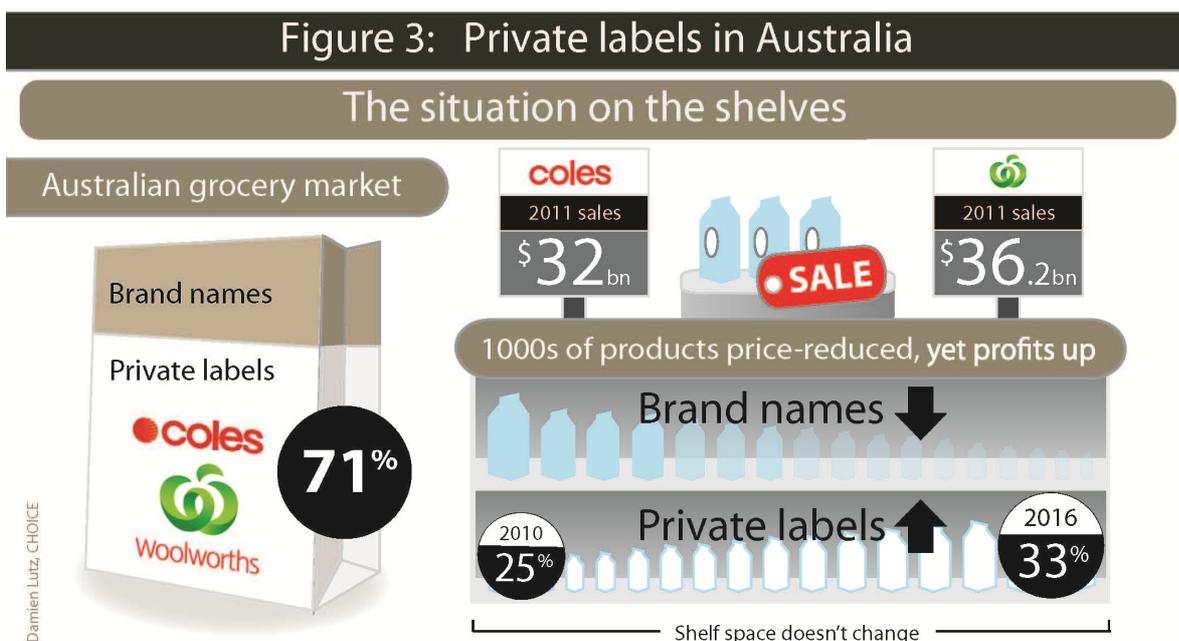
"...many small suppliers – and even large ones such as Heinz and Coca Cola – are concerned about the pressure they face in the fight for [this] finite shelf space.

Kevin [a branded goods manufacturer] argues his product was cut not because he wasn't innovating, but because Coles set him up to fail. "Coles told us it's because our sales weren't achieving targets. But that's because they wouldn't put us in catalogues, we got no shelf space, we were hidden behind a column and they refused to let us have promotions, and that made it impossible for us to compete with the big boys. We suspect what they were really doing was targeting the products they wanted to delete so that it would be easier to justify in six to eight months' time."

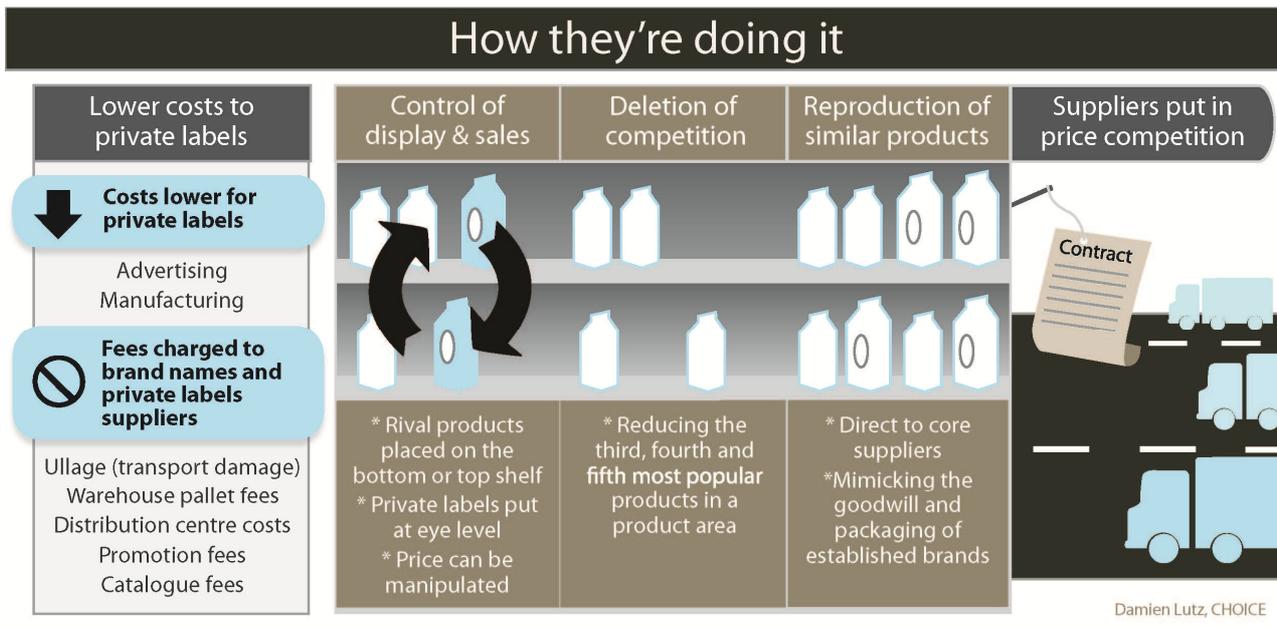
Over at Woolworths, brands are also being cut. Mark [another branded goods manufacturer] had his organic product deleted directly after Woolworths acquired the Macro label. Following steady sales for three years, Woolworths' category buyer told him there was only room for one organic label – Macro, its own. This decision saw his yearly sales halved.

Potentially more damaging is the practice by supermarkets of demanding to know the future product plans of branded suppliers. When these are shared with retailers' own brand manufacturers in order that retailers may launch own brand products simultaneously with or ahead of the branded goods, it undermines the IP rights of the branded suppliers and damages their profitability.

The consumer interest in retailer own brands is considered later in this paper. Meanwhile, the following graphic from CHOICE (Figure 3, in two parts) summarises the detriments that arise to suppliers of retailers' own brands (or private labels as they are referred to here).



<sup>8</sup> CHOICE website: <http://www.choice.com.au/reviews-and-tests/food-and-health/food-and-drink/supermarkets/supermarket-private-labels-and-homebrand-products.aspx>

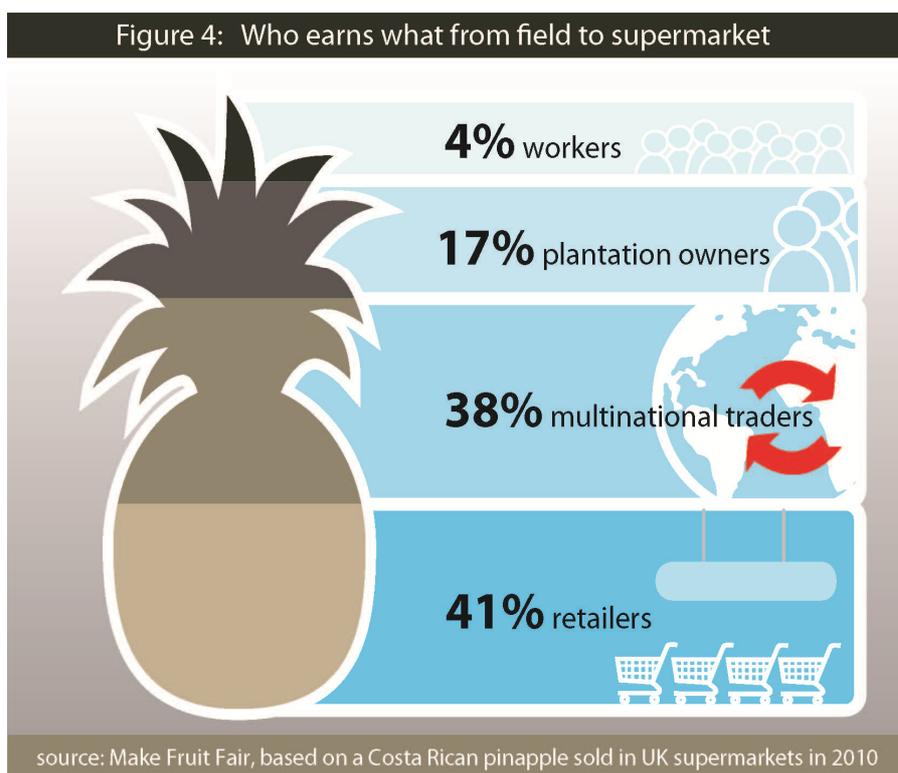


Source: CHOICE Australia, <http://www.choice.com.au>, 2012

### Low prices, uncertainty and sustainability of supply

Low prices to suppliers are a complaint in all countries where buyer power problems have been reported. Deep discounting by supermarkets induces low buying prices and can result in producers making little profit or even losses.

The imbalance of economic advantage between actors in the supply chain for fresh fruit is acute. Figure 4 illustrates the percentage of the retail price received at each stage of a pineapple supply chain and shows the noticeably low percentage of the retail price received by workers compared with distributors and retailers.



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Where products are not sourced directly by supermarkets, the effects can very easily be transmitted to suppliers via an intermediary. This has been attested in relation to exports of fresh fruit from South Africa. Symington<sup>9</sup> believes that as a result of their strong positions, supermarkets and their importers are able to bypass the standard business practice of agreeing a price for a particular volume of product before it is packed and despatched. In relation to table grapes, for example, he states:<sup>10</sup>

“Due to the price sensitivity of the grape product, the retailers cannot afford to commit to a price with their suppliers, because if their competitors’ prices are keener than theirs, they are saddled with a perishable product and its associated potential wastage cost.” (p151)

Instead the risk is passed on to the supplier (who might not find out what price has been achieved until after the product is sold) and the supermarket has the flexibility to pursue price wars and unscheduled promotions without having to bear the cost itself.

Over-procurement to ensure that shelves are covered is described as common, as are complaints about quality. And it is the supplier, not the supermarket, which will pay the price of offloading excess supply of a perishable product. In Symington’s view,<sup>11</sup> suppliers cannot tolerate these practices indefinitely:

“The risks associated with these types of buying practices are now becoming disproportionately high for growers to bear. Either the growers voice their opinion..., and remedial action is tabled; or the UK will gradually see its fresh produce supplies dwindling from its traditional sources.”

Practices that have the potential to create increased uncertainty for suppliers were identified as particularly significant by the UK Competition Commission in its 2008 report already cited. Twenty six such practices were described, often involving the transfer of retrospective (and therefore unexpected) cost and excessive risk to suppliers, undermining their ability to plan, invest and innovate, ultimately to the detriment of the consumer.

The Commission’s 2008 report has some telling observations in relation to promotions:

“...we found that suppliers can come under intense pressure to agree to fund promotions, sometimes at very short notice. In some instances, this may be viewed as a negotiation tactic by a retailer to reduce the costs of wastage. In this way, a grocery retailer might shift the burden of some of the cost of over-ordering back to the supplier by requesting support for a promotion, which could be regarded as a transfer of the risk arising from over-ordering by the retailer. We observed some examples of suppliers providing 65 per cent of the funds for a promotion, and strongly-worded requests from a retailer for promotional support.”<sup>12</sup>

In broader terms, the Competition Commission is critical of the practices of supermarkets in transferring excessive risks to suppliers, thereby generating anti-competitive effects:

“We find that the exercise of buyer power by certain grocery retailers in relation to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers, is a feature of the markets for the supply of groceries by all grocery stores, which prevents, restricts or distorts competition in connection with the acquisition of groceries by large grocery retailers and some wholesalers and buying groups.”<sup>13</sup>

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<sup>9</sup> *UK Supermarket Buying Practices*, paper presented by Stuart Symington at the Commonwealth Agri-Forum Platform, 22<sup>nd</sup> September 2010.

<sup>10</sup> *Staying Ahead of the Global Pack [Creating Sustainable Competitive Advantage in the Marketing of South African Table Grapes to the United Kingdom in the Deregulated Era]*, Stuart Symington, 2008.

<sup>11</sup> *Op Cit* p4.

<sup>12</sup> UK Competition Commission (*The Supply of Groceries in the UK market investigation*, 2008) p170.

<sup>13</sup> *Ibid*, para. 10, 11, p179.

Again, it is important to note that supermarkets are not the only type of organisation to be able to exert buyer power: brand owners, to differing degrees, and major buying groups also enjoy buyer power. But, to re-emphasise a point already made, supermarkets are distinctive because of the retailer power that they exert.

There are signs of recognition by retailers and large manufacturers of the need for more responsible commercial practices – if only to ensure the sustainability of their supply and to respond to public pressure in domestic markets. An example of a supermarket response is the Tesco Sustainable Dairy Group, which aims to address issues such as price, uncertainty and the cost to UK dairy farmers of implementing standards. Although other retailers have also taken action to address these issues in this industry and elsewhere, what is significant about this initiative is the inclusion of a price guarantee. The initiative only applies to liquid milk, however, and there is a long way to go before supermarkets apply these principles throughout their supply base.

## **What do these abuses imply for consumers?**

### **The consumer benefits of supermarkets**

As with suppliers, so with consumers, there is no suggestion that the record of supermarkets merits only criticism.

For several decades past, supermarkets have fuelled, and have been fuelled by, profound social and demographic changes. For the vast majority of people in developed market economies it is impossible to imagine modern life without supermarkets: the convenience of buying substantially all one's grocery needs under one roof in clean and pleasant surroundings, from early in the morning to late at night, with ancillary services such as toilets and cafés, adjacent car parking and/or public transport is irreplaceable. One might argue that for many the true convenience store is in fact a supermarket.

Supermarkets also claim – though the evidence is mixed – that over the long term they have reduced the real (i.e. inflation-adjusted) prices of food.<sup>14</sup>

Yet, as the market power of supermarkets has increased, so have the numbers of those who feel that they are not well served by them: those in rural areas and/or without a car, the old, and, increasingly, those who dislike the damaging environmental impacts of out-of-town hypermarkets. The British Brands Group (BBG)<sup>15</sup> submission to the UK Competition Commission's inquiry of 2006-2008 reported survey findings that showed that some 26 per cent of the population and 33 per cent of people older than 16 were not well served by supermarkets. It is unlikely that the UK's position in these respects is radically different from those of other large EU Member States: indeed, where the population density is lower, as it is in France, Germany, Spain and Italy, the prevalence of problems for people in rural areas may already be worse.

### **Detriments to consumers**

The effects of abuse on suppliers identified in Table 2 are summarised and the subsequent effects of these on consumers are assessed in Table 3 below. This is followed by a commentary on the principal issues arising.

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<sup>14</sup> The UK Competition Commission reported in 2008 that "Food prices declined, in real terms, by around 8 per cent between 2000 and August 2007. This continued the trend observed in our 2000 investigation which showed a decline of 9.4 per cent in the real price of food from 1989 to 1999... However, real food prices have increased by more than 3 per cent between August 2007 and January 2008... and prices seem unlikely to return to their previous lows in the next few years." (p44).

<sup>15</sup> *Consumers' shopping wants and UK grocery retailing: Are consumer needs being met?* British Brands Group submission to the Competition Commission, July 2007.

**Table 3: Effects of buyer power abuse on consumers**

EFFECTS OF ABUSE ON SUPPLIERS	EFFECTS ON CONSUMERS
Overall downward pressure on supply prices	<ul style="list-style-type: none"> <li>Threat to suppliers' viability may affect supply and over time push prices up and reduce choice</li> <li>Suppliers forced to cut production costs (possibly ingredient quality, and may squeeze working conditions in intensive stages of production)</li> </ul>
Additional costs to supplier	<ul style="list-style-type: none"> <li>In the long run, may result in higher consumer prices</li> <li>In the short run, may result in higher consumer prices in non-supermarket outlets</li> </ul>
Risk of stocking new products forced on to supplier	<ul style="list-style-type: none"> <li>Fewer new products, with potential knock-on effects on range and quality</li> </ul>
De-listing	<ul style="list-style-type: none"> <li>Replacement of branded goods with retailers' own brand</li> <li>Loss of choice and possibly of quality</li> </ul>
Cost and risk of shrinkage and/or retailers' forecasting errors passed back to supplier	<ul style="list-style-type: none"> <li>Price, range and quality are all put at risk through reduced funds available to suppliers for investment and promotion</li> </ul>
Adversely affects suppliers' cash flow	
Risk and cost of product changes borne by supplier, increasing costs and uncertainty	
Domino-effect demands for lower prices from other supermarket customers	<ul style="list-style-type: none"> <li>Consumers misled about sustainability of low prices</li> </ul>
Competitors' costs are raised	<ul style="list-style-type: none"> <li>Affects the availability of products to other retailers</li> <li>Reduction of store choice</li> </ul>
Loss of IP rights, leading to a lower rate of innovation	<ul style="list-style-type: none"> <li>Lower rate of innovation and thus of product range</li> </ul>

### The SPQR concept

The consumer interest in supermarket conduct can usefully be assessed by reference to the acronym SPQR – service, price, quality and range. Price, quality and range are widely understood, while service encompasses the all-round experience that consumers receive at a supermarket, eg, queuing and service at the check-out, cleanliness and orderliness of the store, staff helpfulness, parking convenience, and geographic location.

Price and quality are directly controlled by supermarkets through the negotiation (or imposition) of terms.

Range too is directly controlled by supermarkets. They are gatekeepers: they produce nothing,<sup>16</sup> but they bring about a situation in which:

- producers get space on supermarket shelves only on conditions set by the supermarkets; and
- consumers, lacking access to producers, can buy only what supermarkets choose to sell.

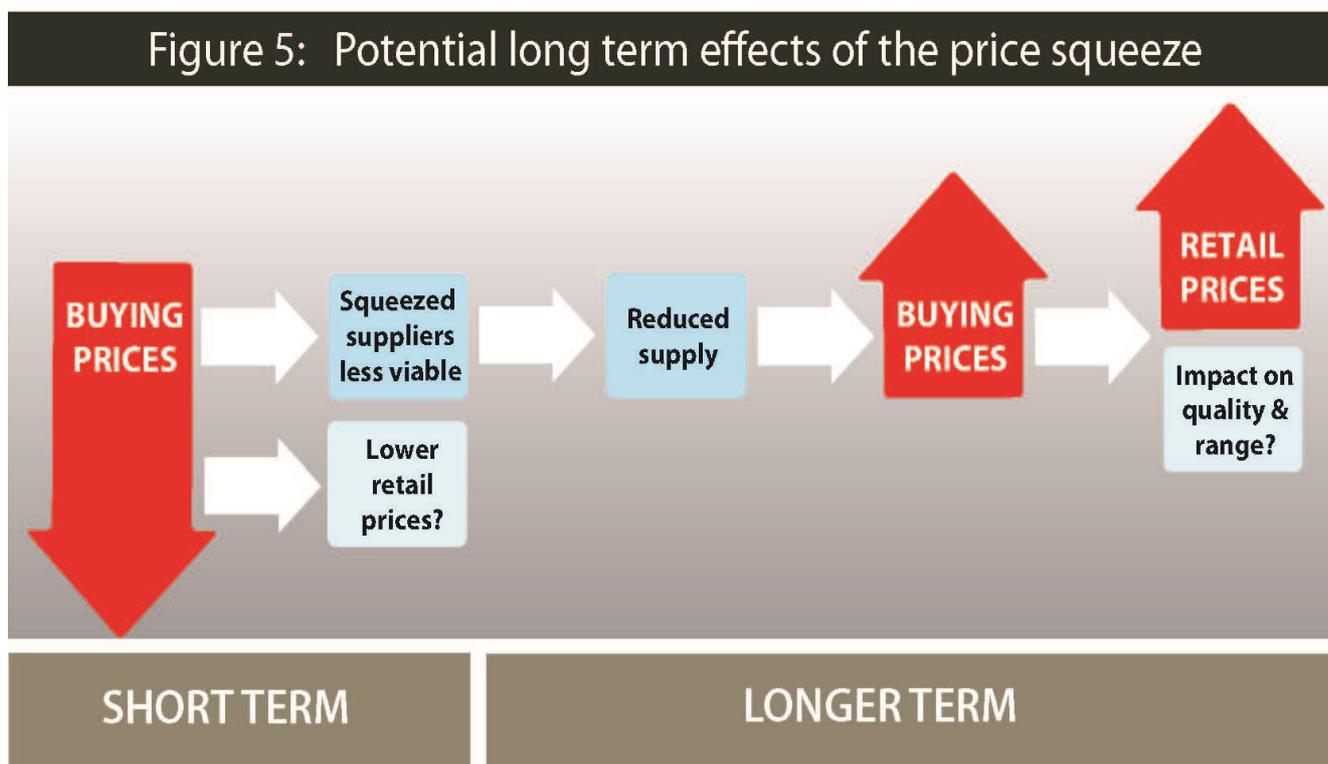
Price and, together, range and innovation are now considered in more detail.

### Price

In general, prices of goods in supermarkets are lower than the prices of the same goods in non-supermarket outlets, and consumers' ability to obtain lower prices, at least in the short term, is generally seen as beneficial. However, a pervasive lack of transparency over the costs (i.e. the buying prices) which underlie retail pricing makes it difficult to establish whether the advantages gained are passed on to consumers and whether such prices are sustainable.

<sup>16</sup> For the avoidance of doubt, the existence of private labels (own-brand products) does not make the supermarkets producers. They source such products from third-party suppliers.

If the rewards are garnered to an excessive extent by the supermarkets, while other actors in the supply chain go under-rewarded, there are risks to the survival of suppliers. If buying prices are forced down to unsustainable levels and supplies begin to dry up, then, over time, buying prices and therefore retail prices will have to rise. Range and quality may suffer too. Figure 5 illustrates this scenario.



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Supermarkets routinely practise selective deep discounting, often referred to as below-cost selling. This was identified by the UK Competition Commission in its 2008 study as a practice with the potential to have an adverse effect on consumers. Although the Commission expected consumers to benefit from lower prices, they recognised that the practice could “mislead consumers into thinking that the prices of all products sold by a grocery retailer are lower than is really the case”.<sup>17</sup> Supermarkets know very well that, in a one-stop shopping expedition, consumers are unlikely to buy deeply-discounted baked beans at one supermarket and deeply-discounted dog food at another. The prominence given to the discounted items can certainly be misleading, as the UK Competition Commission observed, but the point is that the cost of discounting can be (a) largely imposed on the supplier and (b) recovered through the pricing of other items.

### **Innovation and range**

As illustrated above, supermarkets control what may and may not appear on their shelves. It is no longer simply an issue of rival independent suppliers competing for customers with a view to securing better display and location on supermarket shelves, but one in which long-established brands are systematically replaced by retailers’ own brands. Australia, the UK and Norway provide copious evidence of the rise and rise of retailers’ own brands – though they are by no means the only countries to experience it.

Australian experience (of retailers’ own brands/private labels) is well captured in the following graphic (Figure 6) by CHOICE.

<sup>17</sup> *Op Cit* p94.

Figure 6: The effect of the rise of private labels in Australia



The dual role of supermarkets as both essential customer and direct competitor means that abusive practices may be imposed on brand manufacturers.<sup>18</sup>

The Norwegian Inquiry Commission<sup>19</sup> found a general perception among suppliers that the tactical and strategic pricing of retailers' own brands is financed by suppliers through bonuses and joint marketing funds. Suppliers consider that innovation is undermined and the survival of independent brands threatened by imitation, demands for insight into brand recipes and production costs, the unreasonable use of cross-pricing, and different mark-ups for retailers' own brands and independent brands.

The UK Competition Commission in its second inquiry concluded that innovation had probably not been harmed by supermarket buyer abuse but admitted that it could not know what pace of innovation would have applied in the absence of supermarket buying power.<sup>20</sup>

But concerns are still being voiced. The Norwegian Inquiry Commission<sup>21</sup> reported that:

"It is the opinion of the inquiry commission that ... better mechanisms must be found for dividing the risks inherent in innovation processes between suppliers and [supermarket] chains, drawing up incentives and reward systems in product development." (*Op. cit.*, p21).

It is difficult to estimate the scale of innovation which would have taken place in the absence of supermarket buyer power. But it seems likely that there has been damage. After all, no rational company would invest serious funds in innovation when it knows (a) that it will not be rewarded for it, (b) that its IP rights will be flouted and (c) that it stands to be punished for objecting.

<sup>18</sup> Letter dated 6 June 2006 from John Noble, CEO, British Brands Group, to Tim Oyler, Competition Commission Inquiry Secretary.

<sup>19</sup> *The powerful and the powerless in the food supply chain*, April 2011. See: <http://www.regjeringen.no/nb/dep/lmd/aktuelt/nyheter/2011/april-11/mat-makt-ogavmakt.html?id=640277> p3.

<sup>20</sup> Interestingly, another study found that in Spain (and only in Spain) the number of product innovations had increased, but the author found, like the UK Competition Commission, that it was impossible to assess what the scale of innovation would have been. See *The impact of private labels on the competitiveness of the European food supply chain*, 2011, Frank Bunte, LEI, part of the Wageningen University Research Centre, for the *Enterprise and Industry* magazine.

<sup>21</sup> *Op. cit.*, p21.

It is important to acknowledge that some commentators see retailers' own brands as providing additional choice for consumers, i.e. a benefit not a detriment. This would be correct if they were additional to branded goods – but the evidence is that this is seldom the case.

## Confusing pricing

The suggestion that lower prices are always good for consumers is simplistic. It is also worth considering whether consumers are actually getting as good a deal as it may seem. Long-term campaigning by consumer organisations in Australia<sup>22</sup> and a current campaign in the UK by Which?<sup>23</sup> to improve unit pricing is based on research that shows supermarket pricing is routinely confusing for consumers.

Promotions are used continually by supermarkets to attract consumers with the promise of savings. Ideally, promotion would be a rational response to adverse circumstances, e.g. disposing of excess supply, but evidence suggests that some supermarket promotions are possible only because of the presence of buyer power, while other promotions owe at least as much to retailer power.<sup>24</sup>

For a producer, a fair promotion would be agreed in advance, with costs, risks and benefits shared. For the consumer, a fair promotion would be a genuine reduction, if short-lived, from a standard sustainable price. But an analysis of the Danish grocery market in 2011<sup>25</sup> found that special offers were not unambiguously good for consumers. One reason given was that regular prices were set relatively high to finance the promotion and to make the price reduction seem greater.

CHOICE Australia's 2012 investigation of supermarket special offers also found pervasive examples of promotions believed to mislead consumers. CHOICE dubbed current price cut campaigns by the two leading supermarkets<sup>26</sup> "faux [false] sales" because many so-called special offer prices had not changed for more than a year.

CHOICE and Which?, amongst others, have also explored other marketing ploys used to give consumers the impression they are saving money when in fact the price of the product may not actually have been reduced. Such tactics are routinely used, in CHOICE's words, to "bolster the retailer's low price reputation in the minds of shoppers". Table 4 combines evidence that applies to Australia as well as to UK grocery markets.<sup>27</sup>

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<sup>22</sup> *Unit pricing still has room for improvement* CHOICE, December 2011 <http://www.choice.com.au/blog/2011/november/unit-pricing.aspx>;

<sup>23</sup> *Clear, consistent food pricing: Why unit pricing must be improved*, Which? November 2011 <http://www.which.co.uk/documents/pdf/clear-consistent-food-pricing-why-unit-pricing-must-be-improved-which-briefing-288006.pdf>

<sup>24</sup> It has to be acknowledged that larger brand owners as well as supermarket buyers inflict this difficulty on their suppliers

<sup>25</sup> The Danish Competition and Consumer Authority, 2011 referred to in ECN Brief 05/2011

<sup>26</sup> Coles "Down Down" prices and Woolworths "Everyday Price Cut".

<sup>27</sup> CHOICE, *Supermarket Special When is a sale not a sale?* May 2012.

**Table 4: Promotional tactics**

<b>Tactics</b>	<b>Examples found</b>
Colour, word or picture 'cues', eg, scissors, downward pointing fingers, WOW!	<ul style="list-style-type: none"> <li>• “The colour combination of red and white has been associated with being more bargain-orientated or as having better value than other colours.”</li> <li>• “NOW \$x” without reference to the previous lower price.<sup>28</sup> (CHOICE and Which?)</li> </ul>
Was/now pricing or “the never ending sale”	<ul style="list-style-type: none"> <li>• Products using the “was/now” price structure had been on sale for more than a year, in both Coles and Woolworths, Australia. (CHOICE)</li> <li>• Products sold in the UK at the cheaper price for significantly longer than the ‘was’ price, or never found at the higher price. (Which?)<sup>29</sup></li> </ul>
Dubious practices/ errors in price cut campaigns	<ul style="list-style-type: none"> <li>• Prices raised briefly before campaign then reduced to previous price and advertised as ‘was/now’ (UK Tesco “Big Price Drop”).</li> <li>• Products advertised as a special offer when not reduced or even at a higher price than previously (UK Asda “Rollback”) (Which?)</li> </ul>
Multi-buy non deal	<ul style="list-style-type: none"> <li>• <b>Two for £2!</b> (highlighted) when one costs £1.</li> </ul>
Less costs more	<ul style="list-style-type: none"> <li>• Larger/multi-pack costs more than a smaller/single pack.</li> </ul>
Unclear/inconsistent unit pricing	<ul style="list-style-type: none"> <li>• Mixing items priced per kilo or per pack. Which? &amp; CHOICE are currently campaigning for greater clarity/consistency of unit pricing as a tool for consumers to shop more cost-effectively.</li> </ul>

## Summary

It is apparent, especially from Tables 2 and 3, that the interests of suppliers and consumers are closely connected, and that detriments to the one group may lead to detriments to the other. The inescapable conclusion is that when it comes to dealing with supermarkets, consumers and suppliers are, more often than they might think, in the same boat.

## Ethical considerations

The concept of SQPR incorporates a range of complex issues that are important to consumers. Yet even they cannot capture the full picture, as in reality consumers do not always act in their own economic self-interest. This affects the choices they make and their perceptions of what might constitute detriment.

The importance of fairness to consumers is explored by Stucke<sup>30</sup> who asserts that significant proportions of consumers will react against unfair conduct, even at a cost to themselves, and will take the intention of the company into account. He states:

“Consumers are angrier and more willing to punish corporate behaviour if they perceive the behaviour as intentional, unfair and motivated by greed.”

Consumers are increasingly concerned about ethical issues related to food production and consumption, including health, environmental protection, animal welfare, working conditions and sustainability. They are bringing these considerations more and more into their everyday choices. The effects of buyer power abuse are now so pervasive in food supply chains that they may well influence all these areas that concern consumers.

<sup>28</sup> Unless indicated as CHOICE or Which? all examples are quoted from Panorama: *The Truth About Supermarket Price Wars*, BBC, 5 December 2011.

<sup>29</sup> Which? UK, *Special Offers*, November 2011.

<sup>30</sup> *Buyer Power: Should the Seller Beware?* Maurice E. Stucke, paper presented at conference on *Buyer Power in Competition Law*, 15<sup>th</sup> May 2012 (p40).

In this paper, the focus is confined to working conditions and workers' rights, in response to sustained downward price pressure and the transmission of costs and risks up the supply chain.

A survey of consumer attitudes in six European countries carried out for Consumers International by GlobeScan<sup>31</sup> in 2009 found that an overall majority of consumers agreed with the proposition that supermarkets should pay suppliers enough to ensure good wages for their employees, even if this means higher prices. But from the information available at the point of sale it is rarely possible for a consumer to know whether the price of a product enables all those who participate in the supply chain – growers, importers, distributors, processors and retailers – to pay a fair wage to their workers and to earn a fair return on the capital they employ.

Interest amongst consumers in verifiably responsible products is reflected in overall increases in the sales of products carrying independently certified consumer-facing labels such as the FAIRTRADE Certification Mark and the Rainforest Alliance Certified™ seal of approval. This demand is recognised by brands and supermarkets, while the growth reported by Fairtrade International in both new and established markets (retail sales of products carrying the FAIRTRADE Mark reached €4.4 billion in 2010) reflects the “conversion” of both independent and retailers' own brands to the FAIRTRADE Mark.<sup>32</sup> However, the proportion of certified and labelled products remains very small, and unless supermarkets' own codes are rigorously and proactively applied and integrated into purchasing and sourcing activities, they can very easily be undermined by abuses of buyer power and downward price pressure.

The fact that consumers will often pay a premium for an “ethical” choice reflects either the inherently unfair structure of conventional trade, as asserted by the Fairtrade Foundation;<sup>33</sup> or pricing decisions made by the retailer; or both. Where a conventional product is deeply discounted, the difference in price relative to the “ethical” product may undermine sales of ethical products. The responsibility and cost of making a fairer or more sustainable choice is still very much on the under-informed consumer – the retailer simply offers a limited range of options.

### **Impacts on workers' rights**

In the face of persistent downward price pressure and excessive costs and risk there is a limit to the savings suppliers can make through cheaper ingredients and greater efficiencies in production, packing and transport. As demands on suppliers are increased they begin to affect wages, working conditions and environmental protection.

In 2001, the EC's renewed strategy for corporate social responsibility (CSR) for 2011-2014 put forward a new definition of CSR as “the responsibility of enterprises for their impacts on society”.<sup>34</sup> Although the EC has dropped the word “voluntary” from its original definition, CSR remains a voluntary undertaking. Many, but not all, supermarkets have CSR policies or codes of conduct that relate to working conditions and workers' rights, and some also have codes of conduct relating to procurement. However, these need to be applied with exceptional rigour, to be independently verified throughout the supply chain, to be integrated throughout the organisation structure and business practices, and supported by training and incentive systems. Unless they are, commercial practices and price pressure will undermine compliance with standards, and the ability of actors further up the supply chain to invest in improvements will be compromised.

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<sup>31</sup> CI website <http://www.consumersinternational.org/media/394236/checkedout-english-02.pdf>, p18.

<sup>32</sup> Fairtrade Foundation website: [http://www.fairtrade.org.uk/press\\_office/press\\_releases\\_and\\_statements/may\\_2010/consumers\\_purchase\\_more\\_fairtrade\\_products\\_than\\_ever\\_before.aspx](http://www.fairtrade.org.uk/press_office/press_releases_and_statements/may_2010/consumers_purchase_more_fairtrade_products_than_ever_before.aspx)

<sup>33</sup> Fairtrade Foundation website: [http://www.fairtrade.org.uk/includes/documents/cm\\_docs/2008/F/Fairtrade\\_and\\_supply\\_chain.pdf](http://www.fairtrade.org.uk/includes/documents/cm_docs/2008/F/Fairtrade_and_supply_chain.pdf)

<sup>34</sup> [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf)

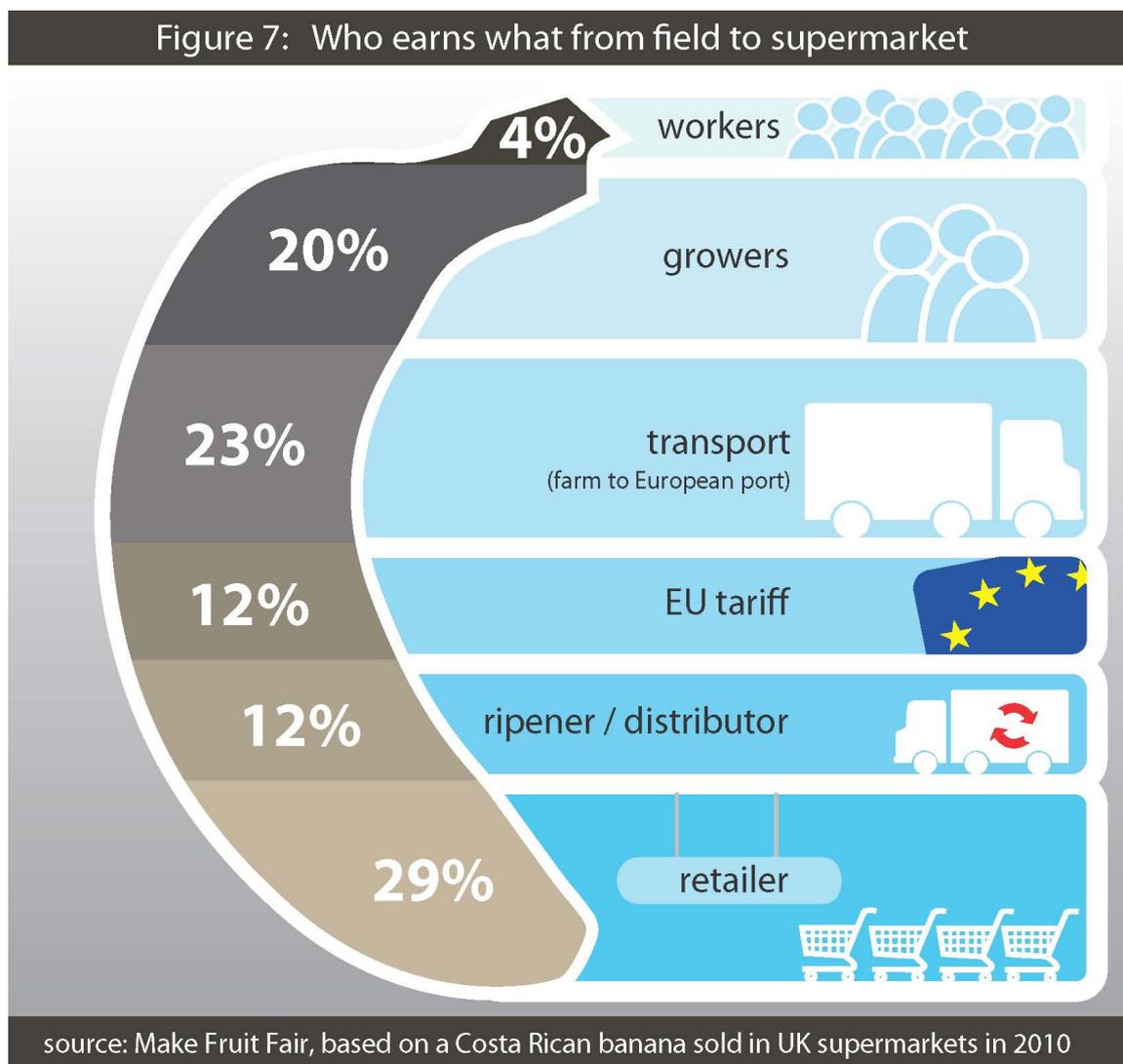
It is very difficult for consumers to know where a falling retail price crosses the line between the competitive and the unsustainable or unethical. The pricing of bananas in UK supermarkets over recent years illustrates this point well.

According to Banana Link, bananas are the world's most traded fruit and a "Known Value Item", meaning that, when one supermarket drops the price, the others often follow. In 2003, the UK Food Group<sup>35</sup> reported that UK supermarkets had fought banana price wars in 2002-3 by both accepting lower margins themselves and by demanding deep cuts at the supplier end.

"Until mid-2002, loose bananas in the UK had been priced at £1.08 per kilo for around six years. Then in August that year, Asda Wal-Mart cut the cost to £0.94, thanks to huge volume discounts which Wal-Mart had exclusively negotiated with Del Monte Fresh Produce. Tesco, Sainsbury's and Safeway were compelled to follow. Morrison's took the next step, cutting the price to £0.85, and again all the major retailers followed suit."

The report stated that with a retail price of £0.81/kg it was not possible for a grower in Costa Rica to pay workers a legal minimum wage. Yet, in 2003 the price fell further to £0.79/kg.

Figure 7 below shows the percentage of the retail price received at each stage of a banana supply chain.



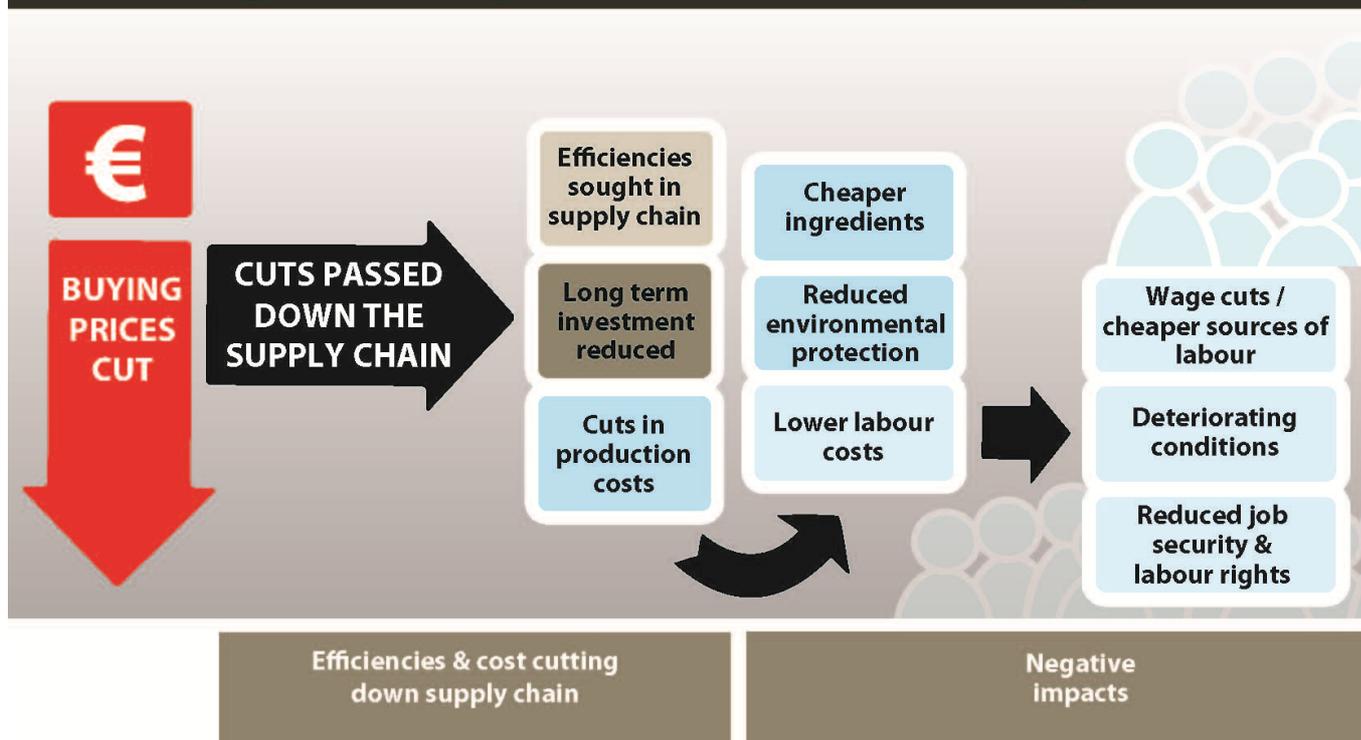
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<sup>35</sup> Food, Inc. Corporate concentration from farm to consumer, Bill Vorley UK Food Group 2003.

As bananas are currently now on sale in UK supermarkets for £0.68/kilo (and have been much lower), and retailers are still dealing with many of the same suppliers as they were 10 years ago, they could argue that the supply chain has adapted successfully to lower buying prices. However, campaigners who have monitored workers' rights in the banana industry throughout this period state categorically that the real price is being paid by those with the least power in the chain.

“A “race to the bottom” in the banana industry has been fuelled by the low prices paid by supermarkets and the cost cutting actions taken by fruit companies as they relocate in search of cheaper labour and weaker legislation in exporting regions. Employers have increasingly sub-contracted labour in a bid to reduce their responsibility for working conditions, the respect of core labour standards or payment of a living wage. Plantation labour is increasingly casual with many workers on temporary contracts or hired on a daily basis. In several countries membership of independent trade unions has fallen as a direct result.”<sup>36</sup>

Figure 8: How price cuts can affect workers' rights



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Unions and campaigners have voiced concerns over the rise in work described as “precarious”, which is synonymous with uncertainty, low wages, lack of trade union rights, control over working conditions and regulatory protection. The problems are widespread in Europe as well as in developing economies.<sup>37</sup>

The negative impacts of the price squeeze on workers are likely to be greater where legislation and the enforcement of labour rights are weak. The upside is that under these circumstances, good standards have the potential to make a greater positive impact – if implemented in partnership by retailers and other actors in the supply chain.

<sup>36</sup> Banana Link website: <http://www.bananalink.org.uk/the-problem-with-bananas>

<sup>37</sup> Organisations such as the Ecologist and the International Labour Rights Forum amongst others have documented examples of unacceptable working conditions in food supply chains in Europe, the USA and worldwide. [http://www.theecologist.org/News/news\\_analysis/1033179/scandal\\_of\\_the\\_tomato\\_slaves\\_harvesting\\_crop\\_exported\\_to\\_uk.html](http://www.theecologist.org/News/news_analysis/1033179/scandal_of_the_tomato_slaves_harvesting_crop_exported_to_uk.html); <http://www.laborrights.org/>

Current initiatives to deal with unfair commercial practices at national and European level are considered briefly in the following section, but an important point to note here is the need for recourse to such initiatives by suppliers and producers regardless of their geographic location.

Supermarkets have responded to consumer interest in ethics and sustainability by using in-house standards to differentiate themselves from their competitors. However, where such standards are simultaneously undermined by abuses of buyer power, or where retailers give exaggerated attention to its commitment to independent labels, they are in effect guilty of the social equivalent of “green-washing” – giving consumers a false impression that they are more socially responsible than they actually are.

### **What have the regulatory authorities done?**

A number of EU Member States are either currently engaged in investigations into retailer/supplier power, or are implementing established mechanisms that aim to deal with it. As a result, the European Commission too has taken an interest in these matters.

In 2008, the Commission established a High Level Group on the Competitiveness of the Agri-Food Industry. The implementation of the recommendations of this group is currently being overseen by the EU High Level Forum for a Better Functioning Food Supply Chain which includes an expert group focused on (B2B) contractual relationships. Within the expert group, the trade and business associations representing each stage of the supply chain produced, in November 2011, *Vertical Relationships in the Food Supply Chain: Principles of Good Practice*. These principles could form the basis of a Code of Conduct or a standard to be applied to companies within food supply chains selling into the EU. Discussion is currently focussed on how such a code would be implemented. The High Level Forum will conclude at the end of 2012, though how the EU will act on these issues remains uncertain.

On recent showing, one cannot be optimistic. Under EU competition law, the domestic consumer is to all intents and purposes paramount, and the consumer interest is generally, if informally, tested by reference to the SPQR acronym already described. If supermarkets broadly pass the SPQR test, competition authorities tend not to be exercised by problems upstream, so that the treatment of suppliers, whether domestic or overseas, slips down the priority list.<sup>38</sup>

To take a specific national example, that of the UK, it is clear that the abuse of suppliers and lack of regulatory will to deal with it is of long standing. In 2000, the Competition Commission<sup>39</sup> found that abuses of buyer power by supermarkets had persisted for at least 10 years. The resulting Code of Practice proved ineffective, however, and a second investigation was carried out, concluding in 2008.<sup>40</sup> Continuing abuse was identified and a second Code of Practice devised together with the appointment of a Groceries Adjudicator to oversee it (although, despite commitment by the UK government, no appointment has yet been made). Thus, on the face of it, the abuse of suppliers by UK supermarkets has persisted, almost unchecked, for more than 20 years.

The 2008 SOMO report (see footnote 1) found that matters were not essentially different elsewhere in the EU and more recently, in 2011, the Spanish National Competition Commission<sup>41</sup> concluded that the bargaining power of retailers may have negative effects on competition and on consumers and suppliers, and made specific reference to a slowing down in the rate of innovation in the food sector.

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<sup>38</sup> As do horizontal effects, eg, the effects of supermarket retail dominance on smaller retailers.

<sup>39</sup> *Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*, Competition Commission, Cm4842, October 2000.

<sup>40</sup> *Groceries Market Investigation*, Competition Commission, April 2008, ISBN 978-0-11-703854-7.

<sup>41</sup> *Report on the relations between manufacturers and retailers in the food sector*, Comision Nacional de la Competencia, 2011 <http://www.cncompetencia.es/Default.aspx?TabId=228>

Why, then, have competition authorities not taken a harder line on buyer power abuse?

Part of the reason is practical difficulty: supermarket buying involves millions of transactions across thousands of suppliers, touching upon the prices that millions of consumers pay. It would be a brave authority which sought to intervene. Intervention could make the bargaining process – such as it is – between suppliers and supermarket buyers more inflexible, with results that could be uncertain.<sup>42</sup> Supermarkets are effective political lobbyists, and politicians tend to be readily persuaded that supermarkets have been the friends of consumers over many years. The question is rarely asked whether they are quite as friendly as they seem.

There is also the difficult question of short and long term. Competition authorities feel they are on safe ground with the past and with the here and now; they are reluctant to base intervention on trends or forecasts that are susceptible to legal or economic challenge. The long term is generally put to one side in the expectation that it will be assessed when it becomes the short term. The result is that competitive detriments can, and do, endure for years.

As CHOICE Australia put it:

“Much of the debate around supermarket discounting is about whether we may see longer-term impacts that work against consumers’ interests. For example, in relation to restricted choice or increased control over pricing by a smaller number of players. Yet the very nature of these long-term impacts means they are difficult to forecast and measure, while the benefits of cheap products are immediate and clear.”<sup>43</sup>

Why was the UK 2000 Code of Practice so ineffective, and why are some commentators concerned that the new Code may be no better? The answer lies in the climate of fear that supermarkets instil in suppliers – a state of affairs that both Competition Commission inquiries identified. While early drafts of the 2008 report gave the climate of fear some prominence,<sup>44</sup> the final version of the report barely mentioned it. If even the biggest multinational brand owners are reluctant to speak out in their own interests, what can reasonably be expected of the small-scale overseas farmer who is no less affected? He not only lacks the resources to mount a challenge, whether directly or through a distributor, but could pay dearly for even attempting one.

A survey by the British Institute of International and Comparative Law (BIICL)<sup>45</sup> on models of enforcement for relations in the food supply chain in Europe illustrates not only how widely buyer power issues are recognised across the EU but how, despite different approaches, authorities have struggled to put in place effective remedies. Of the 15 EU Member States considered in BIICL’s report, nine have taken steps to regulate these issues<sup>46</sup> – six within the framework of competition law. Three states have chosen a variety of soft-law mechanisms and five are currently making plans to regulate. Overall, however, the conclusion reached is that:

“At present, no Member State employs a single method of enforcement that is fully effective. This is, to a large extent, because the majority of mechanisms are based on competition law, but also because it is difficult to create a model that adequately takes into account the unique nature of the food retailer/supplier relationship.”<sup>47</sup>

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<sup>42</sup> The United States has on its statute books the Robinson-Patman Act of 1936, which seeks to use non-discrimination and transparency in buying prices as a means of fostering fair dealing between suppliers and retailers. Modern economic thinking is that the Act has largely failed. A buyer power symposium held in Oxford on May 15th 2012 took the view that a European version of Robinson-Patman would deliver no benefit whatsoever. (Institute of European and Comparative Law, Oxford University, Conference on Buyer Power in Competition Law, May 15 2012).

<sup>43</sup> *Op.cit.*

<sup>44</sup> See the Competition Commission’s *Emerging Thinking* (Jan 2007) p.28, para. 72.

<sup>45</sup> *Models of Enforcement in Europe for Relations in the Food Supply Chain*, Justine Stefanelli, Phillip Marsden, BIICL, 2012.

<sup>46</sup> Belgium, Czech Republic, France, Germany, Hungary, Latvia, Romania, Slovenia, UK.

<sup>47</sup> *Ibid* p1.

What BIICL is able to extract, however, are characteristics of different approaches that they consider to be effective.<sup>48</sup>

- Standards based on the principle that a retailer must deal with its suppliers fairly, lawfully and in good faith, without duress and in recognition of its suppliers' need for certainty (ie, a fundamental principle of fair dealing);
- A binding instrument that regulates conduct through, e.g. the imposition of obligations to change business structures;
- A soft law dispute resolution framework that provides parties with a clear procedure in which to resolve their issues;
- A framework to adequately address imbalances of bargaining power;
- The creation of a dedicated adjudicator or ombudsman that can build up sector-specific expertise;
- A framework that can be accessed by all suppliers in the food supply chain, whatever their geographical origin;
- Routine publication of reports in the food sector to identify good and bad practice;
- The possibility for ex officio investigations;
- A mechanism to allow anonymous complaints;
- The availability of commitment procedures; and
- The possibility to impose enforcement measures with 'teeth', eg, financial penalties.

Again, the climate of fear amongst suppliers is highlighted and BIICL notes that the difficulty of reconciling the need for anonymity with the right for the retailer to have a fair hearing is an issue that all the legal systems struggle with.

To the extent that the fear and the abuse go on, supermarkets will keep adding to suppliers' costs, and over time these will work their way through to the prices that consumers pay; and to the extent that abuse imperils the viability or existence of suppliers, quality and range will suffer too.

## Conclusions

While damage to suppliers can be inflicted by any organisation with buyer power – a major brand owner, a supermarket or a buying group – damage to consumers arises additionally because of the retailer power wielded by leading supermarkets. Detriments inflicted on suppliers will, sooner or later, show up as detriments to consumers.

The evidence considered here, supported by a number of academic commentators,<sup>49</sup> suggests that buyer power is under-represented in academic economic literature. A systematic framework for its analysis and for the whole spectrum of its effects, whether good or bad, is needed. It should also incorporate a long-term view.

Effective measures to prevent unfair B2B commercial practices and the resulting detriments to both small-scale producers and consumers are urgently needed. For too long, and despite numerous initiatives, national and EU authorities have failed to solve the problems. Remedies should be based on a fundamental principle of fair dealing. To be effective, they also need to be binding and enforceable. Further, the global nature of supply to leading supermarkets must be recognised in order to ensure that all suppliers (regardless of geographical location) have effective recourse to protection.

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<sup>48</sup> *Op. cit* p34.

<sup>49</sup> Three papers presented at "Buyer Power in Competition Law", a conference organised by the Oxford University Centre for Competition Law & Policy and Oxford/Stockholm Wallenberg Venture, 15 May 2012: Maurice Stucke, University of Tennessee, *Buyer Power: Should the Seller Beware?*; Ariel Ezrachi, University of Oxford: *Buying Alliances, Cartels and Purchase Price Fixing: In Search of a European Enforcement Standard*; and Michael Rowe, Slaughter and May: *Buyer Power in FMCG Mergers*.

With a mandate to inform consumers and act in their interests, consumer organisations have a vital role to play in preventing the negative effects of buyer power. CI will support the work of its members in raising consumer awareness of relevant issues; will hold supermarkets to account for the conditions in their food supply chains and the integrity of their purchasing practices. Further, CI will support binding and enforceable action to prevent abuses of buyer power and subsequent detriment to consumers and suppliers alike.

Catherine Nicholson, Consumers International  
Bob Young, Europe Economics  
July 2012

(Amended Sept. 2012)

## Endnotes

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### Sources for selected national food market concentration ratios (see Tables 1a and 1b)

Country	Year	Source
Austria, Finland, Norway	2009	Nielsen
Belgium	2011	<a href="http://www.retaildetail.eu/nl/case-van-de-week/item/2421-de-belgische-voedingsmarkt-2010-2011?tmpl=component&amp;print=1">http://www.retaildetail.eu/nl/case-van-de-week/item/2421-de-belgische-voedingsmarkt-2010-2011?tmpl=component&amp;print=1</a> )
Denmark, France, Greece, Italy, Spain	2009	Planet Retail, 2009
Germany	2011	Bundeskartellamt
Netherlands	2010	<a href="http://www.distrifood.nl/web/Onderzoek/Marktaandeelen.htm">http://www.distrifood.nl/web/Onderzoek/Marktaandeelen.htm</a>
Portugal	2011	Nielsen (supplied by APED <a href="http://www.aped.pt">http://www.aped.pt</a> )
UK	2011	IGD
Australia	2011	<a href="http://www.Choice.com.au">www.Choice.com.au</a>
Canada	2011	Food & Consumer Products of Canada, reported by Postmedia News
Switzerland	2011	Detail Handel Schweiz
USA	2006	<a href="http://www.oecd.org/dataoecd/30/40/44231819.pdf">http://www.oecd.org/dataoecd/30/40/44231819.pdf</a>
Estonia, Lithuania, Luxembourg, Slovenia	2005	Planet Retail, 2006