

EU Policy Briefing: What the EU should do against unfair trading practices

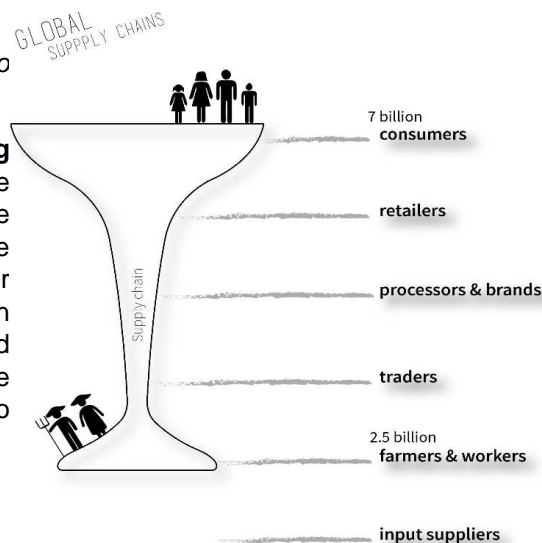
“Who’s got the power? Tackling imbalances in agricultural supply chains”

November 2014

0. What is the problem?

“The shifts in power in the agri-food sector have now become too significant, and their impacts too considerable, to be ignored”¹.

A consequence of such shifts in power are **Unfair Trading Practices** (UTPs)². Abusive practices towards suppliers include squeezing on prices, threatening de-listing, retrospective deductions or changing of prices, and paying late. Large supermarkets or traders may also transfer excessive and/or unjustified risks to suppliers, affecting their capacity to survive in the market, undertake new financial investments in products and technology, and develop cross-border activities in the Single Market.³ This results in squeezing not only suppliers, but also farmers and workers, environmental damage and food waste.



1. What is the problem with current EU policy on Unfair Trading Practices?

The European Parliament raised concerns about UTPs several times, and as far back as 2008 more than 50% MEPs signed a written declaration to ask the European Commission to look at regulating supermarkets to stop the application of unfair trading practices in food supply chains. The European Commission’s Green Paper on UTPs in January 2013 gathered stakeholder views on the occurrence of UTPs in the food and non-food supply chain⁴. In its recent Communication *Tackling unfair trading practices in the business-to-business food supply* the **European Commission acknowledges that UTPs are quite common and may have harmful effects, especially on small and middle-size enterprises in food supply chains.**

The Commission also states “that UTPs applied within the EU could have direct or indirect effects on producers and companies outside the EU, including in developing countries.”⁵



“The concentration of production in fewer hands and the disappearance of small and medium producers foster monopoly and the control of prices and the market, which creates adverse pressure on social conditions, wages and human rights.”

SINTRAINAGRO (Agricultural workers union) – Colombia

A few EU Member States are well advanced in setting up robust enforcement mechanisms which are mindful of the climate of fear to stop unfair trading practices (France, Hungary, Ireland and UK).⁶ Others (Austria, Cyprus, Greece, Latvia, Malta and Poland) have enforcement mechanisms which were considered insufficient by companies surveyed who felt exposed.⁷ The problem is that “**The existing legal tools that can be useful to address UTPs and their negative effects are very fragmented and not specifically designed to tackle this problem**”⁸.

In the meantime, a number of industry associations have set up a voluntary self-regulation initiative (the Supply Chain Initiative). Whilst it has raised awareness on the problem of UTPs, it does not guarantee sufficient confidentiality for suppliers, nor has it the ability to apply tough financial sanctions, and so the initiative cannot be considered as an effective enforcement mechanism.

¹Olivier De Schutter, Co-chair of the International Panel of Experts on Sustainable Food Systems (IPES-Food), former UN Special Rapporteur on the Right to Food quoted in Fair Trade Movement’s “Who’s got the power? Tackling imbalances in agricultural supply chains”, 18 November 2014

²European Commission DG Internal Market European Business Test Panel Consultation on Unfair Practices 15 Feb 2012

³Communication from the European Commission, Tackling unfair trading practices in the business-to-business food supply chain, COM(2014) 472, 15 July 2014.

⁴Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe COM(2013) 37 , 31 January 2013

⁵Communication from the European Commission, 2014, op. cit.

⁶British Institute of International and Comparative Law (J Stefanelli and P Marsden), Models of Enforcement in Europe for Relations in the Food Supply Chain, April 2012

⁷European Commission DG Internal Market European Business Test Panel Consultation on Unfair Practices 15 Feb 2012

⁸Communication from the European Commission, 2014, op. cit.

By the end of 2015 the Commission will present to the Council and the European Parliament an evaluation of the effectiveness of Member States' enforcement mechanisms and of the industry-led voluntary scheme. This is the perfect opportunity for the new European Commission President Jean-Claude Juncker to give follow-up to his programmatic statement "*We need more fairness in our internal market*"⁹.

2. What is the problem with current EU competition policy?

EU Competition Policy has so far ignored sustainability and fair trade criteria in the assessment of both structural and behavioural market competition issues. The current methodologies applied to assessing consumer welfare do not sufficiently take into account the interest of future consumers. This is however hardly compatible with the new mission given to the new EU Competition Commissioner Margrethe Vestager, "*Competition policy [...] should contribute to steering innovation and making markets deliver clear benefits to consumers, businesses and society as a whole*"¹⁰.

There are already a number of EU Member States that are taking action at national level to address this gap. For example in May 2014, the Dutch government issued policy directions to the Dutch competition authority on the application of the Dutch competition rules to sustainability initiatives, pushing for the adoption of a broad consumer welfare concept (not only price considerations), and taking into account benefits to both current and future consumers.¹¹

The EU needs to:

- 1) Adopt a Directive under Article 114 of the Treaty of Lisbon to ensure EU Member States put in place robust, credible, and well-coordinated enforcement mechanisms to stop the application of **Unfair Trading Practices** within food supply chains serving EU market.¹² The following minimum requirements should be met:
 1. be accessible for all businesses participating in EU food supply chains regardless of whether they are located in the EU or not;
 2. operate in a manner which protects the anonymity and confidentiality especially of suppliers who are concerned that they may lose business if they do;
 3. be able to deter poor practice, either at EU or Member State level via a selection of different enforcement tools (e.g. informal dialogue, financial penalty);
 4. share information and coordinate enforcement both between a European network of enforcement authorities and internationally.

- 2) Use its **competition powers** to guarantee sustainable supply chains and neutrality in the interpretation and implementation of rules on the balance of power across the supply chain. Namely:
 1. By addressing **structural issues** such as the accumulation of excessive buyer power and increased market concentration in the retail sector through a revised approach to merger control.
 2. By addressing **behavioural issues** such as anticompetitive agreements and abusive unilateral behaviour in the retail sector, which have an adverse impact on small suppliers and consumers. This could also be achieved by, for example, adopting a block exemption regulation for the food sector that would allow agreements between agricultural companies when the aim is to improve trading conditions and the livelihood of producers, and/or official EC guidance on how existing legislation should be interpreted to meet these concerns.

For more information, detailed recommendations and the coalition of supporters, visit:

www.fairtrade-advocacy.org/power



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⁹ 'A new start for Europe: My agenda for Jobs, Growth, Fairness and Democratic Change' – Programmatic agenda presented on 15 July 2014 to the European Parliament

¹⁰ Mission letter from Jean-Claude Juncker, President of the European Commission, to Margrethe Vestager, Competition Commissioner, 1 November 2014

¹¹ See <http://kluwercompetitionlawblog.com/2014/05/15/art-1013-and-sustainability-new-developments-in-the-netherlands/>

¹² British Institute of International and Comparative Law (J Stefanelli and P Marsden), Fair Relations in the Food Supply Chain Establishing Effective European Enforcement Structures, May 2014