



Amicus Response to the decision by the Office of Fair Trading to refer the big 4 supermarkets to the Competitions Commission.

- 1. Amicus is the UK's second largest trade union with 1.2 million members across the private and public sectors. Our members work in a range of industries including manufacturing, financial services, print, media, construction and not for profit sectors, local government, education and the health service.**
2. The union represents over 20,000 workers in the Food Drink and Tobacco sector.
3. The Office of Fair Trading (OFT) has decided under section 131 of the Enterprise Act 2002, to refer to the Competitions Commission (CC) the issue of competition between the big 4 supermarkets, as there is evidence of market developments and features of the market that might be preventing, restricting or distorting competition and therefore harming consumers.¹ This referral comes after an extensive public consultation carried out by the OFT and is of particular interest to Amicus members who work for the companies that supply the big 4 supermarkets (Tesco, Sainsbury's, Morrison's and Asda) with groceries.
4. The remit from the OFT is to specifically look at whether the consumer is getting a raw deal from the complex monopoly currently held by the supermarkets, even though evidence suggests that consumers have benefited in recent years from falling prices, an increase in product range and an apparent improvement in customer service² There are four specific features that lead to a suspicion that there is a distortion of competition and that this may be having an adverse effect on consumers. These features are:
5. The planning system can reasonably be suspected of restricting or distorting competition by raising the cost of, and also limiting the scope

¹ The Grocery Market, OFT845, May 2006. Page 1 Executive Summary
www.of.gov.uk/NR/rdonlyres/1A2D7FA2-FEA3-4459-9B25-4A737A20023D/0/oft845.pdf

² *ibid*

for, new local market entry, particularly by way of new large format stores.

6. There are reasonable grounds for suspecting that the land holdings of the large supermarket multiples may reinforce their existing market position in some local areas. The OFT has also found evidence of practices that could have an anti-competitive effect, including the use of restrictive covenants in relation to sites sold by the big supermarkets.
7. There is evidence to suggest that the buyer power of the big supermarkets has increased since 2000, and that the differential between suppliers' prices to large supermarkets compared with those to wholesalers and buying groups has risen. Against the background of greater concentration within the market, there are reasonable grounds for suspecting that this buyer power could harm consumer choice by undermining the viability of alternative business models including wholesale distribution to the convenience store sector.
8. Aspects of the large supermarkets' pricing behaviour – below-cost selling and price flexing – also provide reasonable grounds for suspecting that competition is being distorted, though the extent of the possible distortion is unclear. Although the OFT has not found evidence that consumers are being harmed as a result of these pricing practices, a CC market investigation would be able to examine in greater detail the effects that these practices may be having on competition and consumers.³
9. The last review of the supermarket industry by the OFT drew as one of its conclusions that there was a need for a Supermarket Code of Practice⁴ This code of practice was published in October 2000 and a review of the code of practice was undertaken in February 2003, with the report published in February 2004⁵
10. Amicus agrees that the remit from the OFT is commendable and is pleased to see that it has also acknowledged that the relationship between the big 4 and their suppliers requires further investigation. Amicus also agrees that there needs to be an analysis of whether the relationship between the two parties is having a detrimental effect on consumers, even if unintentional, and address the issue of the Code of Practice failing to control or regulate the behaviour of the big 4 in their relationship with their suppliers.

³ The Grocery Market, OFT845, May 2006. Page 2 Executive Summary
www.offt.gov.uk/NR/rdonlyres/1A2D7FA2-FEA3-4459-9B25-4A737A20023D/0/oft845.pdf

⁴ The Supermarket Code of Practice, Review OFT697, February 2004
www.offt.gov.uk/NR/rdonlyres/3A2B629B-59D2-4547-B879-83A9483D3BE6/0/oft783.pdf

⁵ *ibid*

11. The relationship between the suppliers of groceries and the big 4 is fraught with difficulties. In the first review undertaken by the OFT in 1999 a survey of suppliers was conducted and the results of the survey crystallised the inherent problems within the sector regarding 'buyer power': this is the extent to which the main parties are able to obtain lower prices from their suppliers as a result of their size and importance to the supplier's business, as opposed to those justified by reductions in cost
12. In the 1999 report from the CC, they commented that they had received many allegations from suppliers about the behaviour of the main supermarkets in the course of their trading relationship. The CC was concerned to see that most suppliers were unwilling to be named, or to name the main party that was the subject of the allegation, creating a climate of apprehension across the sector. The CC concluded that of the major big 4 supermarkets, each had an 8% share of the market and had sufficient buying power to significantly indicate to the CC that the supply of groceries at this time gave rise to a complex monopoly situation. The CC believed that the most effective way of addressing this effect was the implementation of a Code of Practice⁶
13. In February 2004, the OFT carried out a review of the Code of Practice and whether it was working effectively. The consultation exercise carried out as a part of the review revealed a widespread belief among suppliers that the code is not working effectively. Of those surveyed, most believed that the code had not brought about any significant change in the behaviour of the supermarkets. One trade association representing one significant grocery sector even said that the situation had worsened since the publication of the CC monopoly report (2000)⁷
14. Of the two major reasons given for the perceived lack of effectiveness of the code, the first was the fear among suppliers of complaining. Suppliers both large and small were concerned at being de-listed by the supermarkets or being required to trade with them on inferior terms if they did complain. The fear of retribution was so great that in the consultation exercise carried out by the OFT, four trade association respondents and three individual supplier respondents refused to allow the OFT to reveal their names or even the sectors in which they worked. The second reason was the use of the concept 'unreasonableness' in many of its provisions. Respondents to the OFT consultation believed that the concept allowed the supermarkets to interpret the code at will.

⁶ Code of Practice on Supermarket's Dealings with Suppliers - <http://www.offt.gov.uk/NR/rdonlyres/7199E8F5-7029-4C06-A3E9-04A0E2FA8EF2/0/Supermarkets2.pdf>

⁷ The Supermarket Code of Practice, Review OFT697, February 2004, www.offt.gov.uk/NR/rdonlyres/3A2B629B-59D2-4547-B879-83A9483D3BE6/0/offt783.pdf

15. For Amicus members the pressure supermarkets exert on suppliers is causing them increasing concern, especially when taking into account the continued move into the convenience market by the supermarkets. There are distinct issues that they feel are seriously compromising the relationship between the two parties, these are:
- a. Payment schedules
 - b. Retrospective reductions in price during the period of a contract
 - c. Supplier contributions to marketing costs
 - d. Lump sum payments as a condition of supply
 - e. Payments in respect of consumer complaints
 - f. Tying of third party goods or services
16. All of the above have a detrimental effect on the relationship between the supermarket and the supplier. Our members are seriously concerned that this detriment will impact adversely on their company's profitability. This could then impact on their jobs and job security. They have also expressed concern that if the status quo is not changed many companies will be forced to transfer production of their products overseas to cheaper labour markets, for example in eastern Europe.
17. The Code of Practice was created to address these issues however in the OFT review of the code, evidence shows that since the introduction of the code, the supermarkets had behaved less reasonably towards suppliers and some respondents to the review said the code was 'worse than useless'⁸ because it has had the effect of legitimising the practices which the CC had sought to remedy or prevent. Respondents also made the point that the code as currently drafted is practically useless for smaller suppliers who cannot afford to lose the investment they have to make to gain the business in the first place. Hence the extreme reluctance to jeopardise their position by taking the supermarket to arbitration.⁹
18. There are a number of things that Amicus members would like to see implemented to counteract what is happening in the sector at the moment. This includes:
- a. An enforceable code of practice that checks the market power of the supermarkets
 - b. A code of practice that acknowledges the needs of the full gamut of companies supplying the big supermarkets
 - c. A mediation service that has powers of enforcement
 - d. Specific dispute resolution procedures in the code of practice, including financial penalties if the dispute is not resolved within 90 days
 - e. An open and transparent complaints procedure if there have been perceived breaches of the code

⁸ *ibid*

⁹ The Supermarkets Code of Practice – Review, February 2004, page 12

- f. An acknowledgement that a climate of fear, retribution and vulnerability permeates the sector, needing a clear and pragmatic response to address this culture
- g. The introduction of an independent ombudsman or regulator to fully oversee the sector, with the power to deal with supermarket – supplier relationships and ensure compliance with the code of practice
- h. A system of fines to be introduced if supermarkets do not abide by the code
- i. An effective communications strategy to advertise the existence of the code, the Friends of the Earth survey found that only 44% of farmers were aware of the existence of the code¹⁰

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¹⁰ Friends of the Earth – Survey of Farmers regarding the Supermarket Code of Practice, March 2003