

AIM POSITION PAPER

UNFAIR TRADING PRACTICES - Ensuring Fairness for All

AIM supports a “fairness for all players in the supply chain” approach. We believe that the current proposal for legislation on Unfair Trading Practices should apply to all players in the food supply chain. Unless the entire supply chain is addressed, UTPs will continue to affect SMEs, farmers and therefore thousands of workers.

Fairness for All:
20 Member States
 have UTP rules, none
 of them an SME
 limitation

20 EU Member States have UTP legislation (EC Impact Assessment, April 2018) – but not one existing legislative instrument treats some players in the supply chain and not others. **Out of 20 Member States, none focuses on SME-only legislation.**

Fairness for All:
 UTPs in one part of
 the supply chain have
 a domino effect in
 the whole chain

The supply chain is an interdependent system – inefficiencies or challenges in one part of that system have a ‘domino / cascade effect’ on the whole chain. Brands manufacturers have a **unique intermediary role** in this supply chain. They buy and supply within the chain – buying from farmers and upstream suppliers, SMEs or not (raw materials suppliers, converters) and supplying final product to wholesalers and retailers. **Due to unfair trading practices, a lack of certainty in the business environment is one of the key challenges to future planning – manufacturers cannot be expected to absorb the costs of unfair practices over the longer-term.** Although brands manufacturers honour their contracts and their commitments in the supply chain by absorbing the costs of de-listings as much as possible, so as not to affect current contracts with SMEs & farmers, there is clearly a challenge to continued investment, innovation and growth for the long term.

Fairness for All:
Cost of UTPs
 equivalent to € 4.4
 billion per annum

The European Commission acknowledges that suppliers of all sizes are affected by UTPs in the proposal for legislation COM (2018) 173. It acknowledges the cost to manufacturers, and quotes evidence regarding **the negative impact of UTPs:** In 2011, “UTP-related costs amounted to 0.5% of turnover [...] would be the equivalent of EUR 4.4 billion per year of overall food industry turnover”. **UTPs furthermore result in job losses, investment losses and inefficiencies, in lost sales, and lost workdays. It affects all brands, whatever their size, big or small, whatever their structure – whether farmers or agri co-operatives, SMEs, family owned businesses or global players.** One out of three brands in the food supply chain is produced by farmers co-operatives.

Fairness for All:
Retailers in their dual
role are CUSTOMERS

As gatekeepers, retailers are in a position to de-list products of brand manufacturers, thus to take them off the shelf, in order to exercise pressure in negotiations. Suppliers can do little about this, given the role of the gatekeeper: **if the retailer closes the gates,**

AND COMPETITORS of BRANDS, and at the same time the GATEKEEPERS TO THE CONSUMER

manufacturers lose access to consumers, and likewise, consumers lose on choice. In their dual role as customer and competitor to brands manufacturers, these de-listings are even an opportunity for retailers to promote their own retailer brands products, as some authorities have acknowledged in investigations. Retailer brands dominate an extensive number of categories directly linked with the agri world such as milk, oil, vegetables and fruits, as evidenced in the DG COMP 2014 report on modern retailing. The retailer brands have up to 67% share of milk sales, 54% of oil, 60% of frozen and canned vegetables.

Fairness for All: European Retail Alliances undertake co-ordinated de-listing across Member States resulting in loss of consumer choice

The imbalance of power has become even stronger with the growth of **European Retail Alliances, which undertake practices, amongst others, of co-ordinated de-listing across Member States.** This directly impacts consumers choice of products in several Member States, is contrary to the single market for goods, negatively impacts the revenues of manufacturers and their suppliers with negative consequences for employment at the processor level, as the Commission has acknowledged already on the costs of late payments. The French government has also publicly expressed its concerns with European Retail Alliances and asked the Commission to address the issues of **retailers conducting their negotiations outside of the EU to avoid Member State laws on UTPs.**

Fairness for All: Multinational retailers driving negative dynamism in the supply chain

Retailers justify all behaviour in the name of lower prices for consumers. But this has consequences. **With their pricing strategy tactics, enabled by their dual role as retailer and manufacturer of their own private labels, one reinforcing the other, the retailers have been responsible for the loss of farmers' incomes and have a negative impact on many other players in the supply chain. These tactics, which include de-listings and other unfair practices, towards all size of suppliers are driving a negative dynamism in the supply chain, which has long-term negative effects for all.**

Fairness for All: UTPs are imposed by retailers to increase margins

As illustrated by the main retail players in a number of European countries, the gross margin generated by large European retailers (which varies between 20% to 36%) has been increasing over the past ten years at the expense of their suppliers base which has to cover the increased cost of raw materials, taxes, etc. At the same time, their market share continues to increase, to the detriment of smaller retailers and independent shops. **The major retailers in Europe are all multinationals - present in several countries and continents. They have managed to reduce their purchasing price of goods compared to 10 years ago, despite inflation, clearly demonstrating the growth of their bargaining and negotiation power. Buying power leads to unfair trading practices,** as recognised by several national authorities and academic research.

Fairness for All: UTPs result in a less competitive grocery supply chain

This explains why the European grocery supply chain remains less competitive than in other global regions. The fact that retailers claim a lower net margin while their gross margin keeps increasing further reinforces the point of growing inefficiencies due to the practice of unfairness.

“Retailers only want talk about price. While the salmon price has increased by 60% in a year, that the raw material represents 75% of the finished product, **some retailers threaten the cooperatives of delisting their products ...** request for paying for no services, increase of demand to finance promotions ...”
 – Source: Coop de France, association of French cooperatives, LSA, 27.02.2017

Latvia: The Competition Council Fines Retail Chain for Imposition of Unfair Discounts on Milk Processing Company –

“A significant proportion of the suppliers I received information from had experienced delay in payments ... these suppliers ... were of different sizes and from different locations”

– Source: Groceries Code Adjudicator Investigation, 26.01.2016

4 leading retailers found guilty of various abuses in last 2 years.

French competition authority, 07.12.2010, Asymmetry and uncompetitive terms in contract of retail to franchise stores.

“From the perspective of the smaller partners a purchasing cooperation with one of the leading competitors has ambivalent implications for another reason. ..., there are increasing indications that the conditions attained are not always passed on in full to the smaller partners. The results of the sector inquiry confirm this estimation. Apart from the loss of independence, this can also lead to direct disadvantages for the smaller cooperation partners.”

– Source: Bundeskartellamt, German Competition Authority, Summary of the Final Report of the Sector Inquiry into the food retail sector, 31.12.2014, p.5



Retailer brands suppliers: “Many of the respondents felt that **quality was seldom the lead concern of Retailers. Price seems to be the number one concern, especially when buying alliances are involved. ... The use of buying alliances also further removes the process from any contact with the category, reducing the exercise to just a spreadsheet price. Very low price expectations lead to quality erosion to the detriment of the category. Some also stated that this inhibits innovation.**”

– Source: How private labels suppliers in Europe experience the relationship with their retail clients, Report April 2017, IPLC Europe

The Czech Office for the Protection of Competition (ÚOHS) issued verdict for leading retailer which asked **more than 200 suppliers to change the basic purchase price of their products, otherwise threatening to delist 30% of their product portfolio** – 21.08.2017

“Certain retailers impose to small shopkeepers «their law» (minimum sales volume, obligation to purchase secondary products)”

– Source: Secretariat General Benelux: restrictions territoriales dans le commerce de détail, p.5, 2018 Micro entreprise statement

When retail strangle their franchised storekeepers: “the retail buying group sells to its franchised stores products which are often 10% to 30% more expensive than the price the shopkeeper could purchase in a regular supermarket!” Source: Mediapart, 11.10

Retailers forcing the shopkeepers to only buy from retail central buying group and to sell with negative margin

Source:CNMC (competition authority) SDC/0508/14

214 shopkeepers against leading retailer for unfair redistribution of the profit gathered from suppliers

CI/15/224905- 2016

INTERNATIONALISATION OF RETAIL CALLS FOR A EUROPEAN DIRECTIVE FOR ALL

TOP 5 RETAILERS IN THE MEMBER STATES- MOST ARE INTERNATIONAL RETAIL GROUPS

2017	Top 1	Top 2	Top 3	Top 4	Top 5
Austria	Rewe	Spar	Aldi	Schwarz/Lidl	MPreis
Belgium	Colruyt	Ahold Delhaize	Carrefour	Aldi	Schwarz/Lidl
Bulgaria	Schwarz/Lidl	Coop Euro	Rewe	Metro	Fantastiko
Croatia	Agrokor	Schwarz(Lidl)	Spar	Plodine	Rewe
Cyprus	Alpha Mega	Schwarz(Lidl)	Sklavenitis	Denbenhams	Spar
Czech Republic	Schwarz /Lidl	Rewe	Ahold Delhaize	Tesco	Coop Euro
Denmark	Coop DK	Dansk Supermarked	Dagrofa	Reitan	Schwarz/Lidl
Estonia	Coop Eesti	Kaubajama	Maxima	Ica Gruppen	Phoenix
Finland	SOK	Kesko	Alko	Schwarz/Lidl	Reitan
France	Carrefour	Leclerc	ITM	Système U	Casino
Germany	Edeka	Schwarz (Lidl/Kaufland)	Rewe	Aldi	Metro
Greece	Sklavenitis	Ahold Delhaize	Schwarz(Lidl)	Metro Gre	Masoutis
Hungary	Coop Euro	CBA	Tesco	Spar	Real Hungaria
Ireland	Musgrave	Tesco	Spar	Aldi	Schwarz(Lidl)
Italy	Coop Italia	Conad	Esselunga	Auchan	Carrefour
Latvia	Maxima	Ica Gruppen	SOK	Aibe	Couche-Tard
Lithuania	Maxima	Norfa	Ica Gruppen	Aibe	Schwarz(Lidl)
Luxembourg	Cactus	Louis Delhaize(Cora)	Ahold Delhaize	Auchan	Carrefour
Malta	Schwarz(Lidl)	Debenhams			
Netherlands	Ahold Delhaize	Jumbo Supermarken	Schwarz(Lidl)	Aldi	Plus
Poland	Jeronimo Martins	Schwarz (Lidl/Kaufland)	Eurocash	Tesco	Carrefour
Portugal	Jeronimo Martins	Sonae	Schwarz(Lidl)	ITM	Auchan
Romania	Carrefour	Schwarz (Lidl/Kaufland)	Profi	Ahold Delhaize	Auchan
Slovakia	Schwarz (Lidl/Kaufland)	Coop Euro	Tesco	Rewe	CBA
Slovenia	Agrokor	Spar	TUS Trgovine	Aldi	Schwarz(Lidl)
Spain	Mercadona	Carrefour	Dia	Eroski	Auchan
Sweden	Ica Gruppen	KF Gruppen	Systembolaget	KF Gruppen	Bergendahls
UK	Tesco	Sainsbury	Asda	Morrisons	Aldi

Source : Planet Retail, 2017

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