

Why farmers must have access to the Supermarket Ombudsman

ActionAid is deeply concerned that the Department for Business, Innovation and Skills is considering only allowing direct suppliers access to the Supermarket Ombudsman. If this happens, the Ombudsman would not be able to remedy the Adverse Effect on Competition (AEC) effectively, and producers in developing countries would be excluded from the body.

The Adverse Effect on Competition will not be remedied effectively if indirect suppliers are excluded

The Competition Commission (CC) recommended that the Ombudsman should be able to receive anonymous complaints from indirect suppliers such as farmers, and other third parties such as trade associations. This is because the CC found evidence that “unexpected costs and excessive risks” are passed on from supermarkets’ direct suppliers to indirect suppliers further up the chain, including primary producers.

In cases where a supermarket breached the Groceries Supply Code of Practice (GSCOP), direct suppliers are likely to have a greater incentive to pass on excessive costs and risks to indirect suppliers, rather than complain to the Ombudsman. A brief look at the options available to direct suppliers shows why.

A breach of the GSCOP would result in financial losses for direct suppliers, who would have four options available under the Ombudsman scheme. These are 1) to file a formal dispute case and attempt to win compensation; 2) submit a complaint anonymously; 3) absorb the losses incurred by the breach of GSCOP; and 4) recoup losses by passing on excessive costs and risks to indirect suppliers. Let’s look at these in turn.

- 1) The Government has recognised that in a majority of instances, the ‘climate of fear’ amongst suppliers will prevent them from filing dispute cases. As such, disputes alone will not remedy the AEC.
- 2) Being able to submit complaints anonymously will certainly encourage suppliers to provide information to the Ombudsman. However, anonymous complaints would not result in suppliers receiving compensation for any financial losses incurred through an infringement of the GSCOP! Thus direct suppliers would still have an incentive to pass on costs and risks to indirect suppliers.
- 3) Direct suppliers could absorb losses incurred through a breach of the GSCOP. However, this would damage their business operation, and the AEC would remain in place.
- 4) Therefore, the greatest incentive for direct suppliers is likely to be to recoup any losses incurred by passing on excessive costs and risks to indirect suppliers. Moreover, it is likely that the majority of direct suppliers have greater market power than indirect suppliers, meaning the incentive to pass on excessive costs and risks will be even greater.

This indicates that in cases where the GSCOP had been breached, excessive costs and risks may be transmitted to indirect suppliers in a majority of instances, meaning the majority of GSCOP breaches could go undetected. As such, if indirect suppliers and other third parties are not permitted to submit complaints anonymously, the Ombudsman will not have the information it needs to prevent the AEC.

It is also the case that if indirect suppliers are excluded, *and* a cap is placed on the size of supplier allowed to access the Ombudsman, it would have no power whatsoever to address the AEC across a large swath of the groceries supply base.²

Excluding indirect suppliers would run counter to international development goals

While the exact percentage is not known, it is safe to assume that almost all the supermarkets’ overseas producers are indirect suppliers, and therefore would be excluded from the Ombudsman scheme.

Excessive costs and risks imposed on suppliers in developing countries result in an unfair transfer of wealth from small businesses and their employees in these countries, to supermarkets in the UK. Anecdotal evidence indicates that unreasonable pressures placed on overseas suppliers are prompting some of them to consider withdrawing from the UK market.³ This outcome would not be in the interests of consumers. The extent of overseas suppliers' concern over the issue is highlighted by the letters sent to UK Secretaries of State from producer associations in developing countries in support of the Ombudsman.⁴

By excluding producers from developing countries, the Government would lose an important opportunity to promote ethical trade, and to help achieve its international development goals.

Indirect suppliers would not overwhelm the Ombudsman with complaints

The Government has proposed excluding indirect suppliers through a concern that, because there would be upwards of 300,000 potential complainants in the UK alone, the Ombudsman could become overwhelmed with work. This is highly unlikely. The CC has proposed that a single complaint would not necessarily lead to the Ombudsman taking action. Once the Ombudsman had sufficient evidence to spot a pattern of behaviour among retailers, then it could open an investigation.

Even if a large number of complaints are submitted, they would be prioritised according to their importance, and grouped into a smaller number of categories that could be covered by a small number of inquiries.

What can policymakers do?

The CC recommended that the Ombudsman should be able to receive and investigate “complaints from any other person, to the extent that it relates to a breach of the Code”. ActionAid suggests this or a similar form of wording should be used in the design of the Ombudsman.

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¹If considered meritorious, anonymous complaints could prompt the Ombudsman to investigate the practice in question. If the Ombudsman found the practice to be in breach of the GSCOP, it would take action to ensure supermarkets changed their behaviour. However, in these instances it could not award compensation to suppliers.

² A proposal has been put forward to exclude large-scale suppliers from the Ombudsman scheme. Doing so would harm the interests of small suppliers and workers in developing countries. See here for a briefing on this issue:
http://www.actionaid.org.uk/doc_lib/why_large_suppliers_must_have_access_to_the_ombudsman_-_26-03-10.pdf

³ See ActionAid's submission to the Competition Commission Grocery Market Inquiry, 27 June 2008.

⁴ Letters in support of the Ombudsman were sent to the Secretaries of State for Business and for International Development, by the Windward Islands Farmers' Association and by the Zambia Export Growers Association in 2009.