

Traidcraft Exchange Response to Competition and Markets Authority's Call for Input on Competition Law and reducing the UK's Carbon Dioxide emissions, including the Path to Net Zero

1. Introduction

Traidcraft Exchange is the UK's only development charity dedicated to making trade work for people living in poverty in the global south. It was established in 1995 as the sister organisation to the social enterprise Traidcraft plc. Traidcraft Exchange runs programmes in South Asia and Africa supporting small businesses, farmers, and workers. In the UK we campaign and advocate for improvements in the practices of the UK government and UK businesses. Traidcraft Exchange submitted evidence to the Competition Commission's 2006-2008 Grocery Market investigation.

- 1.1** We welcome the opportunity to submit evidence to the CMA on how competition law can best support the path to net zero. However, the UK's focus on net zero is too narrow and fails to include the carbon emissions generated overseas as products are made and shipped for consumption in the UK. For the UK government to play its globally responsible and proportionate role in reducing UK-linked generation of carbon emissions, it will need to adopt a target to reduce off-shored emissions to complement the existing net zero target.
- 1.2** From Traidcraft Exchange's experience of working to improve the lives of workers and farmers in the global south, we witness that risks and benefits are unequally shared along supply chains. UK retailers' businesses models of buying consumer products for resale enables them to routinely make profit on the items that they sell. Meanwhile, suppliers and the workers in the supply chains that retailers rely on find themselves in a more volatile and vulnerable situation. For example, when UK lockdowns in response to Covid-19 disrupted trade, garment suppliers were not paid for products already produced and shipped, nor reimbursed for fabric and raw materials explicitly bought for retailers' orders. The consequence was that workers were not paid for work already completed and many found themselves destitute, unable to pay for food and housing.
- 1.3** Garment workers in Bangladesh, Cambodia, India, Indonesia, Myanmar, Pakistan, and Sri Lanka lost an estimated US\$3.19 to 5.78 billion in March through May 2020 due to layoffs and factory closures¹. The non payment of wages of workers has been traced back to

¹ https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_758626.pdf

individual retailers not paying for previously ordered goods by Clean Clothes Campaign². Flower workers were also badly impacted³.

1.4 There are close links between the need for farmers and workers to earn a living income, and other measures associated with sustainable supply chains and the path to net zero, including tackling deforestation, sustainable production methods and adaptation. In light of this, our consultation response focuses on how competition policy impacts upon workers' and farmers' incomes, rather than a narrow focus on net zero.

1.5 This response focuses on the following recommendations, from Traidcraft Exchange's experience.

1.5.1 A) The CMA needs to intervene either to stop excessive levels of buyer power, or otherwise to issue orders to regulate behaviour. We propose CMA uses its market investigation powers more frequently to enable markets to operate fairly.

1.5.2 B) The CMA considers what it can do in relation to international competition policy (for example when UK consumers are consuming products supplied by cartels in other countries).

Both Recommendations A & B are set out more fully below from point 2 onwards.

1.5.3 C) The CMA needs to set guidance to enable conversations to occur amongst businesses operating across the same markets to improve lives of farmers and

² The non-payment of wages is alleged to have occurred in the following supply chains. Although these figures and the non-payment itself is disputed, they indicate the huge numbers of people potentially impacted. Whilst suppliers are responsible for paying the wages of their workers, it is retailers' responsibility to honour contracts as initially agreed, and to ensure that the labour rights of workers in their supply chains does meet the standard in their supply chain codes of conduct, which include correct payment of wages.

- o Next (25,370 workers in Bangladesh, Cambodia, India, Myanmar and Sri Lanka),
- o Primark (20,700 workers in Bangladesh, Cambodia, Myanmar),
- o Arcadia (11,300 workers in Bangladesh, Cambodia, Pakistan),
- o Tesco F&F (4,150 workers in Bangladesh, Cambodia, India),
- o New Look (3,140 workers in Bangladesh, Sri Lanka, and Hong Kong),

Labour behind the Label, October 2020, Presentation

³ <https://www.fairtrade.org.uk/media-centre/blog/kenyan-worker-tells-her-story-of-a-flower-industry-devastated-by-covid-19/>

workers. When sharing lessons learnt from the Adapting Commercial Practices Enhancing Lives of Smallholders report⁴, Traidcraft Exchange found that the staff of retailers were nervous about being in the same room together to share findings and learning. When seeking authorisation to attend learning meetings related to the report, retail staff were advised by their legal teams not to attend, or to be very cautious when discussing issues in the same room as their competitors. Reassurance that retailers can be in the same room to hear, and discuss practices which are common across the sector, with their competitors would be welcome.

We recommend strongly that competition law and CMA guidance should be reviewed to consider how it can best support retailers, brands and traders collaborating on pre-competitive farm-gate pricing to ensure investment in those at the bottom of supply chains.

2. BEIS Secretary of State Questions to CMA

i. If, and how, do current competition and consumer legal frameworks constrain or frustrate initiatives that might support the UK's net zero and sustainability goals?

2.1 Traidcraft Exchange recognises the talent, innovation and entrepreneurship of businesses around the world to meet the needs of their customers, in a manner that responds to their local social or environmental context. The potential for businesses to act in a socially and environmentally responsible manner is supported when these businesses earn sufficiently and have the scope to act as they see appropriately. This is undermined in supply chains where buyers dictate standards in highly prescriptive ways and apply relentless price pressure.

2.2 CMA has not modernised its competition policy tools to respond to the fact that trade has become increasingly international, where the power dynamics along those supply chains have become highly unbalanced. Around 10-15% of the UK's overseas food imports come from Asia, Africa and Latin America⁵. We estimate that half the UK garments market is supplied by imports⁶. Therefore UK food security and consumer interests are inextricably

⁴ <https://corporate.marksandspencer.com/documents/plan-a-our-approach/traidcraft/adapting-commercial-practices-and-enhancing-lives-in-kenya-full-report>

⁵ The Trade & Agriculture Commission report puts the value of food imports at £47.7 billion

⁶ The UK market for garments was valued, at retail prices, at £55 billion in 2019. Garment imports in 2019 were valued at approximately £20 billion at wholesale prices so, allowing for mark-ups to convert these to retail prices, we estimate that about half the UK market was supplied by imports.

linked to the health of economies and the stability of societies in low-income countries. We consider the CMA has not been sufficiently active in assessing and acting to stop the rise of buyer power in retailers' supply chains.

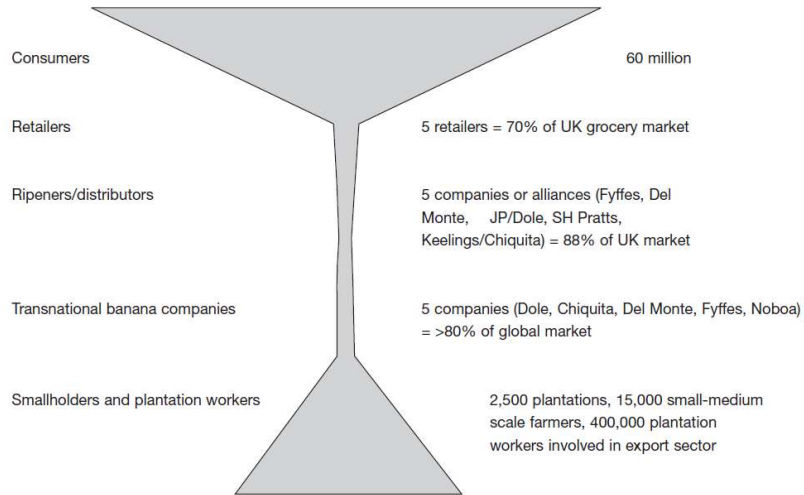
2.3 Increasing concentration of retailers and traders enables buyer power to be exerted in a manner that undermines sustainable development outcomes including for environment and society.

2.3.1 Power has been moving to the retailers in many sectors, due to their multiple sources of power. (One source of power relative to suppliers is the intrinsic unfair competition between own brand and independent brands as retailers give an advantage to their own brands over independent brands.)

The banana sector is one sector where power has moved to retail. The 2003 Food Inc report stated "Bananas are traded in a classic oligopoly. A small number of vertically integrated transnational corporations – Chiquita, Dole, Del Monte Fresh Produce, Noboa and Fyffes – dominate international banana marketing and trade, and these companies are able to exercise their market power at several or all of the stages of the banana marketing chain. Although these multinationals are vertically integrated in sourcing, shipping, ripening, packing and distribution, they are moving away from direct ownership of production. As with other commodities, preferred-supplier arrangements are now the norm, with contracts specifying standards for quality, packaging etc. Only around 12% of revenues from banana retail sales remain in producing countries, despite the very limited amount of product transformation outside of the farm or plantation. The dominance of retailers has had an increasing influence over the structure and distribution of value along the banana chain. The shift of profits up the chain has been dramatic over the last decade, and the transnationals' margins on bananas are now very slim. Forty per cent of retail value may stay with the supermarket even though this is the least demanding part of the chain. Lower prices for supermarket suppliers are felt keenly in exporting countries, making it impossible for growers and labourers to be paid legal minimum wages. International buyers are in effect obliging all banana-exporting countries to reproduce Ecuador's poor labour and environmental conditions."⁷

⁷ Food Inc (2013) Bill Vorley for UK Food Group. (PDF can be supplied on request)

Figure 7.1
The global banana bottleneck – from Latin America/Caribbean to the UK
 Data: UNCTAD, Banana Link



p51 Food Inc Fig 7.1 Global Banana bottleneck from Latin America/Caribbean to UK

2.3.2 By 2014 retailers started to control the importing of bananas. Tesco and Morrisons become the second and third largest importers of bananas, (after Fyffes) whilst Asda/Walmart’s IPL is seventh. (see graph below) This has enabled retailers to dictate terms into the supply chain.

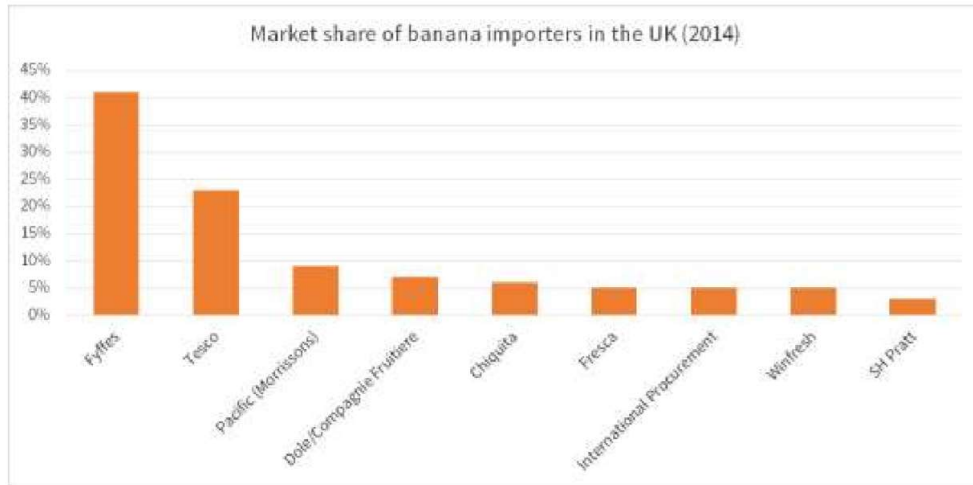


Figure 106: Market shares of main banana importers in the UK
 Source: BASIC, based on European Commission (2014)

Ref: p97 Make Fruit Fair Banana Study⁸

2.3.3 UK retailers have been operating a price war on bananas since 2002 pushing down consumer price. This has had a dire impact on workers and farmers in exporting countries whose incomes have reduced whilst production and living costs increased. The figure below sets out the breakdown of the UK retail value of bananas produced in Ecuador (average 2000-02 and 2015)

⁸ LeBasic (2015) https://lebasic.com/wp-content/uploads/2015/10/BASIC_MFF-Banana-Study_Final-Report_Low-Res.pdf

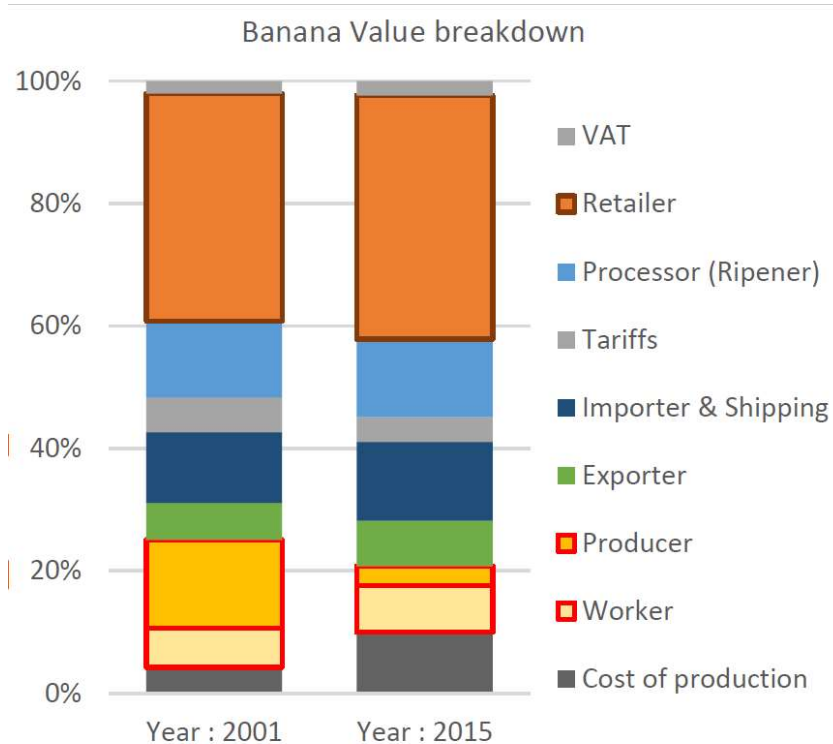


Fig 66 p 91 Basic/Oxfam Distribution of Value in Agrifood chains⁹

2.4 The increase in power held by retailers causes a problem as powerful retailers are able to act unethically, and sometimes unlawfully towards their suppliers. Suppliers are unable to challenge these commercial practices for fear of losing possible orders. The imbalance of power undermines the suppliers’ ability to make investments both in terms of environmental improvements and also in relation to their work force. Whilst retailers can create the façade of driving improvements by dictating terms to suppliers in relation to higher environmental or social performance, these buyer-driven standards are then undermined by low prices, lack of long-term commitment, and short notice changes to orders. In practice, retailers own purchasing practices can undermine better social and environmental outcomes; and dishonesty is driven into the supply chain, as suppliers need to be seen to be compliant but actually don’t have the resources to meet the retailer’s standards. (The horsemeat investigation exposed some of these dynamics in food supply

⁹ p 91 Basic (Oct 2017) Distribution of Value in Agrifood chains October written for Oxfam <https://lebasic.com>

chains.)

- 2.5** The Material Concerns report¹⁰ based on interviews with garment suppliers in four countries explains the corruption happening in labour standards audits at garment suppliers. “By negotiating hard on price and supply conditions buyers may unwittingly force suppliers to commit to production schedules they are unable to keep, if they are to meet minimum required labour standards. This leads to a situation where suppliers must give the impression of ethical compliance whilst continuing to deliver on other customer requirements. Deceptive practices can include misleading auditors (maintaining double books, coaching workers), bribery of auditors, show factories (compliant factories which are audited, whilst much of the production takes place elsewhere) and unauthorised sub-contracting.” These outcomes result from imbalanced supply chains where retailers can dictate terms to suppliers, and suppliers are unable to challenge these for fear of losing future orders or being subject to commercial retaliation on current orders.
- 2.6** Traidcraft Exchange would like to see a rebalancing of power along supply chains, such that suppliers can have confidence that they will be paid and can plan and make investments, rather than be unable to plan because their retail customers continuously breach their contracts or pass on excessive risks and unacceptable costs onto suppliers. Honesty is a vital precursor within supply chains, to then enable difficult conversations and choices to be made in relation to improving social and environmental impacts of the millions of products which are imported into the UK each year.
- 2.7** Traidcraft Exchange recognises that CMA could use both structural tools, as well as order behavioural remedies, to address buyer power. We commend the CMA’s predecessor, the Competition Commission in recommending the establishment of a behavioural regulator, the Groceries Code Adjudicator. The statutory code that the GCA enforces has, as its central tenant, the Principle of Fair Dealing, defined as follows:
“A Retailer must at all times deal with its Suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of the Suppliers’ need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.”¹¹
The EU also recognised the asymmetries of power in food supply chains and has now

¹⁰ p7 Material Concerns – guidance for garment sector – <https://www.traidcraft.org.uk/policy-resources/2017/10/20/material-concerns-responsible-garment-sourcing>

¹¹ <https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice>

regulated food supply chain with the 2019 Unfair Trading Practices directive.¹²

- 2.8** The impact of the regulation of the food sector but not other products can be seen by the difference in payment terms of the same businesses to different categories of suppliers.
- o M&S pays food suppliers in 19 days but clothing suppliers in 120 days.
 - o Asda pays small suppliers in 14 days, others after 60 days, but non-food import suppliers are paid after 90 days.
 - o Sainsbury's pays food suppliers in an average of 45 days, but non-food suppliers in 75 days.

2.9 Section 2 above sets out the problems which have resulted from Competition & Markets Authority failing to modernise its approach in response to the fact that trade is increasingly international and that buyer power is as much of a problem, if not more so, than supplier power.

3. BEIS Secretary of State Questions to CMA

ii. Are there changes to the UK's competition and consumer law that would help to achieve the UK's net zero and sustainability goals?

iii. Are there other opportunities within the UK's competition and consumer policy toolbox that would support the UK's net zero and sustainability goals, which the government should be considering?

3.1 Traidcraft Exchange would welcome the CMA considering two avenues: a) how the CMA should act when the UK is receiving products from overseas markets which are in breach of competition policy, and b) greater use of CMA's Markets investigation tool.

3.2 How best to act when the UK is receiving goods from markets where competition policy is not enforced in other countries, with dire consequences on overseas farmers and workers.

3.2.1 Traidcraft Exchange along with the Hungarian Association of Conscious Consumers and German partner Christian Initiative Romero e.V. has been concerned since 2013 about the terrible working conditions of Brazilian labourers picking oranges, destined to be sold as orange juice in UK and other European countries¹³. These juicers had so much buyer power relative to their suppliers that the only way one farmer could get out of his loss-making arrangement with a juicer was to burn his

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L0633>

¹³ <https://www.youtube.com/watch?v=7Mml1Vn6Fn4>

orange trees.¹⁴ Brazil supplies 50% of the world's orange juice. Three companies control the orange juice market: Cutrale, Citrosuco and Louis Dreyfus. The concentration on the market gives these companies enormous market power over the orange producers and the opportunity to keep the orange price below the production costs. The juicers have suppressed the price paid for oranges resulting in poverty wages, an absence of job security, hazardous conditions and long working hours for the pickers. It is estimated workers earn the equivalent of 9 Euros per day from picking two tons of oranges in a day. However the subsistence level in Brazil is 14 Euros per day.¹⁵

- 3.2.2** One seasonal worker near Sao Paulo, Cicera Coltro, who worked for 30 years at orange plantations explained her experience. "Every morning, before dawn, I had to start hand-picking oranges and fill boxes that I carried to the truck. To fill my daily quota and get my full pay, I had to bring 60 such boxes of at least 40kg each, until my spine gave up and I needed an operation. Now I do not even have that [an intact spine]." For this work she was paid 220 euros a month.¹⁶
- 3.2.3** A civil case has been brought to the UK courts by Brazilian farmers against the owners of the Cutrale company. The father and son (who frequently live in the UK) are being taken to court in England over their alleged participation in an illegal cartel that substantially impacted the global market for the sale of orange juice. In 2021 Cutrales, Cargill and Louis Dreyfus Commodities have confessed their participation in the cartel.¹⁷ It appears that Brazil's competition authorities failed to prioritise this sector.
- 3.2.4** UK consumers have inadvertently been buying orange juice which failed to provide an adequate income to farmers and the orange pickers for years. Where power is more fairly distributed in supply chains, it is more likely that those at each stage can earn sufficiently.
- 3.2.5** This consultation response therefore recommends that the CMA should consider what it could do when products arrive in the UK from overseas where markets are not operating fairly.

¹⁴ <https://pgmbm.com/brazilian-orange-juice-magnate-will-face-trial-in-london-for-illegal-cartel-operation-as-pgmbm-secures-landmark-judgment/>

¹⁵ <https://www.ci-romero.de/en/orange-juice/>

¹⁶ Personal testimony of Brazilian seasonal worker in October 2013 & <https://weltladenmuenster.de/aktuelles/neuigkeiten/313-ausgepresst-orangensaft-im-visier>

¹⁷ <https://pgmbm.com/brazilian-orange-juice-magnate-will-face-trial-in-london-for-illegal-cartel-operation-as-pgmbm-secures-landmark-judgment/>

- 3.3** We recommend a greater use of a Markets investigation tool (ideally simplified) to investigate and curb instances of buyer power which result in the transfer of disproportionate, excessive, unexpected risks and inappropriate costs onto suppliers, with consequent negative impacts in supplier communities, with consequences for farmers and workers.
- 3.4** The Groceries Code Adjudicator (GCA) was established after a groceries market investigation found that grocery retailers routinely passed “*excessive risks and unexpected costs*” onto their suppliers. The design of the GCA is unique, and it has been able to successfully bring the purchasing practices of the retailers in scope in line with the statutory Groceries Supply Code of Practice (GSCOP) code.¹⁸
- 3.5** However, the framing of the groceries market investigation was too narrow and didn’t consider the impact of grocery retailers on second and third tier suppliers. The result was that the GCA’s scope was unfortunately limited to the relationship between retailers and first tier suppliers. Where there is an imbalance of power between first and second tier suppliers (e.g. farmers) then the weaker business remains at risk of being subjected to unfair commercial pressures.
- 3.6** The Groceries Market investigation also heard that smaller retailers had more balanced relationships with suppliers and were unable to apply such unethical commercial practices on their suppliers. However, the smaller retailers were less able to compete with larger retailers who were effectively subsidising their business by unethical and unfair purchasing practices. In 2016 the GCA has found that Tesco plc has breached the Groceries Supply Code of Practice by withholding millions of pounds owed to suppliers for several years.¹⁹
- 3.7** Market investigations would enable CMA to assess and address markets with highly unbalanced power relationships, such that suppliers could earn sufficient and plan on that basis. Rebalancing relationships along supply chains would enable:
- 3.7.1** honest and transparent conversations along supply chains about the environmental, social and labour rights impacts of products, rather than driving dishonesty in these areas which undermines progress towards Net Zero.
 - 3.7.2** smaller competitors, sometimes with better social or environmental credentials, to be able to compete more fairly. Understandably, smaller competitors offering

¹⁸ In the annual supplier survey conducted to assess the effectiveness of this regulator, 79% of suppliers experienced a breach of the statutory fair purchasing code in 2014. This had reduced to 29% of suppliers in 2021. <https://www.gov.uk/government/news/gca-survey-improvement-across-the-board-despite-challenging-year>

¹⁹ <https://www.gov.uk/government/publications/gca-investigation-into-tesco-plc>

products at higher price points struggle to compete with mass-market retailers (usually due to differences in economies of scale). However, if the difference in price points is caused by corner-cutting in production standards driven by unethical purchasing practices of retailers, this is both a problem for the market, and also for the achievement of environmental or labour rights and reduction of carbon emissions.

- 3.8** Market investigations to address the buyer power of several large businesses operating at the same level of the market is needed. Retailers are too powerful in garment supply chains, and there are mid-supply chain businesses which are too powerful in agricultural supply chains.

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