



**CONSULTATION FOR THE REVIEW OF THE EU FRUIT  
AND VEGETABLE REGIME**

**- UGAL COMMENTS -**

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*UGAL, the voice of groups of independent retailers at EU level, believes that the consultation document on the review of the EU fruit and vegetable regime contains several inaccuracies and misleading statements.*

*Robust EU fruit and vegetable policy cannot be developed on the basis of emotive and subjective statements, lacking an evidence base.*

*These concerns are elaborated in this consultation response.*

### **Context: addressing misconceptions**

The “context” chapter of the public consultation speaks of the “*persisting imbalance of bargaining power that fruit and vegetables producers have vis-à-vis the distribution sector.*”

This negative view of distribution/retail, portrayed in the consultation document, is disproportionate and lacks factual backup.

**Firstly**, the recent report on competition law enforcement and market monitoring activities by European competition authorities in the food sector (the “ECN Report”)<sup>1</sup> emphasizes that practices linked to imbalances of bargaining power is an issue “*which has been identified **regardless of the level of the chain***”.

**Secondly**, the ECN Report<sup>2</sup> clearly demonstrates that the retail sector has been subject to substantially fewer competition law infringement cases than other levels of the supply chain (2 fruit and vegetable cases at retail level as opposed to 10 fruit and vegetable cases at other levels of the supply chain, mainly in production).

**Thirdly**, also mentioned in the ECN report<sup>3</sup>, retailers have very few direct dealings with the primary production/farming sector. According to figures provided by UGAL member companies, less than 8 percent of all food supply chain transactions occur between farmers and retailers.

The natural conclusion is that 92 percent of farmers’ transactions occur with other supply chain partners, yet the “distribution” sector is repeatedly highlighted regarding imbalances of bargaining power in the consultation document.

Given the content of the intensive, fact based research carried out by the European Competition Network; UGAL questions the necessity and accuracy of portraying the retail sector as the main and most problematic counterpart to fruit and vegetable producers.

### **Small size of many Producer Organisations (POs)**

The public consultation states that “*small POs have a too limited bargaining power in the face of distribution chains or processing companies.*”

Independent retailers are faced with a broadly similar position to small POs, when competing against large integrated retail chains, or contracting with supply chain partners.

<sup>1</sup> See paragraph 26 of the Executive Summary of the ECN Report

<sup>2</sup> See paragraphs 134-139 of the ECN Report

<sup>3</sup> See paragraph 2 of the ECN Report

As a result, independent/SME retailers across the EU organise themselves into groups of independent retailers. Indeed, one way in which SME retailers can reach their full potential is by joining such a “group”. This group business model makes it possible for SME retailers to compete with large integrated chains. Joining a group allows SME retailers to achieve economies of scale in purchasing consumer goods. It also gives economies of scale in purchasing *inter alia* energy, telecoms, training, advertising and financial services.

This sustainable business model has not only allowed independent retailers/SMEs to thrive but it also promotes long term growth by helping group members to i) increase the value of their own business and ii) improve the economic performance of their shops. Moreover, members are actively involved in the working of the group itself.

Such positive actions ensure that a member independent retailer can sustainably contribute to the local economy over the long term, thereby promoting wider economic stability. Being part of a larger group structure ensures a long-term contribution to the wider European economy through *inter alia* utilising the wholesale function of that group.

Ultimately, the group structure benefits consumers by ensuring a more diverse, sustainable and competitive marketplace. The consumer is the ultimate beneficiary as a more diverse, sustainable and competitive marketplace facilitates consumer choice, responds to consumer expectations and leads to lower consumer prices.

In addition to the consumer benefit, groups of independent retailers promote entrepreneurship. As it is entrepreneur retailers who make up a group, levels of customer service at the point of sale are extremely high. This is due to an independent retailer always wanting the best for his/her business.

As groups of independent retailers and their members believe in having a “local touch”, the well-being of the group, and its members, can promote local/regional development. This can be through developing close relationships with local or regional producers and service providers, ensuring that the local/regional economy benefits.

*“Same rights; same obligations”*

The rationale behind the group business model, outlined above, is similarly relevant for producer organisations. Accordingly, the maxim “same rights; same obligations” should apply.

UGAL believes that producer organisations must abide by the same rules as groups of independent retailers.

### **Lack of professional management**

The public consultation highlights the existence of *“a sharp contrast between the level of professional knowledge and education of the managers of the distribution chains and those of the producer organisations”*

If producer organisations were to further develop their structures, as groups of independent retailers have done (see above), this alleged skills mismatch is likely to disappear. From the experiences of groups of independent retailers, in compliance with all applicable laws, the group structure gives

access to a large support network facilitating the provision of exchange of best practice, advice and help. This is particularly useful during turbulent economic times.

### **Uneven distribution of value added along the fruit and vegetable supply chain: the effect of concentration**

#### *Value added*

The public consultation raises the issue of value added in the supply chain *“increasingly being created in sectors downwards in the chain, primarily in the processing industry and in the distribution sector. This trend has been favoured by the increased concentration downstream the supply chain, particularly at the retail level.”*

**The fragmentation of the agricultural sector is frequently mentioned in the ECN Report as one of the major weaknesses in the food supply chain. More concentration in this part of the chain is likely to lead to more efficiency, more competitiveness, more value added and subsequently, innovation.**

Innovation is a key feature of a competitive and efficient market. Innovation is provided, in part, through the creation of value added at the different levels of the supply chain. Innovation may, in turn, also add value to the product.

UGAL is against a re-distribution of the value added throughout the fruit and vegetable supply chain as it would potentially prevent further supply chain innovation at specific levels of the chain.

Rather than speaking about the uneven distribution of value along the supply chain, the debate should only focus on how value added can be created at production level. Efficient producer organisations, adhering to the same rules and obligations as groups of independent retailers, will aid value creation in the fruit and vegetable supply chain.

#### *Concentration*

It is misleading to target retail market concentration as the main driver of imbalances in bargaining power in the fruit and vegetable supply chain. On the contrary, at several instances in the ECN report, the atomisation and lack of competitiveness of the agricultural sector are identified as main causes of inefficiencies and price increases in the supply chain<sup>4</sup>. This fragmentation makes it more difficult for other parties in the chain to deal efficiently with the production sector.

The fact-based ECN report identifies atomisation and lack of competitiveness of the agricultural sector as the main causes of inefficiencies and price increases in the supply chain; not market concentration at retail level. This public consultation should reflect the findings of the ECN Report on this issue. Retail market concentration should not be portrayed in a radically different way, as is the case in the current consultation document.

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<sup>4</sup> See *inter alia* paragraph 38 of the ECN Report

### *Bargaining power*

The public consultation frequently references bargaining power. This was also addressed in the ECN Report in a number of paragraphs, notably in chapter 4.6. The ECN Report notes that “*the strong bargaining power of retailers may have a positive effect on consumer welfare*”.

This view is backed up by the response of the US authorities to a 2008 study of the International Competition Network on the abuse of superior bargaining positioning stating:

*“The package of terms that make up a contract between parties in a vertical relationship reflects the parties’ agreement as to how to allocate rights and risks between them in an efficient manner. If a particular provision is deemed by the government to be an ‘abuse of superior bargaining position’ and therefore not available for use in a contract, the parties likely will adjust other terms of the contract, such as adjusting the contract price. The result may be a less efficient contract with higher contracting costs and both parties potentially worse off. Ultimately, the quality adjusted price to the ultimate consumer would tend to increase, a result antithetical to the goals of US competition policy.”<sup>5</sup>*

A similar conclusion was reached by the Irish Competition Authority in its recent submission on proposed Irish legislation on unfair contracting in the groceries supply chain. In particular, it stresses that limiting bargaining power would create a loss of flexibility in the supply chain and an ultimate loss to consumer welfare<sup>6</sup>.

This is not an isolated point of view. It is generally accepted that efficient bargaining leads to best consumer prices. This is a point central to EU competition law.

<sup>5</sup> International Competition Authority, *Report on Abuse of Superior Bargaining Position*, 7th Annual ICN Conference, Kyoto Japan, 14-16 April 2008, p.17

<sup>6</sup> Submission by the Competition Authority to the Department of Jobs, Enterprise and Innovation’s Consultation on a *Code of Practice for Grocery Goods Undertakings*, September 2011