

# Press Briefing

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## **FARMERS AND THE SUPERMARKET CODE OF PRACTICE**

### **SUMMARY**

The Supermarket Code of Practice was introduced in March 2002 to redress the balance between the big supermarkets and their suppliers, including farmers. Since its introduction it has been criticised for being too weak and there has been plenty of anecdotal evidence that it is not working effectively.

Friends of the Earth with the support of farming and public interest organisations, carried out a survey of farmers in February 2003 to find out how farmers are faring under the Code and in general under current market conditions. The supporting organisations were the Small and Family Farms Alliance, the British Independent Fruit Growers Association, farm, Grass Roots Action on Food and Farming, the National Federation of Women's Institutes, the Farmer's Union of Wales and the National Pig Association.

Key findings included:

- Less than half of the respondents (44%) were aware that a Code of Practice had been introduced in March 2002, and out of those that were aware, most had not seen a copy.
- More than half of the farmers who responded (58%) did not think that the Code of Practice had made any difference to the way in which supermarkets did business with them.
- All four supermarkets currently bound by the Code of Practice (Asda, Safeway, Sainsbury and Tesco) were named by farmers in connection with practices which are identified as being of concern by the Competition Commission.
- A significant proportion of farmers who responded (eg 52% of dairy farmers) said they were getting paid the same as or less than the price of production for their produce.
- There is strong support from respondents for new legislation to prohibit the unfair trading practices of the supermarkets, and for an independent regulator to oversee the way in which supermarkets do business with their suppliers. Respondents also supported the proposal that supermarkets should be required to source a proportion of food locally.
- About a third of respondents who had experienced problems supplying supermarkets said that 'fear of delisting' was their reason for not complaining.

### **Contact:**

**Sandra Bell 0113 389 9956 07941 176 957**

26-28 Underwood Street London N1 7JQ  
Media contact 020 7566 1649 (24 hour) Fax 020 7490 0881 Email [press@foe.co.uk](mailto:press@foe.co.uk) Website [www.foe.co.uk](http://www.foe.co.uk)  
Friends of the Earth Limited Registered in London No 1012357

## BACKGROUND

The Code of Practice was introduced following the recommendation of the Competition Commission, whose investigation into the supermarkets found evidence that the biggest supermarkets (Asda, Safeway, Sainsbury, Somerfield and Tesco) adversely affected the competitiveness of some of their suppliers. Suppliers were therefore likely to invest less and spend less on new product development and innovation, leading to lower quality and less consumer choice. The Competition Commission report listed specific measures which should be included in a Code of Practice, which it stressed must be binding on the larger supermarkets. The Code was introduced in March 2002 and the biggest four supermarkets [1] (Asda, Safeway, Sainsbury and Tesco) gave undertakings to be bound by it. The Code was immediately criticised for being vaguely worded and weaker than the recommendations of the Competition Commission. The Code was produced in close liaison with the supermarkets, which then agreed to be bound by it. Supplier groups such as the NFU who had been consulted over the draft, were quick to criticise the final version.

Since then, anecdotal evidence has suggested that the Code has made no difference to the way in which supermarkets treat their suppliers. For example, a Safeway supplier wrote to the Grocer in February 2003 alleging that Safeway made “*demands for six figure payments*” which, according to the supplier, would breach the Code of Practice. But the letter went on to say that the supplier felt they could not go to the Office of Fair Trading (OFT) about this as doing so “*would damage their business even more*” [2]. Other suppliers have echoed this fear about complaining, one supplier commenting that “*I would get blacklisted instantly*” [3]. It is not surprising then that only one official complaint, from Express Dairies, has been received by the OFT. Others have pointed to the vagueness of the Code, in particular to the references to “reasonable” practices. As one supplier pointed out, “*If you are a small supplier negotiating with a retailer who has more than 15% of the market, you can bet it’s not you who defines what is ‘reasonable’... if you don’t like it you can lump it.*” [4]. The arrangements for dispute resolution under the Code require that the supplier negotiates with the supermarket in the first instance and that in the case of the dispute not being resolved a mediator is appointed by the supermarket.

The Code applies to all suppliers, although the Competition Commission was particularly concerned with the impacts on smaller suppliers, and it is clear that farmers are meant to be protected by it. The Government’s Strategy for Sustainable Farming and Food, produced in response to the Curry report, notes that: “*the major disparity between many very small producer businesses at one end and very large supermarkets at the other has led to tensions within the chain with concern that the smaller players are unable to secure a fair return.*” It goes on to say that the Code “*defines the principles and practices that apply in order to achieve a fair and balanced trading relationship between the largest supermarkets and their suppliers*” [5]. The Department of Trade and Industry has recently confirmed that the Code does apply directly to farmers, even if they supply supermarkets via an agent [6]. However, it does not apply to farmers who sell their produce to an intermediary who then sells on to the supermarket. This appears to be a significant gap in terms of protecting farmers.

## THE SURVEY

Some 2,000 forms were sent out to farmers. The majority were selected from commercial databases. Others were distributed by farming organisations.

### The Respondents

There were 161 responses by the deadline. The respondents included a range of farmers and

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growers, including 65 fruit and vegetable growers, 44 dairy farmers, 26 livestock farmers and 15 arable farmers. The farms covered ranged in size from 0.5 to 3000 acres, about a third (29%) were between 125-250 acres (50 – 100 ha)

As noted above, the Code of Practice applies to farmers who supply supermarkets directly or who use an agent. It does not apply to those who sell their produce to an intermediary (eg a dairy) which then sells to the supermarket. Based on the information given to us by the respondents, it is estimated that the Code applies directly to 56 of the 161 respondents (35%).

Some of the respondents supply supermarkets through intermediaries such as milk co-operatives and dairies. But the majority of respondents (65%) whether they supply direct or not considered that it is supermarkets that have the most influence on the food chain.

## **Price Received**

We asked farmers about the price they received for their primary crop/livestock compared to the cost of production:

- More than half of dairy farmers (52%) said that they received the same as or less than the cost of production for their produce. A further 43 % said they received “just over” the cost of production. Only one dairy farmer said they received “well over” the cost of production.
- More than a third of fruit and veg growers (37%) said that they received the same as or less than the cost of production for their produce. Almost one half (49%) said they received “just over” the cost of production, and just seven growers (11%) said they received “well over” the price of production.
- Nearly a third of livestock farmers (31%) said they received the same as or less than the price of production for their produce. Almost half (46%) received just over, and just 2 farmers received well over.

## **Code of Practice**

We asked farmers several specific questions about the Code of Practice:

- Fewer than half of the respondents (44%) were aware that a Code of Practice was introduced in March 2002.
- Of those respondents who were aware of the Code, only 18% had seen a copy of it.
- More than half of the respondents (58%) said that the Code had made “no difference” to the way in which supermarkets (and their intermediaries) conducted business with them.
- Of the 56 respondents who were judged to be directly affected by the Code (see above), more than half (59%) had heard of the Code of Practice but only eight (14%) had actually seen it. Only one had noticed a positive difference in the way supermarkets did business with them. The majority (88%) said they had not noticed any difference, four said there was a negative difference.

We asked farmers about specific practices which had been identified by the Competition Commission.

- Twenty eight farmers (17%) had been asked to pay a rebate on an agreed price. Forty eight

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farmers said they had not been asked, and 19 farmers said they were not sure.

- Twenty eight farmers (17%) had to wait longer than 30 days for an invoice to be paid. In two cases the wait was 90 days.
- Forty two farmers (26%) had been required to make changes to transport or packaging of their products, without being compensated for the additional costs.
- Twenty six farmers (16%) had been required to meet the cost of unsold or wasted products unrelated to a quality problem with the product.

All four supermarkets bound by the Code of Practice were named in connection with one or more of the above practices. These were identified by the Competition Commission report as practices which should be addressed by the Code.

But many farmers did not answer these questions and “don’t know” was a relatively common response. This could be because farmers supplying supermarkets through an intermediary would not necessarily be aware of these demands/practices. As one farmer explained “*where I put ‘don’t know’ it is because our selling desk would not necessarily pass this information to us*”. Others said these particular questions were not relevant because they did not supply directly to supermarkets.

We also asked farmers to list any other practices they had experienced and there was a relatively high rate of responses to this open question, other issues identified included:

- Charges passed back to the farmers for customer complaints which had not been verified. In one case, a charge was passed on to fruit growers for a complaint, even though the supplier had not been identified.

Other comments included:

- *“My only complaint is the price we are being paid for milk. It is below the cost of production. How long can this last?”*
- *“Our milk price was reduced because [the] supermarket paid less on contract as agreed because it was having a promotion – two for one.”*
- *“Verbal encouragement to overproduce and subsequent failure to buy (Tesco)”*
- *“Had to pay compensation for ‘dubious’ customer complaints.”*

Only one respondent answered that they had very positive experiences with three supermarkets.

We also asked farmers about whether they had complained about the practices of supermarkets and how that complaint had been dealt with.

- One fifth of respondents (21%, 34 farmers) had complained to the supermarkets or their intermediaries. Over a third (35%, 56 farmers) said they had not complained.
- Of those who said they had not complained, about a third (34%) gave their reason as being “*fear of delisting*”.

On the question of why they did not complain, one respondent simply said: “*They are the boss,*” and another said: “*I would be too scared*”. Others commented that there was “*no point*” or it was a

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“waste of time”. Only two of the respondents said they had not complained because they had been treated fairly by the supermarkets they dealt with.

- Only two respondents said their complaint had been resolved to their satisfaction. Twenty seven respondents (77% of those that had complained) said their complaint had not been resolved.

## Solutions

We asked farmers their opinion about a range of possible legislative and voluntary initiatives. Farmers were given a range of possible reactions to each proposal depending on whether they thought it would have a ‘major positive’ effect to a ‘major negative effect’ on their business.

The most strongly supported proposals were “*new legislation to prohibit unfair trading practices of supermarkets*” (43% of farmers said major positive effect and a further 37% said positive effect) and “*minimum requirements imposed on supermarkets for the amount of produce they source locally*” [7] (41% major positive, 41% positive).

The majority of respondents (29% major positive, 46% positive) also supported “*the appointment of an independent regulator to oversee the way in which supermarkets do business with their suppliers and to act as a mediator in the case of a dispute*”. More than half of respondents also supported “*new legislation to control the way in which intermediaries such as packhouses, selling desk, abattoirs and processors do business with farmers*” (15% major positive, 44% positive effect). Nearly three quarters of respondents (29% major positive, 42% positive) supported the proposal for “*increasing competition in the retail sector by a statutory limit on the market share of any one supermarket.*”

However the additional comments made by some farmers indicated wariness of a regulatory approach. Some believe that the supermarkets have so much influence on the Government that effective legislation was unlikely. Others felt that legislation would result in more red tape or additional costs that would be passed back to the producers. Although the responses show support for a requirement for supermarkets to source locally, several respondents felt that the solution lay in more support for farmers to sell direct to consumers, or more support for local shops such as butchers, rather than in increasing local sourcing in supermarkets.

There was strong support (31% major positive, 37% positive) for “*the introduction of a Fair Trade mark for British produce, with an associated premium price linked to environmental and animal welfare conditions*”. But a number of respondents also said this would have no effect, and there were concerns about the introduction of another assurance scheme and logo. Some respondents felt that the existing schemes were not well understood by consumers. There was concern that the additional costs incurred by farmers would not be met by the supermarkets. There was concern from some respondents that consumers were too concerned with getting cheap food, and that therefore such a scheme would not work. A few respondents suggested that there should be clearer labelling showing the country of origin, to help consumers identify where food had come from.

The suggestion that “*supermarkets employ buyers who have good knowledge of the product they are dealing with, and who deal with farmers and growers directly*” was backed by about two thirds of farmers (23% major positive, 42% positive). But just under a quarter of respondents felt that it would have no effect.

Several respondents also suggested some kind of fuel tax to address the issue of cheaper food

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being imported. Several respondents also suggested that imported food should be subjected to the same standards as UK produce eg for pesticide residues and for standards of animal welfare.

## **RECOMMENDATIONS ON THE CODE OF PRACTICE**

Based on this survey and other evidence of the ineffectiveness of the Code of Practice Friends of the Earth considers that the Government should:

Strengthen the Code of Practice in line with the original recommendations of the Competition Commission, and include definitions of what is reasonable. Impose the new Code on the supermarkets.

Ensure that the new Code of Practice applies to farmers who supply supermarkets via an intermediary such as a wholesaler or livestock market and ensure that the farmers are informed of which supermarket they are supplying by intermediaries.

Appoint an independent watchdog to ensure that the new Code of Practice is being complied with and is effective, including regular liaison with suppliers who may be afraid to come forward with complaints.

Ends

## **NOTES**

[1] The Code applies to supermarkets that had more than eight per cent of the grocery market at the time the Code was introduced. This excluded Somerfield, but included Asda, Safeway, Sainsbury and Tesco.

[2] "Safeway extracting the last penny", Reader's letters, The Grocer, 15 February 2003.

[3] "Code is an 'irrelevance'", The Grocer, 15 February 2003.

[4] "No cracking under Code", The Grocer, 7 September 2002.

[5] The Strategy for Sustainable Farming and Food, DEFRA, 2002.

[6] Written answer to Parliamentary Question.

[7] We stated that 'locally' would mean the most local possible e.g. may be district, region or in some cases national as opposed to imported goods, e.g. a Scottish supermarkets sourcing apples from Kent instead of France.

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