

The relationship between supermarkets and suppliers: What are the implications for consumers?

Summary of the main report

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This paper explores supermarket buyer power and the ways in which such power affects suppliers and consumers. It finds that the abuse of buyer power is widely and routinely practised against suppliers and that, if not immediately, certainly over time, such abuse will inevitably damage consumers too. Yet competition authorities have largely failed to deal with this problem, so that detriments to suppliers and consumers have gone on for many years.

The paper concludes that effective measures to prevent unfair business-to-business commercial practices and the resulting detriments to both small-scale producers and consumers are urgently needed. Remedies should be based on a fundamental principle of fair dealing and should be enforceable and binding. All suppliers (in national, regional and global supply chains) should have effective recourse to protection. Consumer organisations have an important role to play in mitigating the negative effects of buyer power.

Buyer power and retailer power

Buyer power enables supermarkets to control their suppliers to an extent which would not be possible if there were a reasonable balance of bargaining power between them. The imbalance of bargaining power is especially acute in agricultural products as the fragmentation on the supply side reinforces the bargaining power of supermarkets.

Supermarkets have buyer power because they also have retailer power. In most developed national markets, supermarkets now dominate the supply of food products to consumers. Table 1 below shows that in Australia, for example, two retailers command 71 per cent of the national food market, and that in Portugal, three command 90 per cent.

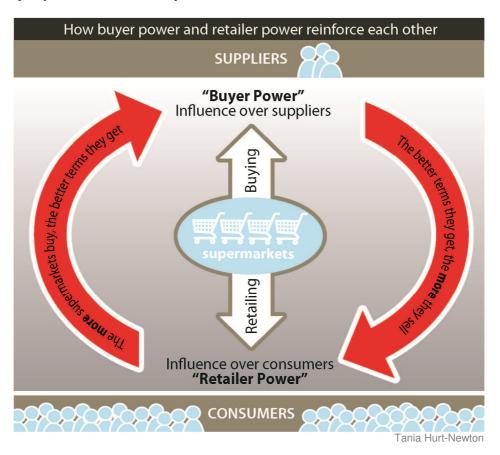
Table 1: The concentration of national food market shares

Country	Year	No. of major supermarkets	Their combined food market share	
Australia	2011	2	71	
Austria	2009	3	82	
Belgium	2011	5	71	
Canada	2011 5		75	
Denmark	2009	5	80	
Finland	2011	3	88	
France	2009	5	65	
Germany	2011	4	85	
Greece	2009	5	50	
Italy	2009	5	40	
Netherlands	2010	5	65	
Norway	2011	3	81	
Portugal	2011	3	90	
Spain	2009	5	70	
Switzerland	2011	3	76	
UK	2011	4	76	
USA	2006	4	35	

Sources^b

Figure 1 below illustrates how buyer power and retailer power reinforce each other. Increasing buyer power enables economies of scale that can be beneficial to consumers in the short term – provided that they are passed on to consumers – but the effect of this and other factors on suppliers may ultimately have negative impacts for consumers.

Figure 1: How buyer power and retailer power reinforce each other



In any national market only a handful of supermarket gatekeepers stand between thousands of suppliers and millions of consumers. As a result, suppliers have access to fewer alternative large buyers and therefore considerably less bargaining power.

Figure 2 below shows the pattern, using the UK market as an example.

Figure 2: UK – suppliers, supermarkets and consumers



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Abuse of suppliers

The imbalance of bargaining power that exists between supermarkets and their suppliers fosters abusive buying practices and this has been documented across the EU and in other developed economies. The abuses are financial in nature and/or create uncertainty for suppliers. Principle abuses are shown in Table 2 below.

Table 2: Buyer power abuses and their effects on suppliers

ABUSES	EFFECTS ON SUPPLIERS
Listing fees To be on a list of suppliers	 Additional costs to supplier Risk of stocking new products passed to supplier
De-listing/threat of de-listing When suppliers refuse to reduce prices or make other payments and concessions	 Threats of de-listing create uncertainty, weaken suppliers' bargaining position and inhibit their ability to plan Actual de-listing can mean substantial loss of volume to the supplier
Slotting fees To gain access to shelf space	Additional costs to supplier Risk of stocking new products passed to supplier
Demanding extra or unforeseen discounts or payments from suppliers For marketing, store openings or remodelling, new packaging, and retailer-initiated promotions Demanding retrospective payments, extra discounts, and after-sale rebates Deducting a percentage of the total sales of a particular supplier for that year; compensation for profit margins being less than expected; 'managing [retailer's] profitability'	Unexpected costs, less than expected income and increased uncertainty passed on to supplier
Return of unsold goods to supplier At the suppliers' expense, including fresh produce that cannot be resold	Cost and risk of retailers' forecasting errors passed back to supplier
Late payments For products already delivered and sold	Adversely affects suppliers' cash flow Leads to additional finance costs and uncertainty over how much they will be paid
Retrospective changes to agreed terms Retrospective discounts on agreed price, changes to quantity and/or specification without compensation	Risk and cost of changes and/or retailers' forecasting errors borne by supplier Leads to increasing costs and uncertainty
Below cost selling Unscheduled promotions, to clear over ordered stock or to outsell rivals	 Puts suppliers' profits under pressure May result in demands for lower prices from other customers Distorts consumers' perceptions of product value
Influencing product availability to, or raising the costs of, other retailers By demanding lower buying prices than all other retailers or demanding limitations on supplies to other retailers	 Increases the costs to competitors Affects the availability of products to other retailers Constrains the volumes available to suppliers
Promotion of retailers' own brands (own brands) Squeezing out third-party brands; some copy-cat packaging issues; requiring brand owners to divulge development intentions so that retailers can pass them on to their own brand suppliers	 Loss of volume and profitability Loss of IP rights, leading to a lower rate of innovation

Similar patterns are observed across different jurisdictions. The payments referred to above are reported to reach up to 50-70% of suppliers' revenues, with small and medium enterprises in the food and agricultural sector found to be especially vulnerable. Two factors which make agricultural suppliers especially susceptible are the labour intensive nature of production and the perishable nature of products. Labour-intensive stages of production can be regarded as a variable cost which can be squeezed when pressure is exerted on the supply chain. The nature of perishable products means that the supplier has only a short period of time before the product becomes unsaleable. Purchasers know this and can exploit it.

Low prices, uncertainty and sustainability of supply

While supermarkets offer suppliers volume of sales, unsustainably low buying prices are a perpetual complaint. Yet low buying prices do not always result in low retail prices: a great deal of margin is taken by distributors and retailers. Figure 3 below shows the percentage of the retail price received at each stage of a pineapple supply chain.

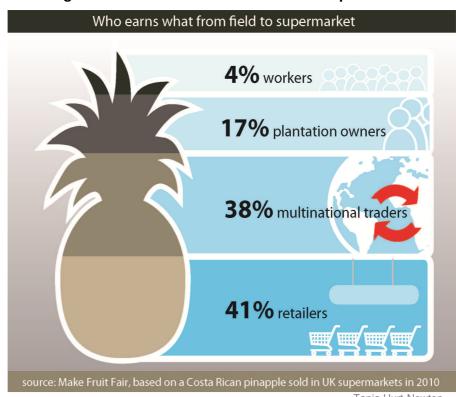


Figure 3: Who earns what from field to supermarket

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Uncertainty for suppliers worsens problems of low prices. The UK Competition Commission in its grocery market investigation of 2006-2008 described 26 practices, most imposing retrospective (and therefore unexpected) and excessive costs and risks on suppliers, and undermining their ability to plan, invest and innovate. III

Branded goods and retailers' own brands

As supermarkets have acquired increasing reputation and market power, they have developed their own brands, which have taken an increasing share of the food market. The consumer organisation, CHOICE in Australia estimates the retailers' own brand share of national supermarket food sales is now 25 per cent in that country, while the British Brands Group estimates double that for the UK. This has given the retailer a new role – in addition to their traditional role as purchaser, they have become a direct competitor.

Limited shelf space means that branded goods are increasingly replaced by own brands. Own brand products are more profitable for the supermarkets: their promotion costs can be carried as part of their corporate overhead, while the close supermarket control over their own brand suppliers helps to reduce direct costs too. Retailers may also exploit advance information on products and plans that they have

access to in their capacity as purchaser of these new products. Retailers' own brands, therefore, do not always represent additional choice for consumers.

Figure 4 below, from CHOICE Australia, neatly summarises the supplier detriments that arise from retailers' own brands (private labels).

How they're doing it Control of Deletion of Lower costs to Reproduction of Suppliers put in private labels display & sales competition similar products price competition Costs lower for private labels Contract Advertising Manufacturing Fees charged to brand names and private labels suppliers Rival products * Reducing the Direct to core placed on the third, fourth and Ullage (transport damage) fifth most popular products in a *Mimicking the goodwill and packaging of established brands Warehouse pallet fees Private labels put at eye level * Price can be manipulated product area Distribution centre costs Promotion fees Catalogue fees Damien Lutz, CHOICE

Figure 4: How retailers' own brands/private labels supplant branded goods

The impacts of buyer power on consumers

For the vast majority of people in developed market economies it is impossible to imagine modern life without supermarkets: the convenience of buying all one's grocery needs under one roof in clean and pleasant surroundings, from early in the morning to late at night, with services such as toilets, cafés, car parking and/or public transport is irreplaceable. Supermarkets also claim – though the evidence is mixed – that over the long term they have reduced the real (ie, inflation-adjusted) prices of food.

Yet, because consumers and suppliers are ultimately connected, damage to one group inevitably results in damage to the other. Table 3 shows how the detriments to suppliers listed in Table 2 are passed through to consumers.

Table 3: Effects of buyer power abuse on consumers			
EFFECTS ON SUPPLIERS	EFFECTS ON CONSUMERS		
Overall downward pressure on supply prices	 Threatens suppliers' viability and supply May raise prices and reduce choice Suppliers forced to cut production costs (possibly ingredient quality, and may squeeze working conditions in intensive stages of production) 		
Additional costs imposed on suppliers	Higher long-run prices		
Risk of stocking new products forced on to supplier	Fewer new products, with potential knock-on effects on range and quality		
De-listing	 Retailers' own brands replace branded goods Loss of choice in short term, future innovation, and possibly of quality 		

Table 3: Effects of buyer power abuse on consumers

Cost and risk of retailers' forecasting errors passed back to supplier Adverse effects on suppliers' cash flow	 Reduced funds available for investment Price, range and quality put at risk
Domino-effect demands for lower prices from other supermarket customers	Consumers misled about sustainability of low prices
Competitors' costs raised	Reduced product availability to other retailers
	Reduction of store choice
Loss of IP rights, leading to a lower rate of innovation	Lower rate of product development

Prices

In general, prices of goods in supermarkets are lower than the prices of the same goods in non-supermarket outlets, and competition authorities see consumers' ability to obtain lower prices, at least in the short term, as beneficial. However, even well-informed consumers cannot know whether the prices they pay are sustainable. If buying prices are held down to unsustainable levels, then over time supplies will dry up, so that buying prices — and therefore retail prices — will have to rise. The range and quality of products may suffer too. Figure 5 below illustrates.

Potential long term effects of the price squeeze RETAIL **PRICES** Squeezed BUYING BUYING Reduced suppliers supply **PRICES PRICES** less viable Impact on quality & Lower range? retail prices? **SHORT TERM LONGER TERM** Tania Hurt-Newton

Figure 5: Potential long term effects of the price squeeze

Retailers' own brands

Evidence is growing that established brands are systematically replaced by retailers' more profitable own brands, regardless of consumer preference. Australia, the UK and Norway have all reported this. Australian experience is well captured in the following graphic by CHOICE.

Figure 6: The effect of the rise of retailers' own brands/private labels in Australia



Own brands make supermarkets serious competitors to branded good suppliers. This widens the scope for buyer power abuse in that it can adversely affect choice for consumers and could also affect innovation. Supermarkets often claim that their own brands mean additional choice for consumers. The evidence, however, is otherwise – that retailers' own brands drive out branded goods. Furthermore, the aggressive development of own brands discourages branded goods suppliers from innovating, which is a further detriment to consumers.

Confusing pricing

The suggestion that lower prices are always good for consumers is simplistic. It is also worth considering whether consumers are actually getting as good a deal as it may seem. Long-term campaigning by consumer organisations in Australiavii and a current campaign by Which? in the UKviii to improve unit pricing is based on research that shows supermarket pricing is routinely confusing for consumers.

Promotions are used continually by supermarkets to attract consumers with the promise of savings. For consumers, a fair promotion would be a genuine short-term reduction from a standard sustainable price. For producers, a fair promotion would be agreed in advance with the retailer, with costs, risks and benefits shared. An analysis of the Danish grocery market in 2011^{ix} found that special offers were not unambiguously good for consumers. One reason given was that regular prices were set relatively high to finance the promotion and to make the price reduction seem greater. A promotional price can also become an on-going price which can also mislead consumers. CHOICE and Which? and others have explored some of the tactics used by supermarkets to give consumers the impression they are saving money. Table 4 below summarises them.

Table 4: Promotional pricing tactics

Tactics	Examples found		
Colour, words or pictures	 "The colour combination of red and white has been associated with being more bargain-orientated or as having better value than other colours" (CHOICE) "NOW £x" without reference to the previous lower price (Which?) 		
Was/now pricing or "the never ending sale"	 Products using the "was/now" price structure on sale for more than a year (Australia) Products never found at the higher price (UK) 		
Dubious practices in price cut campaigns	 Prices raised briefly before campaign then reduced to previous price and advertised as 'was/now' (UK) Products advertised as a special offer when not reduced or even at a higher price than previously (UK) 		

Multi-buy non deal	•	Two for \$2! (highlighted) when one costs \$1
Less costs more	•	Larger/multi-pack costing more than a smaller/single pack
Unclear/inconsistent unit pricing	•	Mixing items priced per kilo or per pack. CHOICE and Which? are campaigning for greater clarity/consistency of unit pricing

Source x

All in all, it is clear from supermarket practices, especially in relation to prices, range and promotions, that consumers and suppliers are, more often than they might think, in the same boat.

Ethical considerations

The consumer interest in supermarket conduct is routinely assessed by reference to service, price, quality and range (SPQR). These factors cover a range of issues important to consumers yet they cannot capture the full picture, that in reality consumers do not always act purely out of economic self-interest. This affects the choices they make and their perceptions of what might constitute detriment.

A survey in 2009 found that a majority of the consumers surveyed in six European countries agreed that supermarkets should pay suppliers enough to ensure good wages for their employees, even if this meant higher prices. How the supply impossible for a consumer to know whether all those in the supply chain – growers, importers, distributors, processors and retailers – actually pay fair wages.

A similar share of revenue shown earlier for pineapples, applies elsewhere too. According to Banana Link, bananas are the world's most traded fruit and in the jargon of supermarkets a "Known Value Item" – which means that when one supermarket drops the price, the others usually follow.xii In recent years, UK supermarkets have fought banana price wars partly by accepting lower margins themselves but also by demanding deep price cuts at the supplier end. Figure 7 below shows the percentage of the retail price received at each stage of a banana supply chain.

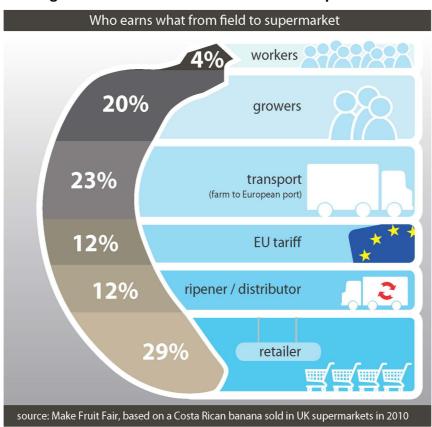


Figure 7: Who earns what from field to supermarket

Tania Hurt-Newton

The casualisation of agricultural labour over recent decades has led unions and campaigners to protest over the prevalence of uncertainty, low wages, absence of trade union rights, and a lack of basic health and safety standards. These problems are widespread not only in Europe but in developing economies too. Cuts in prices paid to suppliers directly affect agricultural workers' earnings, as Figure 8 below shows.

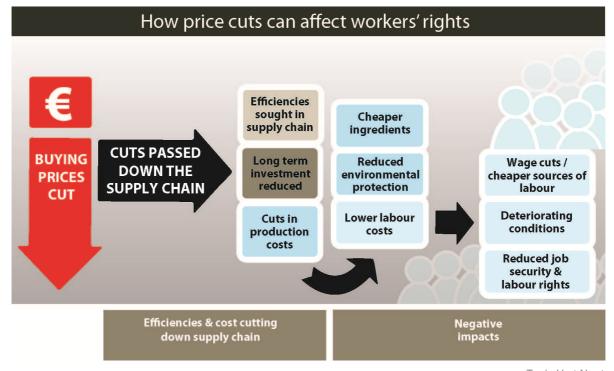


Figure 8: How price cuts can affect workers' rights

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Consumer demand for responsibly-sourced products continues to grow. Many supermarkets have responded by stocking products that carry independently-certified labels such as the FAIRTRADE mark and the Rainforest Alliance seal of approval, and by adopting codes of conduct on working conditions in their supply chains. Despite increased sales (eg, retail sales of products carrying the FAIRTRADE mark alone reached 4.4 billion Euros in 2010), the overall proportion of certified and labelled products available in supermarkets remains very small, however, and unless supermarkets' own codes are rigorously and proactively applied and integrated into purchasing and sourcing activities, they can very easily be undermined by abuses of buyer power and downward price pressure.

What have regulators done?

Under EU competition law, the short-term interests of the consumer are to all intents and purposes paramount, and if those are satisfied in the most general terms, competition authorities are less concerned with problems upstream. The treatment of suppliers therefore slips down the priority list – and has done for decades.

Recent and ongoing sector investigations in a number of countries (including Norway, Finland, Italy and Spain) illustrate that there is growing recognition of the problem. The Spanish National Competition Commission, for example, concluded in 2011^{xiv} that the bargaining power of retailers may have negative effects on competition and on consumers and suppliers, and made specific reference to a slowing down in the rate of innovation in the food sector.

But devising and implementing effective remedies has proved neither quick nor simple. In 2000, the UK Competition Commission found that abuses of buyer power by supermarkets had persisted for at least 10 years. The resulting Code of Practice proved ineffective,^{xv} however, and a second investigation was carried out, concluding in 2008.^{xvi} Continuing abuse was identified and a second Code of Practice devised together with the appointment of a Groceries Adjudicator to oversee it (although no appointment has yet been made).

Part of the reason why competition authorities have achieved so little is, to be fair to them, practical difficulty. Supermarket buying involves millions of transactions across thousands of suppliers, and touches

upon the prices that millions of consumers pay. The concern of competition authorities is that intervention in such a large-scale process could make relationships between suppliers and supermarkets even more inflexible, with results that could be uncertain. Supermarkets are also effective political lobbyists, and politicians tend to be readily persuaded that supermarkets are the friends of consumers – though they do not always ask small suppliers for a view. Furthermore, a fundamental problem with codes of practice is that they require suppliers to complain, but the prevailing climate of fear discourages suppliers' participation in investigations.

A 2012 survey by the British Institute of International and Comparative Law on relations in the EU food supply chain illustrates how authorities have struggled to put effective remedies in place. The Institute describes a variety of "soft law" and "hard law" remedies that have been tried, none of which, singly or in combination, has proved wholly successful. The most effective of such approaches were considered to be the following:

- Standards based on a fundamental principle of fair dealing (ie, a retailer must deal with its suppliers fairly, lawfully and in good faith, without duress and in recognition of its suppliers' need for certainty)
- A binding instrument that regulates conduct
- The creation of a dedicated adjudicator who can build up sector expertise
- A framework accessible to all suppliers, whatever their geographical origin
- Routine publication of reports to highlight good and bad practice
- The possibility for official investigations
- A mechanism to allow anonymous complaints
- The possibility of financial penalties

Conclusions

While damage to suppliers can be inflicted by any organisation with buyer power – a major brand owner, a supermarket or a buying group – damage to consumers arises additionally because of the retailer power wielded by leading supermarkets. Detriments inflicted on suppliers will, sooner or later, show up as detriments to consumers.

The evidence considered here, supported by a number of academic commentators, viii suggests that buyer power is under-represented in economic literature. A systematic framework for its analysis and for the whole spectrum of its effects, whether good or bad, is needed. This analysis should also incorporate a long-term view.

Effective measures to prevent unfair commercial practices and the resulting detriments to both small-scale producers and consumers are urgently needed. Remedies should be based on a principle of fair dealing and should be enforceable and binding. Further, the global nature of supply to leading supermarkets must be recognised in order to ensure that all suppliers (including those outside the EU) have effective recourse to protection.

With a mandate to inform consumers and act in their interests, consumer organisations have a vital role to play in preventing the negative effects of buyer power. Consumers International will support the work of its members in raising consumer awareness of relevant issues; will hold supermarkets to account for the conditions in their food supply chains and the integrity of their purchasing practices. Further, Consumers International will support binding and enforceable action to prevent abuses of buyer power and subsequent detriment to consumers and suppliers alike.

Catherine Nicholson, Consumers International Bob Young, Europe Economics July 2012

Acknowledgements:

We are very grateful for the help given by: Elise Dalley and Zoya Sheftalovich, CHOICE Australia; Emese Gulyás, Association of Conscious Consumers, Hungary; Karianne Christiansen, The Norwegian Consumer Council; Tom Hind, NFU (National Farmers Union in the UK); Professor Roger Clarke of Cardiff Business School; Fiona Gooch, Traidcraft and Tania Hurt-Newton.

Sources for selected national food market concentration ratios (see Tables 1a and 1b)

Country	Year	Source
Austria, Finland, Norway	2009	Nielsen
Belgium	2011	http://www.retaildetail.eu/nl/case-van-de-week/item/2421-de-belgische-voedingsmarkt-2010-2011?tmpl=component&print=1)
Denmark, France, Greece, Italy, Spain	2009	Planet Retail, 2009
Germany	2011	Bundeskartellamt
Netherlands	2010	http://www.distrifood.nl/web/Onderzoek/Marktaandelen.htm
Portugal	2011	http://www.aped.pt/Media/files/Ranking%20APED%202010.pdf
UK	2011	IGD
Australia	2011	www.Choice.com.au
Canada	2011	Food & Consumer Products of Canada, reported by Postmedia News
Switzerland	2011	Detail Handel Schweiz
USA	2006	http://www.oecd.org/dataoecd/30/40/44231819.pdf
Estonia, Lithuania, Luxembourg, Slovenia	2005	Planet Retail, 2006

- The Abuse of Supermarket Buyer Power in the EU Food Retail Sector: Preliminary Survey of Evidence, Vander Stichele and Young, SOMO, 2008. p4.
- The Supply of Groceries, UK Competition Commission, 2008 p167.
- British Brands Group, 2006, op.cit. and CHOICE Australia, 2011.
- CHOICE Australia, http://www.choice.com.au, 2012.
- vi Op cit.
- Unit pricing still has room for improvement, CHOICE, December 2011 http://www.choice.com.au/blog/2011/november/unit-pricing.aspx
- Clear, consistent food pricing: Why unit pricing must be improved, Which? November 2011 http://www.which.co.uk/documents/pdf/clear-consistent-food-pricing-why-unit-pricing-must-be-improved-which-briefing-288006.pdf
- The Danish Competition and Consumer Authority, 2011 referred to in ECN Brief 05/2011.
- Supermarket Special When is a sale not a sale? CHOICE, May 2012; Which? UK Special Offers, November 2011; Unless indicated as CHOICE or Which? all examples are quoted from Panorama: The Truth About Supermarket Price Wars, BBC, 5 December 2011.
- Consumers International website http://www.consumersinternational.org/media/394236/checkedout-english-02.pdf, p18.
- Banana Link website: http://www.bananalink.org.uk/the-problem-with-bananas
- Organisations such as the Ecologist and the International Labour Rights Forum amongst others have documented examples of unacceptable working conditions in food supply chains in Europe, the USA and worldwide.

 http://www.theecologist.org/News/news analysis/1033179/scandal of the tomato slaves harvesting crop exported to uk.html;

 http://www.laborrights.org/
- Report on the relations between manufacturers and retailers in the food sector, Comision Nacional de la Competencia, 2011 http://www.cncompetencia.es/Default.aspx?TabId=228
- xv Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom, Competition Commission, Cm4842, October 2000
- Groceries Market Investigation, Competition Commission, April 2008, ISBN 978-0-11-703854-7.
- Models of Enforcement in Europe for Relations in the Food Supply Chain, Justine Stefanelli, Phillip Marsden, BIICL, 2012.
- Three papers presented at "Buyer Power in Competition Law", a conference organised by the Oxford University Centre for Competition Law & Policy an Oxford/Stockholm Wallenberg Venture, 15 May 2012: Maurice Stucke, University of Tennessee, *Buyer Power: Should the Seller Beware?*; Ariel Ezrachi, University of Oxford: *Buying Alliances, Cartels and Purchase Price Fixing: In Search of a European Enforcement Standard*: and Michael Rowe, Slaughter and May: *Buyer Power in FMCG Mergers*.



This report was produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of Consumers International and can under no circumstances be regarded as reflecting the position of the European Union.