

Fairtrade Response to CMA Call For Input on Competition Law and the Path to Net-Zero

1. Introduction

- 1.1** Fairtrade in the UK is part of a global Fairtrade system which supports 1.71 million Fairtrade workers in 73 countries around the world. Our vision is to make trade fair and secure a better deal for farmers and workers, contributing to the UK's wider climate crisis, international development efforts and achievement of the Sustainable Development Goals (SDGs).
- 1.2** Fairtrade welcomes the opportunity to submit evidence to the CMA on how competition law can best support the path to Net-Zero.
- 1.3** Since 2014, the Fairtrade Foundation has been working to encourage a more favourable regulatory environment for business sustainability initiatives in the grocery sector, including whether competition and markets policy could play a stronger role. In November 2017, we published a report¹ that modelled the potential **consumer benefits that could be gained from collaboration between businesses for sustainability purposes**. The study considered a pre-competitive hypothetical collaborative sustainability initiative in the British retail market for fresh pineapples. It found that the hypothetical collaboration would **deliver improved consumer choice and pricing over the medium to long term by building improved resilience to environmental shocks**. The hypothetical initiative was designed for compliance with existing competition law at the time of research.
- 1.4** In 2019, we released a follow up report² made up of interviews from key stakeholders which identified that a **significant number of market actors in the grocery sector believe that multi-stakeholder collaboration is frequently necessary to achieve key sustainability benefits for producers and consumers**. The same study evidenced that a **fear of an unfavourable ruling under competition law is a deterrent to a significant number of retailers from collaborating on sustainability issues**, particularly on issues of low incomes and wages in the supply chain.
- 1.5** Our conclusion is that (I) better guidance and support is needed to increase confidence amongst businesses about how to undertake pre-competitive collaboration in ways that are compliant with existing competition policy, and (II) The UK regulator should also set active strategic goals to align its operations with the UK's sustainability goals including its SDG and UNFCCC commitments.
- 1.6** We are not advocating an increase in "retailer power" (since Fairtrade's core mission is to support smallholder farmers and agricultural workers who frequently lose out in trade relationships). Rather we would like to see a "smart" approach by the regulator, designed to incentivise sustainability investment and sustainability risk reduction at farm level, supporting particularly the medium to long-term consumer interest.

¹ [Fairtrade Foundation Sustainability Collaborations Report.pdf](#)

² [Competition Law and Sustainability - Fairtrade Report.pdf](#)

2. The impact of climate change on agricultural supply chains

2.1 We would like to illustrate the threats to UK food supplies, and hence the availability of food to the consumer in the following paragraphs.

2.2 The COVID-19 pandemic shows us the stress placed on global supply chains by a major shock. Fairtrade supply chains saw widescale disruptions to trade, logistical challenges and increases in the costs of production in many sectors, in core food sectors such as fresh fruit and vegetables. While UK retailers “rode the storm”, costs rose, and production levels dropped severely due to workplace and logistical disruption. For example, ‘non-essential’ goods such as flowers saw huge drops in sales, sometimes in a matter of days, leading to widescale job losses³. This level of disruption is likely to increase as climate conditions worsen globally and we see increasing climatic shocks.

2.3 With around 10-15%⁴ of the UK’s overseas food imports coming from Asia, Africa and Latin America, (the Trade & Agriculture Commission report puts the value of food imports at £47.7 billion⁵) **UK food security and consumer interests are inextricably linked to the health of economies and the stability of societies in low-income countries.** The UK therefore has a high interest in promoting resilience and investment in what are currently fragile and threatened supply chains. Failure to do so increases the risk not just to food security and livelihoods, but to the **availability, choice and price that UK consumers will experience in future decades in the supermarket.** As well as sourcing products not viable in UK agriculture (such as coffee and bananas) retailers use produce from different lower income countries in rotation through the year so that produce such as fresh vegetables remains available to the consumer “out of season”.

2.4 With the effects of the COVID-19 crisis and the worsening climate crisis likely to drive more farmers and workers into poverty in the coming years, **competition law needs to gactively support the resilience of smallholder farmers and agricultural workers at the bottom of our food supply chains.** Failure to support such resilience will result in increasing risks to security of supply, with knock-ons to price and choice.

2.5 The case of bananas illustrates how sustainable supply chains can be more resilient in the face of disruptions to trade caused by a global shock. The UK public consume one hundred bananas per person annually, leading to retail sales of over £700 million⁶. During the pandemic the banana sector was hit by workplace closures, transit/freight challenges and border closures, leading to an increase in the costs of production⁷, and causing availability

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

⁴ <https://www.gov.uk/government/publications/food-statistics-pocketbook/food-statistics-in-your-pocket-global-and-uk-supply>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969045/Trade-and-Agriculture-Commission-final-report.pdf

⁶ <https://www.bananalink.org.uk/wp-content/uploads/2019/04/Britains-Bruising-Banana-Wars.pdf>

⁷ UK consumers however typically pay below the sustainable cost of production for their bananas. The typical price that we pay for a loose banana in the UK is 12p and over the last 15 years, the cost of a banana, accounting for inflation, has dramatically reduced: <https://www.bananalink.org.uk/wp-content/uploads/2019/04/Britains-Bruising-Banana-Wars.pdf>

and cost issues for buyers. However, during the crisis, there is evidence to suggest that Fairtrade farmers were better able to buffer these impacts. Due to additional investment provided through Fairtrade sales they were better able to adapt to the shock and maintain production, by quickly investing in protective equipment and paying for “shielding leave” for vulnerable workers⁸. Despite this strength of resilience, delivered through higher value at farm level, such Fairtrade commitments have not resulted in higher consumer prices for bananas.

2.6 We therefore recommend strongly that competition law and CMA guidance should be reviewed to consider how it can best support brands and traders collaborating on pre-competitive farm-gate pricing to ensure investment in those at the bottom of supply chains. Other sustainability issues associated with sustainable supply chains and the path to Net-Zero, including deforestation, sustainable production methods and adaption **will not be possible to overcome unless farmers and workers are able to earn a living income to make the necessary investments.**

2.7 There are an increasing number of regional living wage and living income benchmarks developed using the Anker methodology⁹, as the sector recognises the importance of living incomes and wages to ensure sustainable livelihoods for farmers. The Global Living Wage Coalition and The Global Living Income Community of Practice¹⁰ are two initiatives that have a similar approach to living wage and income using the Anker methodology. The Global Living Income Community of Practice is a multi-stakeholder group of over 200 who work together to report on progress against living income benchmarks, understanding the gap between actual and living incomes and solutions to help actors close these gaps. The Global Living Wage Coalition is an ‘unprecedented’ collaboration of seven standards systems to take a common approach to measuring living wages led by ISEAL.

2.8 Alongside living incomes, the path to Net-Zero is further complicated by several other factors affecting agricultural supply chains, including **price volatility at the farm-gate level** which impacts on sustainability. Price volatility is particularly significant in cocoa, banana, cotton and tea sectors. Prices have been known to fluctuate dramatically, usually depending on global crop yields. This has been further impacted by the pandemic in 2020. With many smallholder producers having little visibility over the global market for cocoa, it often leaves producers with very little information to plan for their incomes. The market volatility means farmers may receive wildly fluctuating prices for their product, making it impossible for them to plan ahead and reducing confidence to make investment into their production practices.

2.9 Another key challenge for many agricultural supply chains is to **ensure a reliable supply of talented, young workers.** Tough physical conditions, combined with volatile and low incomes, make farming a particularly tough livelihood. The challenging conditions on many farms in low-income country supply chains risk driving young people out of the sector towards service sector jobs, primarily in cities. As a result, there is a risk that many countries will struggle to retain young workers in the farming sector as workers move to

⁸ <https://www.fairtrade.net/news/in-times-of-covid-fairtrade-heroes-adjusting-their-work-to-a-new-normal>

⁹ [The Anker Methodology for Estimating a Living Wage | Global Living Wage Coalition](#)

¹⁰ [Living Income Community of Practice \(isealliance.org\)](https://www.isealliance.org/)

cities in pursuit of more stable jobs with higher wages. Many economies in high income countries already struggle to attract domestic labour into the agricultural sector, with many farms relying on immigrant labour to fill a lack of domestic labour supply. Again, the supply of labour is likely to be severely impacted by the increasing impacts of the climate crisis.

2.10 The Fairtrade Foundation holds that addressing this unhealthy cocktail of sustainability challenges is in the long-term interests of the consumer. Without measures taken to address the issues affecting international agricultural supply chains, smallholders will be unable to adapt and mitigate to the impacts of the crises, and the risks of widespread supply chain disruption rise. Shocks to supply will result in higher prices for consumers, or some food disappearing from our shelves.

3. Competition law and the path to Net-Zero

3.1 Most grocery supply chains are characterised by an **asymmetric power structure**. On the one hand, retailers and traders hold a high degree of buying power and visibility over the market for agricultural goods. On the other, a large number of producers in low-income countries continue to operate in a smallholder context, with little to no power in their negotiations with buyers. Some of the underlying factors within the power asymmetry include vertical integration of many retailers with the creation of ‘own brand’ products, and the consolidation of major traders and retailers into a smaller number of large corporations.

3.2 This asymmetry, in turn, leads to **sustained downward pressure on farm-gate prices**, as well as creating pressure to use a **range of unfair trading practices**. The buying power of retailers and traders puts farmers under a great deal of **pressure to sell at low prices**. This power imbalance can be exacerbated by a lack of pricing data, which affects the ability of producers to plan and demand a fairer price for what they grow.

3.3 From our research¹¹, the Fairtrade Foundation understands that many brands and retailers recognise the challenges but do not take action on sustainability issues due to concerns over **‘first mover disadvantage’**, recognised by the Netherlands competition authority¹², as a *‘coordination problem [that] may arise if a sustainable product brings with it higher production costs, and as a result thereof, higher prices. Undertakings would be confronted with a ‘first mover disadvantage’ if too many customers wished to switch to non-sustainable products’*.

3.4 The results from our interviews in 2019¹³ show that first mover disadvantage is very real in the minds of market actors in the UK grocery sector. All 18 interviewees believed that first mover disadvantage was an obstacle to successful unilateral initiatives on pricing. Retailers and brands interviewed all cited the fierce competition between retailers for market share, and the perceived need by retailers to cut their costs to retain their position in the market. This competition means brands and retailers may be reluctant to pay higher

¹¹ [Competition Law and Sustainability - Fairtrade Report.pdf](#)

¹² [Vision document on Competition and Sustainability | ACM.nl](#)

¹³ [Competition Law and Sustainability - Fairtrade Report.pdf](#)

prices and to make courageous sustainability commitments, even where they see a compelling sustainability case.

3.5 All our interviewees said that **competition law** limited their ability to work collaboratively to address certain sustainability issues. In particular, competition law constraints were felt most acutely in the context of low farm-gate prices. Helpfully, our interviewees did not feel competition law particularly restricted discussions about supply chain issues such as child labour, deforestation, and low productivity, but they did feel that an **unclear legal landscape around potential collaboration in relation to low farm-gate prices restricted progress towards working collaboratively to secure living wages and incomes across supply chains**. It was less clear whether this expressed concern reflected the reality of competition law, or a “chilling effect” caused by uncertainty and a lack of confidence. Either way, it is clear that greater support and focus from the regulator in navigating sustainability and competition issues would be likely to lead to improved levels of commitment to multistakeholder action for sustainability – and this in turn would be expected to improve the kind of “whole sector” responses to issues such as climate change and human rights risks which are urgently needed in the agriculture sector.

3.6 It is a given that EU and UK competition law prevents collaboration between market actors on retail pricing in order to protect consumers. Nonetheless, EU and UK competition law does permit collaboration between market actors which promotes ‘technical’ and ‘economic’ progress that results in an evident consumer benefit. However, our experience is that it is not obvious at all when this exemption might apply. All of our interviewees said that further clarity from competition authorities on how a **pre-competitive collaboration on the issue of low farm-gate prices (for example, in circumstances where farmers are receiving poverty level wages or essential climate adaptation works could not proceed due to lack of value) would be assessed under competition law would greatly aid progress**.

4. Existing progress in this area

4.1 The Fairtrade Foundation welcomes the guidance recently published by the CMA on environmental sustainability agreements and competition law¹⁴. This is an important step in the right direction which responds in part to our earlier engagement. We would be keen to see the CMA keep this guidance under review, and in particular issue further guidance on how businesses might address low-farm gate prices for environmental and sustainability purposes (see recommendations below). As mentioned earlier in this submission, it seems to be the case that pre-competitive collaboration is often able to proceed up until the point where significant additional investment is needed at farm level, at which point a combination of factors, including uncertainty as to the competition law position, can come into play.

5. Our Recommendations

¹⁴ [Environmental sustainability agreements and competition law - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/environmental-sustainability-agreements-and-competition-law)

- 5.1** The CMA should consider **the long-term environmental and social sustainability of supply chains alongside short-term consumer interest** when reviewing how well markets are functioning.
- 5.2** The CMA should note the **significant consumer benefit** which derives from a reduction in future environmental and social shocks in agricultural supply chains, especially those linked to lower income countries. Supportive competition policy, supported by clear guidance for businesses considering sustainability collaborations, will enhance the UK's ability to build resilient food supply chains, as well as helping meet our SDG and UNFCCC commitments.
- 5.3** The UK government's Strategic Steer to the Competition and Markets Authority should emphasise that it should work to facilitate **markets that are sustainable in the long-term, and which support our SDG and UNFCCC commitments.**
- 5.4** The CMA should issue **clearer communications to companies and retailers on how businesses can collaborate for environmental purposes, including where action could involve addressing low farm-gate prices in a manner that would be consistent with competition law.** Specifically, this means providing guidance or policies that would clarify the application of the prohibition and the exemption criteria under Chapter 1 of the Competition Act 1998.