

High Level Group (HLG) on the Competitiveness of the Agro-Food Industry

CIAA contribution to the discussions of the Working Group: “Price setting along the chain and commercial practices”

Background and issue

In almost all EU countries the three largest food retailers represent more than half of the market share, and in some EU Member States, notably Nordic countries, even more than 80%. Industry suppliers face the opposite situation, with over 300.000 companies (99%) producing 48% of the sectors' turnover. The imbalance of power between a highly concentrated retail sector and a highly fragmented industrial sector has serious downsides. Pressure on industry suppliers, especially on the food and drink SMEs, is considerable. Most SMEs have little arguments to resist price pressure or abusive contractual terms and practices.

Small and Medium sized enterprises particularly suffer from late payments by their clients. As outlined in the Report commissioned by the European Commission in 2006, with regard to the impact of the late payments directive 35/2000, the directive has helped addressing late payments, but has not eliminated them, neither has it solved the problem of long payment terms. The directive has not allowed solving grossly unfair practices or contractual terms, which can, for example, require suppliers to pay for services that are not rendered or to participate in blind electronic tenders. One of the major reasons why creditors do not charge interest or reject abusive practices is that they do not wish to offend and, therefore, to loose clients.

There is a need for the introduction of fair trade legislation to ensure the future success of the food, drink and grocery sector and the provision of value and transparency for consumers. Such approach could avoid excessive retailer power being used for own financing purposes and cross subsidisation of operating costs.

CIAA Priority Objectives and Recommendations

Late Payments

In order to improve and enlarge the dispositions of EU Directive 2000/35, converting the current Directive into a regulation would better respond to the need for stronger harmonisation of the approach on minimum standards on commercial law. Such change should in for example include:

- Setting a harmonised payment period. This would considerably enhance legal certainty across Europe and be supportive of intra-community exchanges. The competitiveness of EU business environment is affected by cash-flow difficulties and risks derived from long payment periods. On the other hand,

broad differences in payment periods between Member States prevent companies benefiting from the internal market, distorting the conditions of competition.

- Setting an automatic and fixed late payment fee. This would act as a better deterrent than the current compensation through interest rates. Interest rates, even if they may be increased, triggering costs and do not put enough pressure on debtors.
- Representative organisations should have the full legitimacy to file a complaint on behalf of their members, aimed at seeking to declare clauses and practises inoperative or void; this provision should be matched with a special procedure to preserve the companies' confidentiality.
- Harmonizing and limiting the steps necessary to lodge a claim. The reluctance of SMEs to file a claim is understandable considering the number of steps necessary to obtain an enforceable title and to enforce it. The harmonisation and limitation of the step necessary to lodge a claim would be beneficial, introducing a 60 day procedure to obtain an enforceable title.
- Transparent, compulsory reporting of late payments. The legislation should request Member State to make reporting of late payments and on contract terms. Such data would also allow identifying those who are responsible for paying late, which would put pressure on their reputation and contribute to correct the situation.
- Director responsibility based on civil liability. CIAA supports the introduction of the Director's liability in case a company does not meet its legal obligations in the terms established by the EU legal framework, as a way to avoid excuses of heavy bureaucracy or procedures to pay late.

Grossly unfair practices

The late payments directive should be amended to address "grossly unfair commercial practices" and not only "grossly unfair provisions". This should include both formal and informal ways to avoid abusive contractual clauses in commercial relations, and abnormal practices or informal agreements. For example: payments requested by retail of their suppliers must be duly justified and correspond to a service effectively provided, they must be fair and objective; promotions should be balanced and have a clear benefit for all partners in the chain, including for consumers.

CIAA views on other issues

Funding and Financing to counter power within the food chain

The EU food and drink industry is facing a structural problem: there is a lack of dimension. Promoting collaborative initiatives could bring together SMEs and increase their power. This type of initiatives could cover export consortia, environmental improvement investments, technical centres for improvement of technologies and R&D, promotion of business angels, joint ventures, mergers, capital risk, research projects, etc. For these initiatives priority should be given to public funds, whether from EU or National level. The European Commission could elaborate an EU funded programme to promote collaboration amongst SMEs from different countries.