

Brussels, 2 November 2017

## **Public Consultation on the Initiative to improve the food supply chain**

Freshfel Europe, the European Fresh Produce Association, is the Association representing the fresh fruit and vegetable supply chain in the European Union and is registered in the transparency register under the reference: 1637225479-02. We incorporate more than 150 direct members and associated members, including companies and national associations of producers, shippers, exporters, importers, distributors, retailers, and their service providers. Through the membership of national associations, we have a wide, representative outreach of the EU production and trade.

Our mission is to create a favourable environment for the fresh fruit and vegetables sector, to facilitate the competitiveness of fresh produce, to improve the efficiency of the supply chain, to assist operators complying with the highest food and plant safety rules, to enhance the position of fresh fruit and vegetables in international trade as well as in research and innovation, and to secure a favourable environment to promote the benefits of fresh produce, with the ultimate goal of stimulating the consumption of fresh fruit and vegetables.

As a representative of the complete supply chain, we strive for a competitive and business environment, for a good coordination, transparency, and exchange among all the relevant stakeholders, and to secure that the sector adheres to the highest quality to satisfy the consumers. Therefore, having this supply chain perspective in mind, we would like to add some nuance to the current debate on Unfair Trading Practices (UTP), as it does not necessarily reflect the reality and specificity of the fresh fruit and vegetable sector. While not neglecting the existence of imbalances in certain supply chains, we are careful to proclaim them as UTPs by nature or take for granted that they are standard practice. Most of the business relationships in our sector are built on a long tradition of expertise from growers down to retail. Often, they are the result of a sum of different aspects influencing the relationship among the stakeholders within the supply chain. Therefore, we believe that the questionnaire does not reflect the realities of the specific fruit and vegetable supply chain, as it is hard to fit in the one-size-fits-all approach offered in the Public Consultation.

### **The structure of the fresh fruit and vegetable sector**

The European fruit and vegetable industry sets itself apart from other sectors due to following particularities:

- Our products are characterised by, sometimes high, perishability and seasonality. The highly perishable products have a short cycle and, in case of crisis, often do not have the capacity to be stored for a long time. Products with a longer shelf life can postpone the problem until later in the season. For those products, the logistics (storage and post-harvest treatment) and trade actors, such as Producer Organisations (PO), wholesalers, and exporters, play a bigger role to prevent or overcome market unbalances.
- The perishability implies that the fresh fruit and vegetable supply chain is tight and complex, characterised by a diversity of distribution channels: in order to avoid food waste, operators need to work via different marketing channels, such as wholesale, PO, direct marketing

(farmers markets), or via contracts with retailers, with whom producers often have a longstanding relationship. Despite this diversity of distribution channels, the focus of the chain is often primarily driven by local distribution to meet the customers' expectations.

- Besides a diversity in marketing channels, there is also a high diversity between the product categories: there are, amongst others, differences between methods of production, variety, quality, size, climatic conditions, packaging, labelling, and promotional activities. This is contrary to other commodities and especially to the branding that is possible for processed foodstuffs. Conditions for fresh produce are often more complex and go beyond the safety requirements for other commodities.
- The fruit and vegetable sector is also characterised by a fragmented production, and a concentration of retail. Growers are encouraged to join a PO through the Common Market Organisation for Fruit and Vegetables (CMO), grouping the demand and enabling the growers to exercise greater marketing power through the PO.
- Due to this diverse nature of the supply chain and the products themselves, every link within the chain can be affected by a multitude of different factors, such as the strong susceptibility to adverse weather conditions, the sudden establishment of embargos, the emergence of food safety crises, exchange rate fluctuations, and negative or positive promotional campaigns. This can lead to a strong fluctuation in crop supply and demand and a high price volatility, by which a small volume variation can lead to a significant price variation. This price volatility is dependent on many factors, from adverse weather in certain producing regions to the mere imaging of fresh fruit and vegetables, and price recovery is often slow and challenging.
- Whilst the overall programming of a season is generally guiding the relationship between the different operators in the chain, daily adjustments in business are often required, given the fluctuation between offer and demand. This fluctuation can be influenced by multiple factors, such as climatic conditions. The actors are used to adjusting to this situation.

Due to this complexity in the supply chain, we are unable to answer the questionnaire on the Initiative to improve the food supply chain as published by the European Commission, as it does not reflect all the different aspects of the full supply chain. Instead, we hope that, with this paper, some clarity is provided on how the supply chain functions, what the different challenges and opportunities are, and where the Commission could improve the functioning.

### **Unfair Trading Practices**

We acknowledge that there might be imbalances along the chain – given the high fragmentation of the production and the high level of concentration of the retail – and that market conditions need to be stabilised. However, these imbalances do not necessarily call for more legislation, but could be addressed via private partner initiatives or via reinforced tools from the public sector that are already available.

First, to stabilise prices and relations along the chain, production and supply levels should be stabilised. For this, producers need to have access to the means to prevent the impact of climatic havocs (hail nets, anti-frost systems, proper irrigation systems, etc...), with a focus on ex-ante risk management rather than ex-post. They also need to have access to the necessary plant protection products and post-harvest treatments to prolong the shelf life and enhance the quality of the products. We believe that the EU should reinforce these important factors in its Common Agricultural Policy, and plant and

food safety policies. It should also stimulate research and innovation in new techniques that address these challenges.

Second, the debate about UTPs is steered towards the relationship between the grower on the one hand, and the retailer on the other hand. However, the fruit and vegetable supply chain is characterised by a multiplicity of actors. Those actors are not only responsible for the value added to the product, but also contribute to a better balancing of the market: they are further segmenting the produce available to the different market outlets, such as corner shops, food services, processing or export to third countries. This complexity makes it difficult to establish what could be considered a UTP and what not, taking into account that UTPs may be observed at any stage along the chain. It is up to the supplier and customers to agree on the terms and conditions of the sales to meet the satisfactions of the consumers. This commitment to secure consumer satisfaction can be challenging for anyone in the supply chain, not just the grower. Therefore, we believe the EU should refrain from imposing potential new legislation that might be harmful to any other actor in the supply chain, as it could distort the established working relationships between the multitude of actors.

Third, the proposition of ruling contracts through legislation will be complex, given the diversity of the situation, the day-to-day operation, and the volatility parameters affecting both the suppliers and the recipients. An overwhelming majority of relationships occur within an environment of long-term trust and partnership with guiding principles. In 95% of businesses, a reference price is set prior to departure of an agreed volume, sometimes through e-mail or phone order. Some retailers already have thousands of different types of contracts with their suppliers. Moving towards compulsory contractualisation would lead to millions of contracts, given the number of transactions which operate within different operational environments (daily, seasonal, annual...). In case of disputes, the sector has set up its own arbitration service in Paris, the International Arbitration Chamber for Fruit and Vegetables (CAIFL). The CAIFL not only provides arbitration in national and international disputes, but also promotes the COFREUROP rules. These rules clearly fix the obligations and duties of sellers and buyers in the fresh produce business. As such, they provide a valuable solution in disputes concerning quality, prices, contract breaches, payments, and other issues.

Fourth, private standards are often referred to as UTPs. However, the sector has taken the necessary steps to meet and adhere to customer requirements, demonstrating its capacity to adapt to different conditions to satisfy its customers. It has to be noted that these private standards are often set to protect the customer brands from NGO scrutiny. Additionally, they are regularly used as a response to a lack of clarity in the legislation.

Finally, the ongoing discussions are mostly situated at national level (e.g. in France, Spain). These discussions are rather tackling matters at national level, and are not governing the operations within the Single Market. In these situations, Interbranch Organisations could also play an important role as the facilitator of the relationship between the different categories of operators within a national territory. They could set conditions (such as standards contracts), implement actions for promotions or improve the relationship among business operators in the chain as being a platform for the sector (either supply-based or fully vertical).

To conclude, the EU should first ensure that the existing legislation, such as the Late Payment Directive, is properly implemented. Second, apart from reinforcing its own tools that are already available, the EU could promote non-regulatory industry initiatives, such as the Supply Chain Initiative. The SCI, whilst still developing its full potential, can create productive dialogue between the parties involved.

Witnessing more technical and politically motivated barriers in the fresh produce supply chain – with a strong focus on trade to third countries rather than within the intra-EU cross-border trade itself – we notice only limited need and effectiveness of an overarching European legislation on UTPs.

### **Producer Cooperation**

Another way of balancing market power in the chain is to reinforce the fragmented actors of the supply chain, i.e. the producers, to foster a balanced relationship. Consequently, enhancing the number of stakeholders able to regulate the supply, and encouraging the good functioning of POs and APOs across Europe would help better balancing the bargaining power in the chain, while improving market stability for the benefit of the different actors. This would raise returns for all the actors, from producers down to retail. Within a sector with low margin, it is in no one's interest to sell fresh produce at low prices.

Therefore, the sector should move together to raise value and better understand each other's constraints. Additionally, the EU should continue to work towards a simplified, efficient, and attractive PO structure, secure the attractiveness of the scheme across Europe, and ensure that the tools are efficient and well targeted.

### **Market Transparency**

It is useful to have improved market transparency and market information, leading to a better dissemination and analysis of existing data. Given the volatility of the production, it is important that business operators across the chain have access to reliable information to best plan the campaign and take the most informed decision to maximize return for the various partners in the chain.

However, it should be kept in mind that market information is always ex-post information with limited benefit to structure the market. The fresh produce market is characterized by a frequent volatility affecting both supply (because of climatic havocs) and demand (because weather influences consumers' preferences). The above-mentioned diversity of products, varieties, qualities, labelling, packaging, etc... leads to a multiplicity of prices even within the same category. Therefore, a public initiative to balance supply and demand will be challenging, as it might lead to more difficulties than market uncertainties. If the initiative is to be useful, then the market information tools should encompass more data than just information about prices and production volumes. It should also include figures on consumption, weather, trade data, input and storage costs, as these are all creating the context of the functioning of the supply chain. All these data should somehow be easy to access in a user-friendly platform.

Therefore, the sector would rather welcome tools to have better stability of production (such as prevention against climatic havocs) or demand (by stimulating consumption and diversifying market outlets) to tackle this price volatility, even though improved statistics on market trends are always an asset for the business operators to take informed decisions. In this respect, it needs to be ensured that sharing general and aggregate information on production and trade, in relation to market developments, is in line with competition policy rules.

### **Conclusion**

Whilst not denying the existence of certain market imbalances, we suggest that, primarily, the existing legislation should be properly implemented and potential loopholes in the existing legislation should be addressed. Additionally, we urge the Commission to ensure that potential new legislation does not harm or complicate a well-functioning sector. Instead, we suggest that initiatives result from the private relationship between business partners or from reinforced tools from the public sector.