

The powerful and the powerless in the food supply chain

This text contains an English translation of three key chapters of the report rendered on 13 April 2011 by the Norwegian Inquiry Commission for the Power Relations in the Food Supply Chain, established by the Government of Norway on 18 February 2010. The name of the Norwegian original is “Mat, makt og avmakt”. It is available on the government internet site using the link below:

<http://www.regjeringen.no/nb/dep/lmd/aktuelt/nyheter/2011/april-11/mat-makt-og-avmakt.html?id=640277>

The three chapters in English below are:

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6. The inquiry commission's assessments (p. 10)
7. The inquiry commission's recommendations (p. 44)

2 Summary

Chapter 1 Introduction

This chapter details the inquiry commission's mandate and composition. It provides an account of the inquiry commission's methodology, surveys ordered by the inquiry commission, relevant international surveys, and some basic principles for understanding some of the reports attached as annexes.

The qualitative surveys ordered by the inquiry commission from the firm of auditors KPMG are discussed and explained separately.

Chapter 2 Summary

This summary.

Chapter 3 The food supply chain - status and trends

This chapter describes important topics, processes and issues relating to power relations in the food supply chain.

Historical review

A brief historical review is provided of the structural changes that have taken place in the food supply chain since the 1970s to the present day. In those days the retail structure was

composed of many independent shopkeepers and suppliers, and wholesalers dominated power relations in the food supply chain. In 2011, the situation has changed radically and the various links in the value chain are strongly integrated.

Power analysis

An account is then provided of the analytical approach which provided the basis for assessing relative strength in the food supply value chain. Three main types of structural power have been differentiated between: direct power over outcomes, agenda power and ideational power. The inquiry commission concludes that the trade's umbrella chains have increased their bargaining power over suppliers. The umbrella chains' power lies in controlling access to the market and their ability to ensure the outcomes they desire in negotiations, both when it comes to short-term financial goals and with regard to more long-term, strategic goals.

Franchises

With the exception of Coop, all of the umbrella chains have retail chains in which the stores are operated according to franchise principles. In the qualitative surveys, shopkeeper respondents said three factors in the agreements between the retail chains and shopkeepers/franchisees were problematic: 1) a lack of insight into the calculations on which agreed financial payments are based, 2) strong restraints on their ability to withdraw from partnerships that are not working satisfactorily, and 3) that it is difficult for shopkeepers to switch between different retail chains.

The negotiations ('autumn hunt')

The annual negotiations between the umbrella chains and suppliers are often referred to as the 'autumn hunt'. These negotiations are very important for producers, suppliers, umbrella chains, retail chains, shopkeepers and, not least, the nation's consumers. Which products will gain market access through the nation's stores the following year, and on what terms, is decided during a couple of months at the end of the year. In practice, all Norwegian and foreign suppliers negotiate with four buyers who control access to the grocery market in Norway.

Suppliers describe the negotiations as a difficult process. They experience an ever present and genuine threat of not being able to conclude an agreement or seeing important products removed from the assortment that stores must actually offer if agreement is not reached. Suppliers paint a picture in which the umbrella chains are increasingly unilaterally shaping the negotiations' agenda and content.

Joint marketing (JM), bonuses and discounts

Forming a clear picture of price transmission through the food supply chain is not an easy task given the complex system of discounts, bonuses, special offer prices, and other marketing measures. The inquiry commission's study has uncovered significant disagreement between suppliers and umbrella chains over the basis for calculating discounts and bonuses. Their points of disagreement include which of the actors should establish the basis for calculation for the products and who should be entitled to change this basis for calculation. Suppliers are also calling for better documentation of the quid pro quo when they pay umbrella chains for joint marketing initiatives.

They also question whether these discounts and bonuses are ultimately really passed on to the consumer.

Competition in the national and regional markets

The inquiry commission provides a detailed description of the competition situation in the food supply chain. Each of the four umbrella chains is treated as a single, integrated actor in the inquiry commission's assessments of buying, wholesaler activities and distribution. When considering retail sales, the associated retail chains in NorgesGruppen are treated as independent actors. The inquiry commission characterises the market as heavily concentrated. High concentration in a market can in itself lessen competition and also increase the likelihood of actors successfully working together to lessen competition or implement other competition lessening strategies. Please also see the inquiry commission's assessment in Chapter 6.

Retailer own brands (ROBs)

The inquiry commission presents a wide-ranging discussion of ROBs. It describes recent trends in ROBs, both nationally and internationally. The current scope of ROBs in Norway is relatively modest, even though the proportion of ROBs in the product groups varies strongly. However, the proportion of ROBs is growing rapidly.

There is a general perception among suppliers that the tactical and strategic pricing of ROBs are financed through the bonuses and JM funds contributed by suppliers. For their part, the umbrella chains assert that ROBs, like other products, must demonstrate profitability over time.

In the inquiry commission's surveys, suppliers point out several factors that are generating uncertainty and conflict due to the increasing production of ROBs. These include irritation about various forms of imitating national brands, umbrella chains demanding insight into recipes and production costs, the unreasonable use of cross pricing, and different markups for ROBs and the industry's national brands, etc.

Some suppliers say that producing ROBs rather than continuing to focus on their original national brands is their only chance of survival in the market.

The supplier link

The supplier link in the value chain is also thoroughly discussed, both from an historic perspective and in particular in light of the recent structural changes in the food supply chain.

Like the umbrella chains, the suppliers do not only operate in the grocery market. The foodservice market and convenience retailing are also very important. Most Norwegian supplier markets are heavily concentrated. This is also true from an international perspective.

In theory, suppliers can exercise power in a number of ways. They can refuse to supply products to a customer, and when they conclude agreements they can demand various forms of vertical restraints in order to exercise control over a chain. The ability to employ such means naturally depends on the supplier's bargaining power. The Norwegian Competition Act also lays down certain restrictions. The umbrella chains claim that many suppliers are exploiting their market position to dictate terms they deem unreasonable.

Distribution as an important strategic marketing tool is also discussed.

Based on the inquiry commission's study, it is probable that only the largest suppliers are capable of bringing substantial pressure to bear on the umbrella chains in negotiations.

Finally, the development trends in various industries are described. These descriptions include an account of the dominant suppliers' development in the last ten years in these industries.

The foodservice sector and convenience retailing

Most foodservice companies are heavily subject to various types of buying agreements and buying cooperation.

In 2009, 43 per cent of the purchased volume was distributed by two full assortment wholesalers, ASKO Storhusholdning (NorgesGruppen) and Servicegrossistene, while 57 per cent was distributed by other actors, including directly from suppliers, specialist wholesalers, etc.

Suppliers have pointed out that NorgesGruppen has a substantial market share and that it is difficult to distribute their products without going through NorgesGruppen's system. This is not a description with which NorgesGruppen concurs. They point to significant competition in a number of product groups, including dairy, brewery products, and meat.

In recent years, convenience retailing has experienced poor profitability and major challenges due to factors such as longer opening hours in the grocery trade, the disappearance of slot machines, and under the counter sales of tobacco. At the same time, sales of ready-to-eat food are increasing in this segment and have become an increasingly important element of competition.

Primary production

An overview of structural and production developments is provided for both seafood and agricultural products. National and international framework conditions are described as a basis for assessing the position and market power of the primary producer link in the food supply chain.

Access to information and transparency

Finally, a detailed discussion is presented about access to information and transparency in the food supply chain with regard to price formation and power relations. The inquiry commission discusses in detail the use of the qualitative surveys KPMG conducted on its behalf. The inquiry commission is of the opinion that despite the fact that many findings require more thorough follow-up and documentation, many of the descriptions and statements in the surveys appear credible and objective. Therefore, in the opinion of the inquiry commission the report provides a good basis for assessing the various actors' conduct and exercise of power in the food supply chain.

Chapter 4 The situation of Norwegian consumers

In this chapter the inquiry commission takes a closer look at consumers' rights and interests. Consumer information, origin labelling, and durability labelling are reviewed. Health and environmental considerations in food production are discussed. Consumer choice is assessed in relation to assortment, prices, shelf placement and the labelling of groceries.

Assortments

The inquiry commission ordered a survey of assortments and prices in Norway and comparisons with equivalent data from Sweden and Denmark. The survey shows that an average store in Sweden has twice as many product variants as a Norwegian store in relation to the assortment looked at in the survey. The differences are least for local stores (superettes), but increase the larger the stores get.

Prices

As far as price trends for food and non-alcoholic beverages are concerned, price inflation has overall been lower in Norway than in the EU in the last decade, primarily due to the VAT reform in 2001. Since 2001, Norway has experienced somewhat higher food and non-alcoholic beverage price inflation.

In 2008, however, Norway experienced the highest price level for food and non-alcoholic beverages in Europe (approx. 55 per cent higher than the average EU-27 level), followed by Denmark and Switzerland (46 per cent and 38 per cent higher, respectively). Political, institutional, structural and geographical differences go some way to explain the differences in the general price level. Norwegian tax policy and agricultural policy are among the most

important causes of the price differences between Norway and our trading partners. High food prices in Norway must also be viewed in the context of the general high level of costs in Norway and the political willingness to protect Norwegian agricultural production. However, these factors cannot entirely explain the price differences.

Organised consumer influence

Finally, the various forms of organised consumer influence are discussed.

The National Institute for Consumer Research (SIFO) surveyed a number of organisations about their experiences and their views about their own activities and influence in the area of food and groceries. Overall these organisations have had mixed experiences with regard to influence in this area. While the opportunities to influence producers and the authorities were regarded as limited, a number of the organisations had experienced a greater degree of openness from the grocery chains.

The Consumer Council plays a key role from a consumer protection policy perspective. The Consumer Council enjoys both public and political acceptance as the key and general protector of institutionalised consumer influence and promoter of consumer interests in Norway.

Chapter 5 International initiatives and surveys of the food supply chain situation

This chapter describes a series of international initiatives and surveys concerning power relations in the food supply chain, as well as initiatives that have been introduced or which are being considered in various countries with the aim of improving the balance of power and increasing diversity.

The EU has established the High Level Forum for a Better Functioning of the Food Supply Chain. The High Level Forum will assist the EU Commission with developing food industry policy. Its mandate encompasses 10 specific points proposed by the EU Commission and 30 recommendations from a previous High Level Group. Norway has been assigned observer status in the Forum.

The UK

The inquiry commission has studied the trends in the UK in particular. The UK has had a relatively concrete and detailed code of conduct for the industry since 2002. The first regulations were voluntary, and therefore were not applied in practice. The government concluded that this was not a satisfactory situation and decided to introduce compulsory regulations.

Following two rounds of consultations, the statutory provisions came into force in February 2010 in the so-called Grocery Supply Code of Practice (GSCOP). The government that took

office in 2010 has decided to propose that the statutory provisions be strengthened through an enforcement and supervisory authority in the form of an adjudicator.

Chapter 6 The Food Supply Chain Commission's assessments

This chapter presents the inquiry commission's assessments based on the surveys, information and contributions described in more detail in chapters 3-5.

It refers to chapters 6 and 7 for a more comprehensive description of the inquiry commission's assessments and recommendations. Some important findings are described below, heavily summarised:

- The Norwegian food supply chain is characterised by heavy concentration in the retailer, wholesaler and supplier links. Concentration in the retail grocery market in Scandinavia is heavier than elsewhere in Europe, not least in Norway in which only four umbrella chains control the market.
- There is reason to monitor the risk of restrictive trade practices effecting competition. This is particularly true with respect to tacit price fixing. This refers to a situation in which competitors can, without conferring, adjust to each other's prices.
- Parts of the Norwegian supplier markets are heavily concentrated. In more than half of the surveyed markets the market leader has a market share of more than 50 per cent. This indicates that competition is weak and that the market leader has strong market power.
- Today, neither shopkeepers nor employees in the trade exercise any noticeable power in the food supply chain. In the opinion of a majority of the inquiry commission, a Norwegian franchise act would go a long way towards correcting this distortion of power relations in the food supply chain.
- The relatively high prices of Norwegian groceries are composite and reflect geographic, demographic, economic and political conditions. At the same time, the differences are so large that generally higher margins in the food supply chain in Norway, due to restrictive trade practices in industry or grocery trade links, cannot be excluded either.
- Even if the growth in Norwegian assortments is increasing slightly more than in Swedish ones, comparisons show that the assortments in Swedish stores are very much larger in local stores, medium-sized stores and hypermarkets. The range of healthy and wholesome food, local products and organic food is also limited in the Norwegian grocery trade compared with other countries. The inquiry commission would like to underscore that it appears highly unsatisfactory for consumers that the authorities are allocating substantial resources to providing a basis for healthy, organic and locally produced food without this having an impact in the form of a broader range of such products in grocery stores.
- The inquiry commission thinks it is a paradox that consumers, who in principle possess the ultimate buying power, are unable to coordinate or organise themselves in a manner that ensures they can better further their own interests. On the other hand, Norway has established strong state involvement on behalf of consumers in the form of a publicly funded consumer council.

- The qualitative surveys conducted by the inquiry commission clearly show that both primary producers and suppliers have problems understanding, and gaining access to information about, how consumer prices are fixed and what they are based on. Similarly, many shopkeepers also find it difficult to understand the connection between their profit and the prices set for the products. Doubts about bonuses and discounts create uncertainty, and these have in some cases been brought before the courts for clarification. Therefore, the inquiry commission is looking for more transparency and insight into price formation to ensure that concluded agreements are followed up as expected, and also to ensure that all involved actors can gain a better picture of how the value created in the food supply chain is distributed between the parties. The inquiry commission believes new initiatives and surveys are needed to create a greater degree of transparency and predictability with regard to price formation and price transmission in the food supply chain.
- The inquiry commission believes the following factors, among others, should be looked at in order to achieve a better power balance in the food supply chain:
 - Increasing awareness of how food is produced and how these assets are distributed and used.
 - Developing ground rules for good business practice.
 - Facilitating better market access for small and medium-sized suppliers.
 - Stipulating requirements concerning the content of exclusivity agreements in vertical relationships.
 - A more transparent process that involves smaller suppliers and consumer interests in category development.
- The inquiry commission is of the opinion that if the trend in Norway continues at the same pace and in the same direction, where the umbrella chains can more or less unilaterally dictate the terms in agreements, such a development would be detrimental to healthy competition and balanced power relations in the food supply chain.
- The inquiry commission believes that there may be a need for measures in the vegetables segment that ensure a more reasonable balance of the risk between the actors and which enable better access to the market for both new and smaller producers.
- As far as distribution is concerned, the inquiry commission is of the opinion that greater control over distribution by the umbrella chains will help to reinforce a trend towards closed channels between umbrella chains and suppliers, and could also function as an entry barrier for new suppliers.
- The inquiry commission has provided a comprehensive assessment of the proportion of retailer own brands (ROBs). Even though the inquiry commission finds that the increase in the proportion of ROBs in the Norwegian grocery trade has so far not had negative effects for Norwegian consumers, there is still a need to closely monitor this development going forward. In particular, the inquiry commission points out that major differences exist between the products groups with regard to ROBs. Volumes and growth are both greatest within fresh produce. Moreover, the increase in ROB production will further shift power towards the umbrella chains. The interests of the consumer with regard to price and quality must be protected better than they are today. Cross-subsidisation in relation to ROBs is also discussed and assessed in more detail.
- Even though the inquiry commission has not found that below-cost selling creates competition problems that harm the consumer, the inquiry commission nevertheless thinks that such a business practice is detrimental and should be avoided. The inquiry

commission points out that this has already been banned in a number of European countries and that a prohibition is being considered by the EU. Therefore, the inquiry commission recommends that experiences and the development of regulations in this area be closely monitored with a view to Norwegian conditions. Please also refer to the proposals in Chapter 7.

Chapter 7

This chapter presents the inquiry commission's recommendations and proposals.

The proposals cover:

- An act relating to negotiations and fair trading practices in the grocery sector, etc.
- An ombudsman for the grocery sector
- A grocery web portal
- Food labelling
- Amendments to the merger control provisions in the Competition Act
- A study of ownership restrictions in the grocery trade

It is also recommended that the following factors be assessed in more detail/monitored:

- the competition situations in the foodservice and convenience retailing markets
- a study of price transmission in the food supply chain
- developing cost reducing distribution solutions for small-scale producers
- assessing measures in the EU as a basis for further initiatives aimed at promoting balanced power relations and healthy competition in the Norwegian food supply chain
- a Norwegian franchise act.

Chapter 6

The inquiry commission's assessments

This chapter presents the inquiry commission's assessments based on the surveys, studies, reports and findings on which the inquiry commission based its work. For a more detailed discussion of the various issues, please refer to chapters 3, 4 and 5.

The inquiry commission commissioned both quantitative and qualitative surveys. Each report describes the methods, principles and assumptions on which it is based. The reports from the surveys are attached as annexes.

The different issues are considered in the order in which they are listed in the inquiry commission's mandate:

- Whether, from an overall perspective, the system contributes to an efficient use of resources.
- Whether, from an overall perspective, the system works in favour of consumer interests with regard to price, product quality, choice and accessibility.
- The extent of transparency and ease of monitoring with respect to prices, discounts and other conditions, and whether the system from an overall perspective provides a basis for adequate societal control as a point of departure for competition and an efficient use of resources.
- Whether power relations in the food supply chain, during the last ten years, have undergone such changes that a comprehensive competition approach focusing on buying power is needed.
- Whether any such change in the supply chain has had negative effects and if so on competitiveness, innovation, other political goals, i.e. for agriculture and the Norwegian food industry.

6.1 An assessment of the food supply chain with regard to an efficient use of resources

The food supply value chain comprises a number of different markets that are linked together in a number of vertical value chains, e.g. the cheese value chain, the coffee value chain, and the fresh fish value chain. Most of these value chains are connected at one or more links, for example by the products being sold through the same wholesaler or retailer links.

A central issue in the inquiry commission's work has been the significance the grocery chains' consolidation, increasing vertical integration and buyer power has had in relation to the exercise of power, use of resources and interests of the consumer. These issues have also been central in similar studies in other European countries.

Strong market power, whether in the form of a dominant position or not, provides opportunities for increasing prices and lowering quality when selling products. This may be a problem in a number of the markets in the food supply chain in the supplier, wholesaler and retailer links. Another obvious danger of such a market situation is that the established actors might use their market power to shut out competitors. This will lead to a further concentration of the market that weakens competition with the subsequent consequences for consumer welfare.

The inquiry commission's analysis demonstrates some clear departures from the preconditions for well-functioning markets. Such departures may in turn result in reduced socio-economic efficiency that is unfavourable for the consumer.

The retailer and wholesaler links

The inquiry commission's analysis shows that the Norwegian food supply chain is characterised by significant concentration in the retailer, wholesaler and supplier links in the value chain. The trend in the retailer link has moved in the opposite direction to that in the supplier link. From being very fragmented with many small, independent stores, a consolidation has taken place that has resulted in the current situation with five major competitors in the retailer link, and four umbrella chains competing in the buying markets. Sweeping vertical integration has taken place in the last 10 years in which the wholesaler link has been integrated with the retailer link. The wholesaler link has also been heavily integrated with various distribution channels: stores and supermarkets, foodservice companies, and convenience retailing.

The major umbrella chains have taken advantage of economies of scale in their buying and distribution, and developed more efficient vertical coordination. These structural changes have resulted in greater buying power in relation to suppliers in the buying market and contributed to significant rationalisation benefits. This mirrors the development in several other European countries.

Concentration in the retail grocery market in Scandinavia is heavier than elsewhere in Europe, not least in Norway in which only four umbrella chains control the market. At the same time the structure of stores in Norway differs significantly from those in other countries with many, small stores spread out across the districts. The inquiry commission's surveys confirm that the Norwegian market has higher prices and poorer assortments compared with most other European countries, and this cannot exclusively be explained by special Norwegian protection measures and a high level of pay and costs.

The structure of the Norwegian grocery market with four major umbrella chains means that every chain is important for the suppliers. Even the smallest are large enough to make a supplier take a threat of delisting [1](#) very seriously. At the same time the relationship between the umbrella chains is neither equal nor static. NorgesGruppen is easily the largest and has a buying market share of around 40 per cent [2](#). Rema 1000 has grown rapidly in recent years and now lies in third place with almost 21 per cent. Coop's position is stable at around 24 per cent, while ICA has lost a relatively large amount of ground and now has just under 15 per

cent. If we include the convenience retailing and foodservice sectors, NorgesGruppen has a more than 40 per cent share of the grocery market.

This development can be interpreted as if the competition in the Norwegian market is satisfactory. The development of the relative strengths between the two major chains on the one side and ICA on the supports such an understanding. However, such a view does not provide the entire picture. By virtue of their size alone the relationship between NorgesGruppen and Rema 1000 is more interesting. First of all, these two groups dominate the foodservice and convenience retailing markets and jointly own the Bama Gruppen AS. Suppliers who do not have their own direct distribution channels (i.e. not including products such as liquid dairy products, beer and soft drinks, bread and baked goods) must use the umbrella chains' wholesaler links to gain access to these markets. The price level wholesalers realise in these markets appears to be higher than in the grocery sector. The inquiry commission has not had access to the information necessary to be able to more precisely state the reason for this. However, it would appear that the conditions for greater competition need to be put in place in these markets in order to ensure a more efficient use of resources.

Secondly, one would expect that satisfactory competition would enable the largest buyer, i.e. NorgesGruppen, to offer the most favourable consumer prices in the discounter segment. According to the data collected for the inquiry commission, NorgesGruppen normally achieves the best buyer terms. Nonetheless, Kiwi, NorgesGruppen's discount chain, is generally more expensive than Rema 1000. There could, in principle, be various explanations for this such as different assortments, differing levels of services, etc. However, in practice it is difficult to see any clear differences between the two chain concepts with regard to such variables. Therefore, this may indicate that the level of competition in the market is unsatisfactory.

A number of suppliers have noted that a reduction in internal costs and reduced prices for deliveries to retailers do not appear to have the corresponding effect of reduced prices for the consumer. This is apparent from the qualitative surveys carried out by the inquiry commission. This may also be an indication of inadequate competition. The umbrella chains' markups in the wholesaler link may also have an impact that can be regarded as unreasonable for the consumer: If suppliers' commodity costs increase, while other costs are kept unchanged, a percentage-based markup nonetheless results in the costs of transport, marketing, etc, increasing.

In general, the inquiry commission would observe that the Norwegian grocery market is characterised by a few, large grocery chains, behind import protections for primary agricultural goods and other entry barriers, that have developed a high degree of vertical integration and control. In such circumstances there is reason to monitor the risk of restrictive trade practices effecting competition. This is particularly true with respect to tacit price fixing. This entails a situation in which competitors can, without conferring, adjust to each other's prices. This in turn means that products will be more expensive that they would otherwise have been if there was greater competition. Even though the inquiry commission has not investigated price fixing, *a majority of the inquiry commission* points out that it is rational for actors not to challenge the price level too much. Given that there are only four controlling actors, it is understandable why what may appear rational for one actor in the short-term, namely reducing prices and gaining more customers [3](#), is not rational for either the individual

actor or the actors collectively in the longer term: If one actor lowers prices sufficiently, the other actors will lose customers. It would therefore be rational for them to also reduce their prices to win back lost customers. The result would be that everyone would make less than they did before [4](#). Therefore, reducing prices is not a rational strategy to follow as long as the consumers are willing and able to pay at the existing price level.

A majority of the inquiry commission also points out that the preconditions for this phenomenon occurring are having a few, major actors who have good information about each others' pricing. The Norwegian Competition Authority has pointed out that the concentration in, and entry barriers to, the grocery market indicate that good conditions exist for such cooperation. The authority also points out that establishing and sustaining a price level that is above competing prices in the grocery market is demanding because coordination problems arise when one is going to arrive at a common price level for so many products and retail prices. In 2009, the authority pointed out that the disappearance of the competitors Smart Club and Lidl reduced competitive pressures, and that this could make it easier to coordinate pricing.

Two members of the inquiry commission, Thomas Angell and Bjørn Kløvstad, point out that this is a theoretical argument that does not tally with the experiences of the actors in the retailer link. They think the price level is being challenged. This is a result of the intense competition between the chains, which is also reflected in the chain's falling margins and changes in market share.

Grocery chains have access to each others' prices through reports produced by the Nielsen Company. In 2007, the Norwegian Competition Authority considered intervening against the exchange of detailed weekly price information because it could have been contrary to the Competition Act's prohibition against cooperation that restricts competition. Having been informed of the authority's consideration, the parties chose to change their practices themselves.

In Norway, discount stores have a 50.9 per cent market share of the grocery market (2009) [5](#). The share is strikingly high in an international context. It has steadily increased in recent years, driven by the success of the country's two largest high profile chain, Rema 1000 and Kiwi.

In an international context a distinction is made between 'hard' and 'soft' discount chains, so-called 'hard discounters' and 'soft discounters'. The Nordic competition authorities describe them as follows:

"Hard discounters operate with low service, high rate of turnover, lowest possible costs and pursue a policy of low prices most persistently. They carry few items, many of which are retailer own brands. Soft discounters, on the other hand, also use other parameters in their marketing and carry a more balanced selection of brands and retailer own brands" [6](#).

In the Norwegian market, Rema 1000, Kiwi, Coop Prix, Bunnpris and Rimi have typical 'soft discounter' profiles. Following Lidl's withdrawal, none of the chain profiles in Norway can be categorised as 'hard discounter'. Instead the trend in the last decade has been more towards an 'up-trading' of discount profiles in the direction of supermarkets, with larger assortments and

more fresh produce, but still a relatively high proportion of ROBs and a low level of service. Typically both Rema 1000 and Kiwi have introduced pilot stores with greater floor space and substantially more product lines. The introduction of Coop Extra can be seen as part of the same trend. While in their establishment phase discount profiles were strongly inspired by 'hard discounters' like Aldi and Lidl, today the umbrella chains get their inspiration from Mercadona, the Spanish supermarket success story, which combines more product lines, more fresh produce, a higher level of service and larger stores with lower prices than other supermarkets.

This overall movement in the direction of strengthening 'soft discounter' profiles may be seen as a further indicator that competition in the Norwegian market is not as robust as it could be. The question is whether or not the lowest level is genuinely being challenged. The consequence of stable, limited competition is that the mechanism that in theory should press prices downwards cannot work as it is supposed to. Instead, we can expect prices to better reflect "what the market is willing to pay". In a country with great, evenly distributed prosperity and a shopping pattern in which impulse shopping dominates, the market's willingness to pay can be very high.

The inquiry commission is of the opinion that more independent umbrella chains would improve diversity, strengthen competition and contribute to a more efficient use of resources. The need for greater diversity does not necessarily mean Norway needs more stores; rather it needs more independent chains. The inquiry commission is of the opinion that the competition between independent chains is currently at a critically low level. After Rema 1000 took over Lidl's network in Norway and Coop bought up Smart Club, the integrated chains control almost 100 per cent of the market. Therefore, this situation must be kept under careful observation. Please also see Chapter 7 for further discussion and proposals.

Entry barriers in the retailer link

Given the current general conditions, there are some entry barriers in the retailer link in the value chain, especially in the case of chains that currently do not have a presence in Norway. These barriers include national policy provisions concerning shopping centres and measures such as import protections, custom rules, etc. These regulations help to support key political objectives. Modifying these entry barriers could make competition more robust and contribute to a more efficient use of resources. Naturally, such measures would have to be weighed against other political objectives.

Strong, Norwegian national brands also present a substantial challenge when foreign chains first try to enter the Norwegian market. The inquiry commission would also like to point out the close correlation between the retail trade zoned commercial property market and the market for the retail grocery trade. The relationship between these markets is strongly vertical because properties are a necessary input factor for operating a grocery business. The established grocery chains have been very active and have acquired strong positions in these property markets. This is a way of acquiring an extra channel for realising margins from a business model, but it is obviously also one of the chains' key strategies for securing their objective of increased market share. It also functions as an effective entry barrier against the establishment of competitors in local markets.

Please also refer to Chapter 5 which discusses in more detail the EU Commission's proposal concerning property acquisition.

The supplier link

The inquiry commission's surveys show that parts of the Norwegian supplier markets are heavily concentrated. In more than half of the surveyed markets the market leader has a market share of more than 50 per cent. This indicates that competition is weak and that the market leader has strong market power. This is supported by the qualitative surveys the inquiry commission has carried out.

Both umbrella chains and smaller suppliers say supplier concentration is a problem and highlight the concentration in dairy markets as particularly problematic. Larger suppliers do not disagree that supplier concentration is high, but stress that a positive development has taken place in a number of markets in the last 10-20 years. This is confirmed by the quantitative surveys, which, among other things, show there has been a trend in recent years towards lower concentration within some meat products and in relation to eggs.

However, in most markets the changes are minor. This indicates that Norwegian supplier markets will remain concentrated and that some actors will retain substantial market power.

The shopkeeper

Franchising is an important form of contract for the umbrella chains, with the exception of Coop. Franchises basically regulate a partnership between two parties in a relationship that balances interests. The franchise arrangement has been the subject of debate recently, partly because many shopkeepers think the terms are not balanced between the parties with regard to the division of risk, opportunities for withdrawing from an agreement on acceptable terms, etc. Unbalanced franchise agreements can reinforce entry barriers that work against new or competing actors. The trade union movement has expressed clear objections to the way the franchise arrangement functions with regard to the consequences for workers' rights.

There is no special law that currently regulates franchise relationships in Norway. Sweden introduced a specific franchise act in 2006. This act regulates the terms of such agreements more precisely and helps balance the weighing up of the interests of the franchisor and the franchisee.

The trade union movement thinks the lack of a Norwegian franchise act helps to weaken basic principles of worker's participation with regard to transparency, participation and access to information.

Today, neither shopkeepers nor employees in the trade exercise any noticeable power in the food supply chain. *A majority of the inquiry commission* is of the opinion that a Norwegian franchise act would go a long way towards correcting this distortion of power relations in the food supply chain.

"A minority of the inquiry commission, Thomas Angell, disagrees there is a need for a special franchise act if its purpose is to create predictability with regard to how basic principles of worker's participation with regard to transparency, participation and access to information should be addressed. The minority cannot see how the rights of the employees of franchisees are relevant to the inquiry commission's work, and by way of introduction reminded the inquiry commission that employees of franchisees have exactly the same employment rights as every other employee.

The majority has referred to the Swedish franchise act in its argument that a Norwegian franchise act is necessary. There is therefore reason to state that the Swedish franchise act does not regulate the rights of franchisees' employees at all, but only regulates the franchisors' obligations to disclose certain information to franchisees before any franchise agreement is concluded. ⁷ As far as the minority is aware, the same is also true of franchise legislation in other countries.

Franchises are an important and commercially sensible form of organisation that needs to be protected. Therefore, it is important that framework conditions are not changed in a way that has negative effects for the franchise as a form of organisation. If a franchisor has to take greater responsibility for the activities that take place in a franchisee, the advantages of operating a franchise concept would be considerably reduced. Were this the case, one could not expect the franchisor to retain a slim organisation, meaning that, for example, the efficiency benefits of franchises would fail to materialise and increased costs in the final link in the value chain would have to be passed on to the consumer. Were the concept subject to pressure, this could result in a reduction in the number of franchises established locally, which in all likelihood would have substantial negative consequences for employment and for the districts. This would at the same time negatively impact the competition situation and would thus hardly be commensurate with the inquiry commission's focus.

The minority is of the opinion that there neither can nor must be any doubt that the individual franchisee is the employer. A division of responsibilities between the franchisee and the franchisor would entail a major risk that the franchisee, as the smallest actor in the contractual relationship, would in practice leave HSE work and other employer responsibilities to the franchisor, at the same time as the franchisor would not be sufficiently close enough (or have the resources) to address these responsibilities adequately. One thus risks the disintegration and undermining of the franchisee's employer responsibilities.

As far as the majority's addressing of the need for participation, this can be understood as a question of expanding the representation rules to also include franchises. Were this to be the case, the majority is unable to see that such an expansion would be appropriate with regard to achieving the apparent intentions. Furthermore, it would have unfortunate company law and contract law implications. Firstly, a franchisor does not have the influence and decision-making authority that an employer has. Secondly, there could be a lack of a commonality of interests between the parties as opposed to what one sees in group relationships where companies within a group are bound together by ownership interests. Such an incompatibility of interests could easily result in challenges relating to disqualification and any duty of confidentiality. Different franchisees may also have conflicting interests. Moreover, one would have to expect the number of shareholder elected board members to increase were one to open the door to board representation for the franchisees' employees. This would probably be a natural consequence of the shareholders' need to secure a majority and other influence in the work of the board. One can see that such an expansion would make the ways in which boards work, and achieving a quorum, more difficult, and this could also have a negative effect on the employee representatives' actual influence in the board. Finally, the paradox that

employees of the other party to a contract would have a direct influence on the board of a franchisor must be considered. In my opinion this conflicts with general perceptions with regard to who should have influence in a board, and encroaches on genuine agreement freedom and basic company law relationships.

As far as the majority's argument is concerned that a franchise act is needed to regulate the duration of a franchise contract, the minority finds there is reason to underscore that it would appear very unfortunate to seek to legislatively regulate a direct contractual relationship between two professional parties in relation to matters concerning the duration of a contractual relationship. The minority cannot see that the fear of being locked in should be afforded such great weight that it overshadows the professional parties' contractual freedom."

Consumers

If the trend of greater buyer power in relation to suppliers has also resulted in greater vendor power in relation to the consumer, the total effect of the socio-economic efficiency of greater buyer power is unclear. Concentration at the retailer level has increased and decisions about prices and assortment are today centralised within the individual umbrella chains. Therefore, it would appear reasonable to assume that the trend has also resulted in the umbrella chains having increased their vendor power in relation to the consumer.

6.2 Consumer interests with regard to price, product quality, choice and accessibility

The purpose of the Competition Act is to further competition and thereby contribute to the efficient utilisation of society's resources. When applying this Act, special consideration shall be given to the interests of consumers, cf. Section 1, second paragraph, of the Competition Act. The consumer's interests are also explicitly protected in Section 10, third paragraph, of the Competition Act, as one of a number of conditions for exemptions for concerted restrictive trade practices. The section concerning control of concentrations (acquisitions and mergers) stipulates that the Competition Authority shall intervene against concentrations that will create or strengthen a significant restriction of competition, contrary to the purpose of the Act. Even though protection of the consumer's interests follows directly from the purpose of the Act, the Ministry of Government Administration, Reform and Church Affairs [8](#) has stated that an overall welfare standard shall be applied. This means that when one weighs up an acquisition's negative and positive effects, one must accept all of the socio-economic efficiency benefits due to the acquisition and not just those that benefit the consumer. This is contrary to what happens in the EU and most other countries with which it would be natural to compare Norway, which apply a consumer welfare standard.

Competition policy is an important basis for ensuring key consumer policy objectives are achieved. A distribution-neutral competition policy is not intended to protect consumers from unreasonable prices, even though effective competition does provide consumers with freedom of choice and an opportunity to influence the goods and services on offer. The standard is crucial in determining the type of efficiency benefits deemed relevant, and consequently can also be decisive in determining whether or not concentrations are vetoed. Even though the issue has not been definitively tested in relation to the Competition Act, it

cannot be excluded that the standard that is applied will be of significance for future concentrations within the food industry.

Therefore, the inquiry commission is of the opinion that there is reason to re-examine the formulation of Section 1, and especially its significance in relation to the control of concentrations. Please refer to the mandate of the inquiry commission appointed by the government on 17 December 2010 to consider the need for amendments to the Competition Act, including Section 1 and the rules governing control of concentrations.

6.2.1 Prices

The inquiry commission's surveys show that food prices in Norway generally rise faster than other consumer goods prices. Nonetheless, compared with other European countries, the increase in Norwegian food prices has been moderate. This can primarily be attributed to the Norwegian reduction in VAT and not the competition situation in the market.

There has recently been a significant increase in international commodity prices. These price increases have had a greater impact on consumer prices in EU countries than in Norway. One of the reasons for this is Norway's import protections.

Nonetheless, Norway has, with the exception of fish, the highest price level for food and non-alcoholic beverages in Europe. The reason for this is complex.

Agricultural products such as meat, cheese and milk are protected by special measures in line with key objectives of Norwegian agricultural policy. These sort of protection measures have a price that will also affect consumer prices. The inquiry commission does not look at this issue more closely since it lies outside the inquiry commission's mandate to assess the effect of politically set framework conditions.

Nonetheless, even when the special Norwegian rules are taken into account, the inquiry commission found differences in food prices between Norway and the other Nordic countries that can be attributed to neither agricultural policy, trade policy nor different tax levels. One significant element that helps to explain the price differences is the generally high level of Norwegian pay and costs. In any market, the price an offerer realises for a product will depend on the buyer's ability and willingness to pay. Therefore, the high level of pay in Norway may explain some of the reason for the high prices.

There are a number of ways in which Norwegian food prices can be measured. The development trend of food prices can be viewed on the basis of changes in the share of consumer expenses. In 2006-2008, Norwegian consumers spent 11.6 per cent of their annual household expenses on food and non-alcoholic beverages, while in 2006 the level in the EU-27 was 12.7 per cent. However, it is important to be conscious of the fact that this proportion does not just tell us something about how much we spend on food, it also tells us something about how much we spend on other consumer goods. Norway tops the European list of expenditure on consumption. This measure thus tells us as much about the level of prosperity in Norway as it does about the price level of food. The development trend of food prices can also be measured in relation to the consumer price index. For more information about the

choice of measuring methods applied in the survey of the development trend of food prices in Norway and Europe (consumer price index and price level indices) please refer to Chapter 4 and pertinent annexes from the Norwegian Agricultural Economics Research Institute (NILF).

A new survey from the Federation of Norwegian Commercial and Service Enterprises (HSH) (autumn 2010) [9](#) shows that Norwegian consumers are significantly less price-conscious than grocery customers in other European countries. On the other hand, it is the discount chains that are experiencing the strongest growth in Norway, but only 36 per cent of consumers are satisfied with prices. One possible explanation for these two apparently contradictory trends in the Norwegian pattern of consumption is that the Norwegian consumer seeks out the discount chains confident that it is here that the prices are lowest, but without particularly bothering to check that this is actually the case. Norwegians primarily take advantage of special offers once they are already in the store. Only 1 out of 7 choose stores based on the special offers they can take advantage of in the store on that particular shopping trip [10](#).

Store density is substantially higher in Norway than in other countries. The inquiry commission's survey makes comparisons with Sweden. Since the chains in Norway strive to charge the same prices throughout the country for most products, such an extensive network of stores in all parts of the country will result in higher transport and distribution costs. Low population density will boost this increase in costs.

In other words, the relatively high cost level of Norwegian groceries is in part due to a number of factors that reflect geographic, demographic, economic and political conditions. At the same time, the differences are so large that generally higher margins in the food supply chain in Norway, due to restrictive trade practices in industry or grocery trade links, cannot be excluded.

A balance between buyer power and vendor power is important for healthy, effective competition in the market. Based on the qualitative surveys there is reason to express some doubt about whether or not the benefits the chains achieve through the exercise of their buyer power are passed on in the form of lower prices, a better assortment, or other benefits for the consumer. The complicated price mechanisms arrived at through the annual negotiations (the 'autumn hunt') with discounts, bonuses, JM, etc, make it difficult to conduct comparable surveys of price transmission through the food supply chain to check these factors. Greater transparency and better documentation in the negotiations between the actors in the food supply chain would make such work significantly simpler and provide better opportunities for drawing reliable conclusions with regard to the interests of the consumer.

6.2.2 Assortment

The consumer's choice is not only determined by the number of products or product variants, it is also determined by access to alternative distribution channels such as grocery stores, restaurants and convenience retailing, specialist stores, farm shops, farmers' markets, etc. Even though the latter two distribution channels have grown in scope in recent years, they constitute a very small part of total grocery sales. The assortment in the grocery trade, especially in discount chains, with more than 50 per cent of grocery sales, is therefore very important.

There has been an increase with regard to the available assortment of key food groups in Norwegian grocery stores in recent years, not least in discount stores. The fact that the growth in fresh produce has been especially strong is positive for the consumer. This has partly been driven by the chains' ROB ventures. The result of this trend is that the same sharp divide between discount stores and supermarkets no longer exists. Nonetheless, HSH's survey (autumn 2010) shows that it is precisely with the assortment of fresh produce and healthy and organic products that consumers are least satisfied.

Compared with the assortments available in countries with which it is natural to compare Norway, e.g. Sweden, Norwegian assortments are limited. Even though the inquiry commission's surveys confirm that choice is growing faster in Norway than it is in Sweden, the choice in Swedish stores is very much larger in local stores, medium-sized stores and hypermarkets. There are several possible explanations for this, e.g. different import rules, a less concentrated Swedish food industry, less central control of buying policies in Swedish grocery chains, etc.

Another explanation may be that choice in Norway is to a large extent influenced by the trade's and umbrella chains' strategies for increasing profit. Examples of this include 'super sizing' and little differentiation between agricultural products/quality.

Supermarket shelves have taken on an especially prominent role as a shop window and access structure for products from primary producers and industry. Because of the lack of alternative distribution channels, the scarcity of space on the shelves, and the consumers' lack of time and attention, these shelves have become the focal point of a power struggle and attempt to influence and guide consumers. Consumers are thus at the mercy of the choices and choice architecture on offer. The choices they make will be 'arranged' between alternatives organised and facilitated by trade and industry. Consumers are hardly in a position to exercise any form of power or influence when there are few or no alternatives, or when the alternatives are difficult to spot. Nor can they do so if information about prices, quality and alternatives is lacking, unclear or unreliable. In these circumstances, the preconditions for free, informed consumer choices are not met.

The study the Nielsen Company conducted for HSH in autumn 2010 [11](#), shows that half of customers in Norwegian grocery stores are satisfied with the assortment on offer. 26 per cent are downright unsatisfied. Even though it is not possible to arrive at a clear and exhaustive explanation for the difference in assortments from this study, the inquiry commission found that the big differences between Norwegian and Swedish grocery stores were striking.

Assortments are important for a number of reasons. Consumers have different wants and needs, and these do not vary just because of taste, they also vary due to income and life situation. Food is also a culture carrier and is important with regard to geographic, cultural or ethnic identity. Assortments therefore have a direct impact on consumer welfare. Besides this, assortments and choices are important with regard to enabling consumers to make their choices in the market based on their environmental, ethical and health preferences.

It is clear that the choice of healthy, wholesome food, local products and organic food is limited in the Norwegian grocery trade compared with other countries. For example, up to now there has been little serious focus on product lines among the trade's and chains' brands

that address consumers' wishes with regard to a better diet, good health or prioritising locally produced food. The inquiry commission's report, which describes the status and development of the assortment of organic food in Norwegian stores, confirms this. It is hard to believe that Norwegian consumers' wishes and trends would differ so greatly from the corresponding preferences of consumers in other Scandinavian countries and the rest of Europe. Seen in this light, the inquiry commission is of the opinion that the Norwegian food sector is not, compared with other countries, particularly sensitive to new consumer wishes and the need for a wider variety of product choices. The qualitative surveys may provide a pointer to some causal relationships. For example, a rigid negotiating system between chains and suppliers, which one-sidedly focuses on the topics of price, bonuses, discounts, volume and other terms of supply, can easily ignore other important considerations and the wishes of consumers. This revives the question of how the interests of the consumer can be furthered in a better and clearer manner in interactions between the food supply chain's various actors. It is the opinion of the inquiry commission that if one is to achieve such goals, better mechanisms must be found for dividing the risks inherent in innovation processes between suppliers and chains, drawing up incentives and reward systems in product development, clarifying the general conditions between commercial actors and public authorities, etc. The inquiry commission considers assortment an important indicator of the food industry's ability to respond to the wishes and trends apparent from consumer behaviour, and thinks there is a need for a broad set of means in order to achieve a noticeable improvement. Please also see Chapter 7 for proposals concerning measures.

6.2.3 Accessibility

It is clear from the survey the Nielsen Company conducted for HSH [12](#) that Norwegian consumers are generally very satisfied with the accessibility of grocery stores (76 per cent). This includes opening hours, location, infrastructure, parking, etc.

So-called internal accessibility was also surveyed. The survey shows a somewhat lower level of satisfaction (approx. 60 per cent) with this than with external accessibility. Internal satisfaction includes whether or not it is easy to find products in the store, efficient till service, queue formation, etc.

6.2.4 Consumer influence

Norway does not have a general, independent, membership-based consumer organisation. However, a broad spectrum of special interest organisations does exist in the area of health and the environment. These are very interested in the area of food and groceries. Many of these organisations have a large number of members and considerable expertise in important areas. This means they can claim a certain level of expertise and representativeness with regard to addressing key consumer interests within their field of interest. NGOs play an important role as an advocate and driving force on behalf of the consumer in a number of countries. This can be done through campaigns, pressure group activities, and other actions, or through direct cooperation with industry and grocery chains on choosing raw materials, product design and buying. There are number of examples from other countries of such partnerships between NGOs and business with regard to health and nutrition, the environment and animal welfare.

The survey of NGOs carried out by the National Institute for Consumer Research (SIFO) in Norway, [13](#) shows that overall their experiences vary with regard to being able to exercise influence in the area of food and groceries. While the opportunities to influence producers and the authorities were regarded as limited, a number of the organisations had experienced a greater degree of openness from the grocery chains. For example, the industry has, in collaboration with environmental organisations, stipulated environmental and health requirements for producers and suppliers of fish and seafood. These positive experiences concur with the trends observed in other countries, where there is a mutual interest in building alliances between grocery chains and NGOs that lobby both suppliers and the authorities in areas such as the environment, sustainability, nutrition and animal welfare. The results indicate that NGOs can play a significant role in articulating the wishes of consumers to grocery chains. The inquiry commission is of the opinion that as yet unexploited potential exists for interesting collective consumer influence. It should be possible for more organisations to develop closer collaborations with different business actors, and in this way influence product development and ensure a stronger focus on the correlation between price and quality, health and the environment.

The Consumer Council

Norway has established strong government involvement on behalf of consumers in the form of a publicly funded consumer council. The Consumer Council is a free, independent voice in consumer policy questions. The Consumer Council has wide-ranging contact with various actors in the food and groceries area, both with industry organisations and individual actors, including representatives of the four major owner groups. This contact also includes various governmental agencies, expert groups and NGOs, including within the areas of health, the environment and ethical trade. The Consumer Council has relatively good access to decision-makers in both the public and private sectors, and is involved in questions and processes in the area of food and groceries as well. Beyond these tasks, the Consumer Council protects important consumer interests in Norway, and in this way performs some of the same functions the membership-based organisations address in other countries. The Consumer Council enjoys a high degree of confidence among the general public and scores high on the reputation surveys that have been conducted. The inquiry commission thus recognises the Consumer Council's important role with regard to addressing important consumer policy questions.

It is a paradox that customers, who in principle possess the ultimate buying power, are unable to coordinate or organise themselves in a manner that ensures they can better further their own interests. Each individual consumer possesses very limited buyer power. Nonetheless, the chains base their assessments on detailed knowledge about consumer behaviour: what they buy, what influences their decisions, etc. All campaigns, innovations, launches and other activities are planned in detail, based on their knowledge of consumer behaviour. The fact that the umbrella chains want to increase their agenda power means that they also want greater opportunities to direct consumers and their behaviour, not just the suppliers. ROBs, loyalty programmes, coupons, bonuses, customer cards, etc, increase the amount of detailed data available for consumer segmentation, and enable the umbrella chains to increase their ideational power over consumers.

6.3 Transparency and access to information about prices, discounts and terms

Society's need for transparency and access to information about prices, discounts and terms must be balanced against the market actors' need for confidentiality in relation to private data, and business sensitive and competition sensitive information. The market actors' management of such information is a precondition for well-functioning competition.

How the overall value created in the food supply chain is divided between the various actors in the value chain is not a factor that is directly encompassed by the inquiry commission's mandate. However, it is a topic that has been intensely debated in both Norway and many other EU countries. The emergence of stronger buyer power in the buying market affects the relative power relations between vendors and buyers, and will result in a corresponding change in the division of the total value created that benefits the buyers. If the total value created does not increase sufficiently, a further trend in this direction could weaken competitiveness in the links further back along the chain. If the aim is to maintain a robust Norwegian food supply value chain, this issue will have to be examined more closely.

The division of the value created has been debated in the EU, partly based on a concrete case in which lower milk prices from primary producers did not result in a corresponding reduction in consumer prices. Both the European Parliament and the EU Commission have decided to analyse the situation of food producers and the supply industry. However, it is difficult to determine how price formation develops in different links in the value chain. This is partly due to the actors' legitimate need to protect competition sensitive information, and partly due to a complicated system of discounts, bonuses, campaign initiatives, and marketing initiatives for various product lines in the negotiations between the parties, which makes it very hard to acquire a clear picture of price transmission through the food supply chain.

There has been equivalent media coverage and debate in Norway with regard to high food prices on the one hand, and a substantial accumulation of wealth by the owners of the chains on the other. It is often asserted that this indicates there is a problematic imbalance in power relations in the food supply chain, which results in greater control and a one-sided dictation of terms with regard to other actors, and an unnecessarily high price level for consumers. These assertions are also repeated in the qualitative surveys that KPMG has conducted on behalf of the inquiry commission. The increase in costs in the wholesaler link in the value chain through so-called 'D-prising' (the price set by the wholesaler) (cf. Chapter 3) is highlighted in particular. On the other hand, the trade asserts that their increased profits have been achieved through significant rationalisation and streamlining measures, and through higher volumes. They are of the opinion that parts of the Norwegian food industry are lagging behind with regard to rational, efficient operations, and that these would be able to substantially improve profits by implementing similar measures to those implemented in the trade.

The qualitative surveys conducted by the inquiry commission clearly show that both primary producers and suppliers have problems understanding, and gaining access to information about, how consumer prices are fixed and what they are based on. Similarly, many shopkeepers also find it difficult to understand the connection between their profit and the

prices set for the products. Doubts about whether bonuses and discounts are being credited pursuant to the agreements create uncertainty, and these have in some cases been brought before the courts for clarification. Therefore, more transparency and insight into price formation is sought both to ensure that concluded agreements are followed up as expected, and to ensure that all involved actors can gain a better picture of how the value created in the food supply chain is divided between the parties.

Margins in the food industry vary a great deal. Large parts of the industry have also significantly reduced internal costs. Nonetheless, suppliers recognise there is a need to further improve their own competitiveness with a view to future development. At the same time, concerns have been expressed that not enough of the efficiency benefits that have been realised in the industry over a number of years have remained in companies for innovation and product development. It is asserted that such savings have largely been spent on meeting new supply requirements from the grocery chains. The degree to which these savings have resulted in reduced consumer prices has varied.

The inquiry commission does not have a sufficient basis for determining the veracity of the assertions made in the qualitative surveys. The fact that the division of the value created has changed in favour of the retailer link is one consequence of greater buyer power in the buying markets. At the same time, there is reason to believe that greater buyer power as a counterweight to vendor power has helped to increase socio-economic efficiency in these markets. The use of non-linear contract elements such as bonuses, volume discounts and JM may be able to promote efficiency in these markets by stimulating an increase in sales volumes and increased overall profit in the buying market. This in turn may benefit the consumer in the form of lower prices [14](#). However, such contract elements may also have negative efficiency effects if they contribute to limited competition in the market.

New margin studies and analyses are needed in order to provide a more precise description of price formation and price transmission. The inquiry commission recognises that arriving at a suitable strategy and method for carrying out such studies may be demanding. The early margin studies that have been carried out have been controversial in the trade due to the interpretation of the various findings. Nevertheless, the inquiry commission would like to stress that new initiatives would appear necessary in order to produce a greater degree of transparency, predictability and better balanced power relations in the food supply chain. In relation to this please refer to the inquiry commission's recommendations in Chapter 7.

Please also refer to the initiatives currently being taken by the EU to analyse similar issues through the EU's High Level Forum for a Better Functioning Food Supply Chain. Norway has been assigned observer status in the Forum and is closely monitoring its work. Therefore, it would seem natural for Norway to consider implementing similar measures to those being proposed by the High Level Forum.

6.4 Relative strength trends in the value chain in the last 10 years

6.4.1 Grocery Norway becomes a national market

Prior to 1980, the Norwegian grocery market was characterised by regional markets with cooperatives, industry and wholesalers that primarily served regionally defined markets. The retailers were small and independent, and very seldom operated as chains or joint buying cooperatives. Only 39 per cent of grocery stores were affiliated with a chain as late as 1981. Relations were very peaceful with little price competition, and wholesalers, in alliance with producers and suppliers, largely possessed the power and control over distribution.

Wholesalers thus held a key position at the intersection between a relatively well-organised industry and a fragmented retailer link. The wholesalers generally practised 'open channels' with few or no barriers against the suppliers. The wholesalers' markups were calculated as a percentage, so the higher the buying price, the higher the nominal markup. Even though the assortment in the retailer link in the value chain was of course limited compared with today's stores, major regional and local variations also existed.

One of the preconditions for the survival of this alliance was that competition between wholesalers, as well as between retailers, was limited. The producers' recommended retail price to large extent determined prices in the retailer link. Consumers for their part were more loyal than they are today and routinely did their grocery shopping at the local store. This provided little fertile soil for competition for customers.

This situation changed radically during the 1980s. By 1992, 96 per cent of stores were affiliated with a chain. This development was due to major changes on both the consumer and the supply side. The 1970s and 1980s saw women's entry into the labour market, which had major consequences on shopping patterns in that an increasingly large amount of grocery shopping took place at weekends and at supermarkets with car parks. Wider car ownership made the consumer more mobile and less dependent on the local store, which made competition for customers more attractive for retailers. At the same time, an increase in private living standards had been taking place since the 1960s and this dramatically increased the purchasing power of large sections of the population. This resulted in a boom for the wholesale and retail trade.

On the retailer side, a new type of young, competition-oriented actor started to make their presence felt. Discount chains emerged in around 1980, with Odd Reitan and Stein Erik Hagen leading the way. The discount chains bet on the 80-20 rule, i.e. basing their sales on the 20 per cent of the assortment that was responsible for 80 per cent of turnover. Franchising enabled rapid growth, both through the acquisition of existing stores and the establishment of new ones. Both chains were based on a strong, centrally controlled concept with regard to buying, assortment, distribution, profile, pricing policy and marketing. To achieve this the chains had to gain control of the wholesaler functions, and in a short space of time the wholesalers had been integrated into the retailer link. The discount chains' demands for

centralised buying contributed to the establishment of nationwide sales functions by the suppliers.

These centralised, national negotiations turned the grocery trade in Norway into a national market.

6.4.2 The power relations of umbrella chains and suppliers

Chapters 1.3 and 3.1 provide an account of the inquiry commission's analytical approach to the study of power. Three different approaches are outlined: power over outcomes, agenda power and ideational power. It is important to understand how the three levels of power work in concert and against each other. It is often natural to think of the relationship between levels as additive, or perhaps even multiplicative, i.e. that we can add together or multiply power up through its different levels. However, as far as the structure of the Norwegian grocery market is concerned a better approach would appear to be to analyse the situation as a game in which the umbrella chains possess a high degree of what could be considered gatekeeper power and a high degree of agenda power. The most important resource suppliers can put into play is ideational power in the form of controlling attractive national brands.

When one analyses the food supply value chain to see who has power over outcomes, the crucial question is: to what degree are the four major umbrella chains in reality gatekeepers who stand between suppliers on one side and customers on the other? From this perspective it is important to gain an overview of the chains' total power resources throughout the value chain: from the proportion of ROBs, via control of distribution and wholesaler activities, and up to the control of premises suitable for grocery retailing. The stronger this control, the greater the danger of unwanted effects on price formation, assortments and innovation.

Suppliers view the umbrella chains as the gatekeepers to an attractive grocery market. The four umbrella chains have strong, decisive control over who will be able to sell their products in this market. A green light giving them access to the market from at least one of these four chains is the difference between life and death for most of these suppliers' businesses. Therefore, to them, this access control is an almost frightening opportunity to exercise power. The pressure on the suppliers' margins, constant demands for better discounts and JM, and the fear of reprisals such as delisting are some of the means suppliers mention in the qualitative surveys conducted on behalf of the inquiry commission.

Agenda power

The umbrella chains hold the agenda power because they control the planograms and delisting. The same is true when it comes to being able to define who will be allowed to take part in negotiations and how distribution will take place. Shelf placement also affords strong agenda power because among other things it allows them to decide how many competitors will be allowed to occupy a shelf simultaneously, who will be afforded attractive shelf space, and which innovations will be granted space. In addition to having large market shares in the grocery market, the umbrella chains also control the operation of the retail chains, employ centralised buying, control the negotiations system, maintain central control and standardisation of the assortment, and have central control over pricing. Besides this, all four

chains have integrated the retailer, wholesaler and distribution links by, among other things, taking over distribution from the suppliers' production facilities. ROBs are growing rapidly, and centrally steered transaction systems afford control over the flow of money in the product stream. The umbrella chains have also improved their knowledge and insight in relation to the suppliers' production costs through information obtained in negotiations and ROB ventures. The recent development in which more producers feel compelled to start ROB production, combined with a fear of their national brands being imitated, reinforces the impression of the umbrella chains' agenda power.

The suppliers' means

For their part, the umbrella chains are of the opinion that it is the heavy concentration of supply we have in Norway that is the main problem, and that this makes Norway different to most other European countries. Suppliers have a number of means at their disposal in their relations with the grocery chains. At one extreme suppliers can refuse to supply products to a chain. When supply agreements are concluded, the supplier can include various forms of vertical restraints in order to exercise control over a chain. These include price restraints, e.g. in the form of discounts that provide a chain with incentives that reflect the supplier's wishes. They can also include restraints that are not added to prices, e.g. agreements about an exclusive position for the supplier, a status as the category captain or principal supplier, or an agreement on placement in a specified assortment in the grocery chain. The umbrella chains are also of the opinion that the competition in the grocery market is very good and very real, and that rapid changes in market shares between the umbrella chains in recent years are a tangible expression of this.

Variations in power - dependency relationships

The relative power and dependency relationship between an umbrella chain and a supplier will vary. Many suppliers have substantial bargaining power due to their control of access to raw materials, national brands, ability to serve a national market, own distribution options, ability to establish consumer loyalty and confidence, and ability to produce national brands that all grocery stores must have in their assortment. However, not all suppliers are in such a position. Smaller suppliers perceive the heavy concentration in the retail link as a major challenge. Given the store formats one finds in Norway, the combination of major suppliers with strong national and/or international brands and four umbrella chains that reserve space for ROBs and the national brands consumers are used to finding leaves little space for the third or fourth ranked supplier.

Studies show that suppliers' national brands are not a strong driver in attracting customers to the chains, and that the proportion who are unaware of the chains' ROBs is sinking [15](#). The trend in ROB launches and turnover supports this finding. A steadily increasing share of producers' marketing budgets are spent on JM and other in-store measures; less is being spent on market communication in external channels. This is a natural strategic reaction to a situation in which one cannot be sure that new products will even end up in the stores. These factors result in a weakened position for the suppliers. Furthermore, market analyses show that most consumers have a preference for a set of 1-3 labels, but that they often postpone the choice of label until they get to the store because of the offers and activities there. In 7 out of

10 shopping trips the label or product has not been planned in advance. 2 out of 3 consumers do not use a written shopping list; instead they use the store as a sort of checklist. The store is thus a medium that represents great potential for influencing the customer's behaviour and thus increasing sales. Stores really only risk losing trade if they do not have preferred brands of products such as nappies, tobacco, snuff and newspapers in stock. In the case of other categories, the consumer will choose another label if their first choice is not in stock, and thus it is the national brand suppliers who risk losing the trade. [16](#)

The EU Commission's report [17](#) shows that in the last 10 years the strongest national brands have maintained their position in a number of major markets such as France, Germany and Spain. Meanwhile, ROBs are growing by approx. 1 percentage point per year and it is the mid-level national brands that are being squeezed. This is leading to a polarisation of the markets.

The umbrella chains' gatekeeper power and agenda power are weakening the suppliers' ideational power

Possible scenarios Greater gatekeeper power (which provides an opportunity to credibly threaten not to carry a product) in conjunction with greater agenda power (which means that in-store marketing becomes more important for producers as well) together help to reduce the effect of the suppliers' ideational power. If suppliers do not feel confident that innovations will be carried by stores and imitations of newly launched products in the form of ROBs are a genuine threat, this makes it steadily harder for suppliers to maintain and renew their ideational power. However, this does not mean that ideational power disappears; rather it means that the chains will gain a greater degree of this power. The chains' building up of customer loyalty through ROBs is an example of this.

The qualitative surveys do not provide a clear picture of how the overall grocery trade will develop going forward. Based on the industry's own responses and assessments, the future development may be affected by the following elements:

- Greater pressure to achieve goal of 100 per cent wholesaler distribution.
- Maintaining own distribution to stores.
- Strong growth in market share for ROBs.
- More intense struggle for number two position among the umbrella chains.
- Rationalisation and cost reductions in the food industry.
- Greater strategic cooperation between larger suppliers and chains, in some circumstances:
 - Suppliers and chains continue as independent units.
 - Control of business sensitive and product sensitive information.
 - Right to choose customers.
 - Strengthening competitiveness in order to be able to properly compete with steadily weaker import protections.
 - Strengthening product development and innovation.

The list is not exhaustive and also contains strategies that cannot easily be combined.

The Food Supply Chain Commission's evaluation of a competition policy approach

In the opinion of the inquiry commission, the roles of the actors in the food supply chain have permanently changed. Buyer power is basically positive with regard to balancing vendor power. This contributes to a more efficient allocation of society's use of resources. However, there are only a few suppliers that can balance the umbrella chains' greater bargaining power with equivalent vendor power. If the suppliers or chains are conducting themselves in a manner and implementing measures in the market that restrict competition contrary to sections 10 and 11 of the Competition Act, these provisions can be applied. If buyer power is being used to force through a change in business conduct that is unreasonable but not necessarily contrary to the Competition Act, the inquiry commission thinks there is a need to critically examine the following:

- Increasing the attention paid to, and transparency about, how food is produced and how the value created is divided and used.
- Developing ground rules for good business practice that reduce the effect of unreasonable cross pricing and subsidisation.
- Setting limits for the cooperation between competitors that arises when the customer becomes the supplier's most important competitor.
- Facilitating the development of new markets that increase market access and sales for new products from small and medium-sized suppliers.
- A comprehensive assessment that examines the various market channels as a whole.
- Stipulating requirements for exclusivity agreements in vertical relationships, especially with respect to the end points of the value chain.
- Facilitating a more open process with regard to how strategies for category development can be fixed with a view to involving smaller suppliers and consumer interests.

The fact that the emergence of nationwide grocery chains and integration of wholesalers, distributors and retailers has helped to weaken the dominant position that some larger suppliers enjoyed almost 20 years ago is in itself positive for competition. In reality, the largest suppliers could in those days set many of the terms and prices in the stores of many small, independent shopkeepers. The Norwegian market is characterised by heavy supplier concentration in several product categories that ought to be closely monitored.

The umbrella chains' integration provides greater control over the product stream, and the umbrella chains have greater influence over pricing and terms in several links of the value chain. The fact that some umbrella chains are also heavily involved in other market channels (foodservice and convenience retailing) will afford further bargaining power over the supplier link. The different sales channels represent an opportunity for many suppliers to sell their products in arenas other than grocery stores. The HoReCa market is often an attractive sales channel for small-scale producers. Many of the actors in the foodservice sector are organised into buying cooperatives. This enables them to increase their buyer power over wholesalers and suppliers in the sector.

One could question why more wholesalers do not succeed in establishing themselves in the foodservice market when the surveys show that it is possible to realise higher prices in this market compared with the retailer market.

A majority of the inquiry commission is of the opinion that if the trend in Norway continues at the same pace and in the same direction, where the umbrella chains can more or less unilaterally dictate the terms in agreements, such a development would be detrimental to healthy competition and balanced power relations in the food supply chain. Even though the responses in the qualitative surveys appear, in most cases, to be subjective opinions and statements that cannot be adequately documented, the inquiry commission believes there is little doubt this study has uncovered situations that are detrimental to the development of a robust Norwegian food supply chain.

Balanced power relations in the food supply chain will ultimately both serve the individual consumer and support the development of a robust Norwegian food supply chain. The inquiry commission does not believe it would be possible to remedy the demonstrated distortions and imbalance by issuing instructions and recommendations to actors in the food supply chain. In relation to this, the inquiry commission points to the experiences in the UK where compulsory arrangements such as a special code of conduct for negotiations in the food supply chain, the Grocery Supply Code of Practice (GSCOP) and an Ombudsman, were introduced after attempts with voluntary arrangements did not produce a satisfactory change in conduct. Therefore, the inquiry commission is of the opinion that concrete, compulsory measures need to be introduced to correct the demonstrated distortions. In relation to this, the *majority of the inquiry commission* refers to the recommendations and proposals described in Chapter 7.

A minority of the inquiry commission, Thomas Angell, disagrees with the majority of the Food Supply Chain Commission's choice, and use, of the collected data and the descriptions, assessments and conclusions to which these have led the majority of the inquiry commission. The Food Supply Chain Commission has had access to, and initiated itself, a long series of solid documentation concerning the issues the inquiry commission was tasked with assessing, which were produced by the country's most respected institutions in the field such as the National Institute for Consumer Research (SIFO), the Norwegian Agricultural Economics Research Institute (NILF), the Norwegian Competition Authority, and the Norwegian School of Economics and Business Administration (NHH). However, it is the opinion of the minority that the Food Supply Chain Commission has afforded little weight to this documentation. Instead the inquiry commission has selectively made use of the subjective attitudes and statements apparent from KPMG's closed interviews.

KPMG itself stresses that the interviews have had different areas of focus depending on, for example, the motives of the individual respondents and the information they have wanted to communicate. It underscores that the statements and information provided in the interviews were often not supported by documents and data. KPMG also states that the information presented in their report is thus largely collected from statements and quotes. It further stresses that the information does not verify facts.

The inquiry commission's minority is of the opinion that it is regrettable that the majority of the inquiry commission has nonetheless afforded KPMG's report far greater weight than the solid academic documentation ordered by the inquiry commission.

In connection with this, the minority has also noted that well-documented conclusions that were presented during the inquiry commission's work, e.g. that the competition in the Norwegian market is robust, has been toned down to, for example: "a possible interpretation is that this trend (changes in market shares) confirms that the competition in the Norwegian market may be satisfactory".

Another example obtained from the discussion of the 'autumn hunt' may also shed light on the majority's selective choice of statements. It is presented as if the negotiations between the umbrella chains and the supply industry have little to do with factors other than price, assortment, volume and supply terms. The actual situation is that they involve a far greater number of elements such as plans for new products, media plans, category development, marketing plans, measures for creating growth, etc. It could appear that the majority is choosing to ignore this. The Food Supply Chain Commission's members were also invited to sit in on the negotiations in order to have an opportunity to observe what they are like. None of the members accepted this invitation.

Finally, please also refer to the other special observations.

6.5 Changes in the value chain that could hinder competitiveness, innovation and other policy goals

6.5.1 Competitiveness and innovation

The innovation strategies in the food industry are intended to accommodate several demands and purposes. New consumer patterns and trends in the market require new production methods and new products. The authorities and NGOs are lobbying for a focus on new products that promote good health, meet stricter environmental requirements and provide consumers with a choice of quality. At the same time the industry is focusing heavily on innovations that are intended to contribute to an optimum and cost-effective utilisation of the available raw materials. The food industry currently faces a strong challenge from the umbrella chains. This challenge takes the form of an increased focus on ROBs, greater control over market access and the umbrella chains' generally increased level of competence due to special market and innovation projects. Because of this is that the food industry's innovation work is gaining greater importance and becoming more market steered.

It should also be pointed out that the umbrella chains are now in a better position to control innovation capacity. This is due to greater control over buying and consumer information, funding ability, etc.

Negotiations and innovation

The qualitative surveys give the impression that the negotiations between the umbrella chains and suppliers in the food industry are about little else other than price, assortment, volume and supply terms. Innovations do not have an independent position in the negotiations system. There appears to be little focus on consumers in the negotiations.

This strongly contrasts with clearly defined social interests in a number of areas linked to food. The National Nutrition Council issued new dietary advice in January 2011 that advises

the food industry and the service industry to develop and market healthy foods. The public authorities have also expended substantial resources on the introduction of the 'keyhole' label, the authorities labelling scheme for healthy food.

Furthermore, the authorities have a goal of ensuring that 15 per cent of food production and food consumption are organic by 2020. A special action plan has been adopted to increase organic production and consumption. The authorities also have a goal of ensuring that 20 per cent of the food market in 2020, measured in NOK, consists of local specialities. At the same time, substantial public funds are being allocated via the Agricultural Agreement to stimulate the production and sale of organic food and local diversity.

Consumers are at the mercy of the choices and choice architecture on offer in grocery stores. HSH's survey [18](#) shows that consumers' satisfaction with the assortment in many product categories is low. This is a clear expression of Norwegian consumers' desire for a broader assortment within areas associated with social interests and for which political goals have been set. The inquiry commission would like to underscore that it appears highly unsatisfactory for consumers that the authorities are allocating substantial resources to providing a basis for healthy, organic and locally produced food without this having an impact in the form of a broader range of such products in grocery stores.

The negotiating climate during the annual negotiations has become tougher. The competence needed is increasing and the risk for producers associated with innovation is increasing. A lower level of predictability in the agreements is pointed to. Insofar as this description describes the actual situation, these factors will have a negative effect on dynamic, effective innovation work. They will also create major problems for smaller suppliers that are more dependent on good cooperation with all actors in the value chain in order for their innovation work to succeed.

There appears to be broad agreement that good cooperation between suppliers and umbrella chains is necessary to ensure successful innovation work. When both suppliers and umbrella chains are expressing dissatisfaction with the pace of innovation, it is difficult to interpret this in any other way than that the cooperation and relationship of trust between the actors is too poor as far as innovation is concerned.

Centralised buying and negotiations with four umbrella chains create a high threshold for small suppliers with regard to getting into the assortment that stores must actually offer. The chains' voluntary assortment can be an option for the smallest suppliers and small-scale producers. However, there are significant differences between the various umbrella chains with regard to the individual shopkeeper's ability to carry local products. Generally there are few incentives in the centrally steered assortment to carry local products from central sources. This means that the ability of small-scale producers to gain access to the market will often be dependent on local demand and the individual shopkeeper's interest and goodwill. Opportunities to expand in a regional, or possibly national, market with increased volumes are thus severely limited. Nevertheless, the inquiry commission has observed some positive change in this area, probably due to greater demand for locally produced products in the premium segment.

The inquiry commission would like to point out that the threshold for market access for smaller suppliers with their own brands and small-scale producers generally appears to be high. This is partly a consequence of the umbrella chains' greater, centrally steered power, and partly because the largest suppliers have gained a stronger position when it comes to setting the premises for entire products categories, e.g. through the design of planograms. This is an unfortunate development with regard to product diversity and the preconditions for favourable competition between different levels of quality and pricing in individual product categories.

Farmers' markets are a crucial sales channels for many small-scale producers. The meeting between the producer and consumer provides added value for both parties. The inquiry commission stresses the importance of protecting and developing this concept. In relation to this, the inquiry commission is of the opinion that suitable arrangements should be made that enable small-scale producers to cooperate on ordering routines and distribution out to the market. The inquiry commission also stresses that distribution costs can be particularly high for small-scale producers since their volumes are very small. The inquiry commission requests that consideration be given to cost reducing distribution solutions for small-scale producers.

Products groups with a high degree of vertical control

Greater vertical control on the part of the umbrella chains is most prevalent in the value chains for meat, eggs, bread, fruit, and vegetables, due to either vertical integration, exclusivity agreements or ROB production. In this context, the term 'exclusivity agreements' also encompass cases in which the supplier can in principle supply other umbrella chains, but is in reality unable to do so. This might be the case when, for example, production and distribution are designed to fit an individual umbrella chain's specifications and systems. The fruit and vegetable sector is a typical case.

The proportion of imports in the vegetable sector is high and increasing. Import and import opportunities are a crucial framework condition in the sector. BAMA is a chain-integrated wholesaler that supplies both NorgesGruppen and Rema 1000. Bama has a 70 per cent market share in the grocery market. The umbrella chains' vertical control in the vegetable sector even extends down to the level of the primary producer link. Vegetable producers have an obligation to supply an agreed volume. If one wants to supply a competitor, one must apply for a dispensation. Primary producers stressed that production planning and cooperation are vital when it comes to ensuring a reasonable degree of predictability. Even if a concrete production volume is agreed for a season, this is no guarantee that the volume will be sold or that compensation will be paid if the volume sold is substantially lower than agreed. Nor is the primary producer given any price guarantees, and, in the case of special offers, it is not unusual for the primary producer to share the costs through reduced prices. The producers also point out that the distributors and umbrella chains can easily distort the market situation by buying outside the concluded agreements.

This system is designed for large volumes of standard products in which the large and efficient vegetable producers will do all right, while smaller producers or producers that want to develop their own businesses and try new approaches encounter substantial entry barriers.

This in turn has clear consequences with regard to both diversity and innovation in the industry.

The inquiry commission believes there is a need for measures in the vegetables segment that ensure a more reasonable balance of the risk between the actors and which enable better access to the market for both new and smaller producers.

Possible consequences for agriculture and the Norwegian food industry

The goals of Norwegian agricultural policy are discussed in more detail in Chapter 3.

A number of the largest suppliers in the Norwegian food industry have assumed, or been delegated, important roles in the implementation of agricultural policy. Agricultural cooperatives perform, partly due to their form of organisation and partly due to their market regulator role, tasks linked to regulating production volume, supply and delivery obligations, wealth distribution policy and incomes policy goals. The transfer of power in the direction of the umbrella chains reduces these organisations' ability to perform such tasks. This change is due to three factors in particular:

- The chains are taking over parts of the value chain (e.g. distribution) without taking over the obligations and functions the organisations have had.
- The suppliers are losing the market power/competitiveness necessary to protect special considerations such as accepting products throughout the country.
- The shift in power in itself results in lower price realisation for suppliers. This in turn reduces the food industry's ability to pay the agreed target price to the primary producers.

The changes mean that tasks that were previously performed by the food industry are increasingly now be resolved through public budget allocations. Transport equalisation in cooperatives is being replaced by increased public transport subsidies; price realisation in the market is being replaced by budget support.

Norwegian import protections for some agricultural products are raising the level of Norwegian prices above the price level in the rest of Europe. Both primary producers and suppliers assert that the chains' [19](#) import capacity is challenging prices and volumes beyond that which is a result of genuine price competition. Opportunities to import do not necessarily result in actual imports; rather they can be used as part of the set of means the chains have at their disposal. Within the meat sector there is now a trend towards establishing closed channels between individual umbrella chains and suppliers that supply only them. This presents particular challenges for the market regulation of meat.

Market shares within poultry meat have changed significantly in recent years. Nortura has a market share of around 50 per cent in poultry meat. Cardinal has now established itself as Nortura's only major competitor with an almost equal share of the market.

Therefore, the inquiry commission notes that there has been some distinctive features in the development of meat prices, changes in market shares in the meat industry, vertical agreements, and a trend in the proportion of meat ROBs that one does not see to the same extent in other agricultural products.

The Nortura cooperative is a market regulator for meat from cattle, horses, pigs and lamb. The inquiry commission notes that Nortura's market share in the supply of slaughtered red meat and pork has in the last decade fallen from around 77 per cent to around 67 per cent.

The inquiry commission underscores that, in general, a weakening of the market regulator's market share can have major consequences with regard to the ability to realise the target prices assumed in the Agricultural Agreement.

The inquiry commission also points out that traditionally there has been a certain amount of equalisation between the producers, especially within cooperatives, beyond the means specifically allocated to this in agricultural policy. Examples include the equalisation of transport costs and prices. The inquiry commission notes that with low market shares, especially in combination with strong competition for large deliveries to local markets, it will probably be difficult over time for the leading companies in the industry to bear such equalisation costs themselves. This could have consequences for districts and groups of producers.

The inquiry commission is of the opinion that the development of prices in the meat sector, vertical agreements (closed channels), the strong growth in the proportion of ROBs, and changes in market shares, are reasons to pay extra attention to this sector in the future. The inquiry commission points to the other considerations associated with relative strength in the value chain in another part of this chapter and to the inquiry commission's recommendations in Chapter 7.

The inquiry commission points out that the EU is trying to stimulate the formation of producer organisations to strengthen the primary producer's position in the value chain. Such cooperative ventures have played an important social and commercial role in Norway for a long time. This sort of buying and selling cooperation has ensured primary producers crucial vendor power against steadily greater buyer power.

Distribution

Today, the umbrella chains control a very large share of the distribution of groceries. The suppliers of beverages, dairy products, baked goods, ice cream and reading matter have kept parts of their own distribution solutions. These are currently under considerable pressure from the umbrella chains who want to take over their distribution. Generally, control of the distribution link is a strategic tool in the sales system since it enables optimum consumer response through the control of production in relation to demand and a regular supply of products to the market. Greater control over distribution by the umbrella chains would help to reinforce the trend towards closed channels between umbrella chains and suppliers, and could function as an entry barrier to new suppliers. Unilateral control over distribution by the umbrella chains would also decrease socio-economic efficiency because it would afford a few

actors control over an important link in the value chain. The conflict of interests between the suppliers and umbrella chains in this area underscores the importance distribution has vis-à-vis the various actors' efficiency and the division of costs between them.

The inquiry commission is of the opinion that milk is in a special position and cannot understand how a simple takeover by the umbrella chains would provide any benefit for the consumer or greater socio-economic benefits. On the contrary, such a takeover would clearly strengthen the umbrella chains' power in the food supply chain at the expense of the farmer as the commodity supplier through the cooperative TINE SA.

In line with the inquiry commission's general evaluation of the shift in power relations, the inquiry commission is of the opinion that further control over distribution by the umbrella chains would be a step in the wrong direction.

Retailer own brands (ROBs)

The umbrella chains' ROBs have been a key topic of the inquiry commission's work. The chains introduce a ROB if one or more of the follow conditions are met:

- price is the most important competition parameter
- the product does not exist in the market
- the chain can sell an equivalent product cheaper
- the national brand has lost its strength
- there is low brand awareness in the category
- there is weak competition
- the national brand is less profitable than it was
- the national brand suppliers provide little market support
- there is a lack of innovation in the product category
- the producers have available capacity
- there is already a high proportion of ROBs in other markets, which indicates profitability.

The proportion of ROBs in the Norwegian grocery trade varies greatly from product group to product group, but generally ROBs are growing. In 2010, the grocery chains' sales of ROBs amounted to around NOK 17.5 billion. This represents 11.8 per cent of total turnover in the grocery market. Every fourth product sold in the Norwegian grocery market was an ROB. In addition to this, ROBs are sold in the foodservice market and to some extent in the convenience retailing market. Around 41 per cent of the value of sold ROBs comes from the fresh produce category. The vast majority of products in this category are produced in Norway and from Norwegian suppliers. The inquiry commission has assessed the effect this trend is having for the consumer and the relative strength between suppliers and the grocery trade.

ROBs are an expression of vertical integration in the value chain and are an important strategic means in power relations between suppliers and umbrella chains. The direct effect of ROBs is to strength the umbrella chains' *gatekeeper power*. The introduction of ROBs in a category means less space on the shelves for competing national brands. This makes a threat

to delist national brands more realistic and credible. This can be done directly in the form of delisting, or indirectly through strategic pricing and shelf placement ensuring a gradual reduction in the number of competing national brands in the category.

Over time ROB strategies result in a shift of agenda power from the suppliers to the umbrella chains. 'First generation' ROBs are primarily used as so-called 'price fighters', although today they are also used to generate chain customer loyalty. ROBs are built up as independent national brands to market the chain. Surveys [20](#) show that only the original price fighters (e.g. First Price, Euroshopper and Landlord) are viewed as ROBs, while consumers view names such as Nordfjord Kjøtt, Goman, Slakter'n, Solvinge, etc, as independent national brands. Different ROB portfolios can thus help chains stand out from other chains. This makes it harder for the consumer to compare price and quality between the chains. It can also lessen competition between the chains. Combined with means such as coupons, loyalty cards, membership and greater integration in the wholesaler and distribution links, this is a trend that could further reduce transparency in the industry, increase the chains' power, and lessen competition.

ROBs can provide a means of gaining access to the chains for small producers. ROBs can in this way act as a factor that helps balance power between small and large suppliers. For other suppliers, producing ROBs can be necessary for survival. ROB production is efficient in that it utilises any available production capacity. However, exclusively supplying ROBs to one customer can leave a producer in a vulnerable position. The supplier becomes dependent on the chain and can lose their entire earnings base if the agreement is terminated. This may provide an umbrella chain with an opportunity to make a cheap acquisition and thus establish a fully integrated vertical cartel in the relevant value chain. The inquiry commission's surveys [21](#) show that ROBs in the premium segment (e.g. Jacobs and Smak Forskjellen) can also be perceived as a threat to small producers' specialist products. They fear that once they have been successful with a specialist product, they will in time be forced to produce this product under the Jacobs or Smak Forskjellen national brand.

The ultimate consequence, if a supplier has to give up the fight for shelf space for its own national brands and instead switch to producing ROBs, is the chain has taken over ideational power, i.e. power that enables an actor to influence other actors' wishes and perceptions of what is reasonable and possible. When a producer has to give up independent production and switch to producing ROBs for a chain, this helps consolidate the chain's power and moves it in the direction of total gatekeeper power. This leaves the umbrella chain just one small step away from what one would traditionally be called a fully integrated vertical cartel; a small step because the chain only owns the brand and not the production equipment.

In the inquiry commission's opinion it has not been demonstrated that the increase in the proportion of ROBs in the Norwegian grocery trade has had negative effects for Norwegian consumers so far. The analysis gives no indication that a greater proportion of ROBs has so far resulted in higher prices or poorer choice. Nevertheless, the inquiry commission would like to point out five factors associated with ROBs that should be closely monitored going forward.

Firstly, there is reason to be aware of the major differences between product groups. In some categories the proportion of ROBs has quickly grown to a level comparable with other

European countries. In the case of these product groups it may be useful to examine the trend in R&D as an indicator of how the introduction of ROBs is affecting innovation and other food policy goals.

Secondly, a strong increase in ROB production will increase a high profile chain's bargaining power in the food supply chain, which could produce greater imbalance in power relations.

Thirdly, the inquiry commission would like to point out that it cannot simply be assumed that greater profit transmission from producers to the chain through increased ROB production will benefit the consumer. Strong competition between the chains and a better overview of price transmission in relevant product categories would be effective measures for ensuring that the consumer also benefits from bonuses and efficiency benefits.

Fourthly, the inquiry commission would like to point out the challenges associated with the interests of the consumer with regard to information about product origin and the ability to compare the umbrella chains' prices and quality.

Fifthly, the inquiry commission is interested in the level of quality the consumer is offered by the ROB products that are not positioned in the premium segment. This applies to both price fighters and ROBs with independent names (cf. footnote 21). The inquiry commission is aware that producers who produce both independent national brands and ROBs deliver lower quality in their ROB production. "The time has passed when you could get the same quality under another name [22](#)", as one source put it. The inquiry commission is concerned that over time the trend in ROBs will result in poorer quality in a number of categories.

The inquiry commission would also like to point out that the trend towards closed channels controlled by the umbrella chains is having consequences for agricultural policy (please see the section in Chapter 6.5 above).

Welfare effects of retailer own brands (ROBs) for the consumer

In the short-term the introduction of retailer own brands (ROBs) appears to have a positive effect on price and choice. However, more detailed empirical studies are needed to establish whether or not the introduction of ROBs has resulted in greater welfare. The welfare effect of the grocery chains introducing ROBs depends on how choice and prices are affected. Most of the first generation ROBs are products that are sold at a lower price than competing national brands. Since the preferences of consumers differ, they will react differently to this.

The inquiry commission has evaluated whether or not it is likely that such a trend will be detrimental for Norwegian consumers. Two possible hypotheses concerning harm have been evaluated: poorer innovation and cross-subsidisation with the consequent shutting out of the suppliers' national brands.

Retailer own brands (ROBs) and innovation

ROBs increase the umbrella chains' buyer power over suppliers. It should be pointed out that greater buyer power can in the long-term weaken the producers' ability and incentives to innovate, and thus result in poorer choice in the long-term. The reasoning behind this is as follows: The development of the grocery chains' retailer own brands changes the division of profits vertically in the value chain. Reduced profits in the producer link can result in reduced innovation and thus hamper the development and introduction of new products to the market. This effect is strengthened by the chains' retailer own brands being imitations of the producers' products. They are riding on the producers' product development for free. These types of freeloaders reduce the producers' incentives to invest in product development.

As customers of the producers, the chains receive information about the producers' product development and can thereby gain information about new products well before they are launched. This can make it easier to introduce equivalent products a short time after the producers' products are launched with the result that the producers' profits from innovation are reduced. It is also possible that a fall in absolute profits due to the chains' greater buyer power will result in some producers reducing their innovation efforts, but this is far from certain. The above reasoning ignores the fact that it is not the level of absolute profit that determines the incentives to innovate, but the difference between what producers can expect in profits if they decide to innovate compared to if they did not. Therefore, it is possible that as long as the profit does not sink to a level that makes it impossible for the producer to fund innovation, the chains' ROB efforts may also result in producers *increasing* their innovation efforts, not reducing them. Innovation is one of the producer's strongest weapons in the competition with the chains' ROBs. A greater effort in the area of ROBs may cause producers to innovate faster than before in order to create some distance between the chains' ROB imitations.

Another relevant factor in the overall picture is that innovation takes place through the trade's development of ROBs. Two of the chains stated that they develop ROBs for segments in which they believe suppliers do not have a broad enough assortment.

The inquiry commission regards reduced innovation as a real danger if the proportion of ROBs reaches particularly high levels. Since the proportion of ROBs varies greatly between the product categories, it may be of interest to conduct a more detailed analysis of the effects on innovation in product groups with a high proportion of ROBs.

A number of ROBs appear to be labelled with less information than the national brands. One of the chains practises a deliberate strategy of not labelling where the food is produced. The consumer's right to information has been weakened in this area in line with the increase in ROBs. This not particularly satisfying from a consumer perspective.

Cross-subsidisation and market power with ROBs

There are a number of aspects related to retailer own brands (ROBs) that can help to increase chain power:

- Stronger finances due to higher gross margins and lower losses on price lowering national brands.
- Greater customer loyalty.
- Marketing the chain using selected ROBs.
- Alternative products (ROBs) provide a means of applying pressure in negotiations with national brand suppliers.
- Reduced vulnerability to input factors that would otherwise lie outside the chains' control (e.g. currency fluctuations and commodity prices).
- Exclusive ROB agreements with, or direct ownership stakes in, the ROB producer afford an umbrella chain with determining control over what is produced, the products' sales, and the producer's margins.
- ROB activities transform the chain into both a customer and a competitor of their suppliers.

In the inquiry commission's surveys the suppliers assert that ROBs are priced to favour the development the umbrella chains want in the category [23](#). An oft asked question in the public debate is whether the chains' pricing of ROBs can result in strategic adaptations by the chains that could potentially harm competition and thereby have a negative effect on consumer welfare. A logical argument was presented in the qualitative interviews that ran as follows: The chains lower the price of their retailer own brands, while the price of the competing national brands is increased. The profit from sales of the producer's national brand is used to subsidise the chains' ROBs. The aim is to squeeze the national brand producers so that the grocery chains can control the value chain themselves and set high prices for their ROBs once these no longer face competition from a producer's strong national brand. The result for the consumer is higher prices and lower quality. The inquiry commission did not conduct its own price surveys of the development of ROB prices. However, in the meat product group, in which the proportion of ROBs is high and growing strongly, prices have grown less when compared with other foods. The inquiry commission has no information about quality trends in meat.

The fact that grocery chains price ROBs and other products differently must basically be regarded as normal business operations. However, the inquiry commission has noted that suppliers assert that in some contexts ROBs are afforded unreasonable competitive advantages. Consumers assess national brands differently. Some will be willing to pay a high price for a national brand they know, while others will always buy the cheapest alternative. On the other hand, if cross-subsidisation is taking place meaning that the prices of ROBs are set so low that the chain incurs a loss, while the competing national brand generates a profit, the chain's total profit from sales of these two products will be reduced. In such cases it is natural to assume that this is part of a strategy aimed at squeezing a national brand producer partly or totally out of the market. The inquiry commission has not conducted any margin studies that provide a basis for claiming that this is the case in the Norwegian market. In the

qualitative surveys the inquiry commission has carried out the chains state that they do not sell ROBs at below cost.

However, experience from other countries with a significantly higher proportion of ROBs than we find in Norway shows that it is not common for ROBs to take over a category completely and that the strongest national brands in a category normally maintain a strong position even after the introduction of ROBs. However, this will vary from category to category, and some categories have been completely taken over by ROBs (though without the ROB name linking the product to the umbrella chain) [24](#). A reduced volume of national brands and higher volume of ROBs could have negative consequences further back along the value chain.

The inquiry commission notes that ROBs account for a steadily increasing part of the competition picture. The inquiry commission believes that ROBs can have positive effects on the competition within some categories and favourable effects for the consumer, as long as ROBs are not afforded unreasonable competitive advantages through distorted costings, unreasonable shelf preference, or discrimination against competing national brands. There is reason to pay particular attention to the situation that arises when an umbrella chain's ROB activities makes it a direct competitor of its suppliers. If the umbrella chains have access to information about the suppliers' costings while simultaneously controlling the price the consumer pays, this will represent an unreasonable competitive advantage for the chains' ROBs over the suppliers' national brands.

Below-cost selling

Below-cost selling is prohibited in a number of European countries. These prohibitions take different forms and include various forms of exemptions and additional requirements. Countries that have, or have had, such prohibitions include Germany, Austria, Greece, Bulgaria, Romania, Ireland and France. Ireland's prohibition has been revoked, and in Romania a proposal to revoke its prohibition is pending. According to a resolution in the European Parliament, a prohibition against selling food below cost is being considered in the EU as well.

Empirical surveys of how the prohibitions have worked in Ireland and France have been carried out. The British *Competition Commission* has considered the scope and effect of below-cost selling and possible measures against the practice a number of times. Below-cost selling has also been considered by the OECD's Competition Committee.

These international surveys identify three ways in which below-cost selling can harm competition:

1. Below-cost selling can form part of a predatory strategy aimed at excluding other retailers. If such a strategy succeeds, this can result in a poorer assortment of groceries for the consumer.
2. Below-cost selling can, intentionally or otherwise, have a negative effect on smaller retailers, including convenience retailing and specialist stores, which can be squeezed out of the market.

3. Below-cost selling can mislead the consumer such that they believe that the retailer's overall price level is lower than it actually is.

Other factors were also considered in these surveys.

Below-cost selling is not unknown in the Norwegian grocery trade; recent examples are nappies and spareribs. The qualitative surveys the inquiry commission has conducted establish that the grocery chains have lost money in a number of special offer campaigns in recent years. In other words, the fact that below-cost selling takes place in the Norwegian grocery trade is not disputed. These surveys did not however reveal the type of products that are sold below cost, the size of the losses, or the total extent of below-cost selling.

Below-cost selling can have consequences for assortment diversity in the long-term. Sustaining an adequate premium for premium quality has proved very demanding during and after such campaigns.

Extreme special offers on some cuts of meat (e.g. bellypork in the run up to Christmas) result in a surplus of other pork cuts. This in turn results in these products either having to be sold at a reduced price and/or market regulation measures having to be used. This results in reduced prices and/or higher costs for the farmer in the form of purchase taxes for the regulation measures. The result can be that the target price set in the Agricultural Agreement cannot be achieved in an otherwise balanced market.

Nonetheless, there are many arguments in favour of a simple prohibition against below-cost selling. Calculating what the actual buying price is would be demanding. In France, which has practised such regulation for a long time, it has been a challenge to determine which discounts should be included in order to establish the actual cost of the transaction. The ultimate effect of such regulations may be that the prices consumers have to pay will be set significantly higher than the actual costs.

Even with a clearly formulated prohibition, it will still be possible to circumvent this via agreements between the chain and supplier.

A prohibition could also have detrimental effects on competition and limit the stores' ability to take account of consumer preference in their pricing.

Even though the inquiry commission has not found that below-cost selling creates competition problems that harm the consumer, the inquiry commission nonetheless is of the opinion that this business practice is detrimental and ought to be avoided. The inquiry commission points out that a prohibition has already been introduced in a number of European countries and is currently being considered by the EU. Therefore, the inquiry commission recommends that experiences and the development of regulations in this area be closely monitored with a view to Norwegian conditions.

A minority of the inquiry commission comprising the following members: Aina Bartmann, Jan-Egil Pedersen, Eli Reistad, Grete Standard, Bent Sofus Tranøy and Kristin Taraldsrud Hoff, would like to highlight the actors' agreement that this is a detrimental business practice. These members have also noted the experiences of other countries, both positive and negative.

The inquiry commission has not had the capacity to carry out a more thorough study of this issue within the framework of the inquiry commission's work. Therefore, these members request that a more detailed study of how below-cost selling could be regulated be carried out, cf. Chapter 7.

[1](#) Delisting means a product will no longer be included in a chain's product list.

[2](#) Including associated chains like Bunnpris, see Chapter 3.

[3](#) Of course prices alone do not determine how many customers one has, but low prices are a leading driver in the Norwegian grocery market (Nielsen Shopper Trends 2010).

[4](#) The nappy and spareribs price wars in 2010 demonstrated the potential losses that can be experienced from challenging the price level too much.

[5](#) Grocery Report 2010, The Nielsen Company

[6](#) "Nordic Food Markets – a taste for competition", Nordic Competition Authorities 2005

[7](#) The Swedish act is based on UNIDROIT's Model Franchise Disclosure Law(2002)

[8](#) Appeal against the Norwegian Competition Authority's decision V2005-12 – Veto against Prior Norge BA's acquisition of Norgården AS

[9](#) Nielsen Company 2010 "How satisfied are Norwegian grocery customers with the Norwegian grocery trade?"

[10](#) Nielsen Shopper Trends 2010.

[11](#) Nielsen Company 2010 "How satisfied are Norwegian grocery customers with the Norwegian grocery trade?"

[12](#) Nielsen Company 2010 "How satisfied are Norwegian grocery customers with the Norwegian grocery trade?"

[13](#) Memo on forms of organised consumer influence, Iselin Theien, SIFO. Annex 18.

[14](#) "Importance of various vertical relations in the competition situation in the food supply value chain". Report submitted to Food Supply Chain Commission 2010. Professor Tommy Staahl Gabrielsen. University of Bergen. Annex 20.

[15](#) Nielsen Shopper Trends 2010.

[16](#) Nielsen Shopper Trends 2010.

[17](#) "The impact of private labels on the competitiveness of the European food supply chain", January 2011.

[18](#) Nielsen Company 2010 "How satisfied are Norwegian grocery customers with the Norwegian grocery trade?"

[19](#) Actual imports take place via chain-integrated wholesalers or suppliers.

[20](#) Nielsen Shopper Trends 2010.

[21](#) Qualitative survey of relative strength in the food supply value chain. Report to the Food Supply Chain Commission. Annex 15.

[22](#) Qualitative survey of relative strength in the food supply value chain. Report to the Food Supply Chain Commission. Annex 15.

[23](#) Qualitative survey of relative strength in the food supply value chain. Report to the Food Supply Chain Commission. Annex 15.

[24](#) Cf. report on 'house of brands' brand architecture for ROBs in Chapter 3.5.

Chapter 7

The inquiry commission's recommendations

According to its mandate, the Food Supply Chain Commission's job is to propose relevant measures that the inquiry commission, based on the inquiry commission's own analyses and assessments, thinks are correct and necessary to further the purpose of the study. The inquiry commission is also tasked with assessing the administrative and economic consequences of the measures they suggest should be implemented.

Based on the inquiry commission's surveys, analyses and assessments, the inquiry commission recommends implementation of the following measures:

All of the inquiry commission's members, with the exception of Thomas Angell and Bjørn Kløvstad, suggest:

1. Principles and guidelines for negotiations between actors in the food supply chain, act relating to negotiations and fair trading practices in the grocery sector, etc

The majority of the inquiry commission refers to the descriptions and assessments in chapters 3 and 6 with regard to the negotiations that take place annually between suppliers and the umbrella chains (the so-called the 'autumn hunt' and any intermediate negotiations).

These negotiations currently take place within the general framework set by the legislation. Based on the study carried out by the inquiry commission, one could question whether this regulation provides sufficient guidelines to ensure that the negotiations mechanism protects the interests of the consumer and takes fair trading practices into account.

The inquiry commission has found that a number of European countries have introduced concrete measures intended to remedy the problems that arise in such negotiations because of the differences in vendor and buyer power, company size, choice of strategy, and access to professional advice. The majority of the inquiry commission points to the fact that the UK has introduced a specific code of conduct for negotiations between actors in the food supply chain: the Grocery Supply Code of Practice (GSCOP). In the opinion of the inquiry commission an equivalent code adapted to Norwegian conditions could contribute to clearer procedures, greater transparency and predictability, and thereby also a better climate for negotiations. It would also be necessary to establish a means of enforcing such a code and imposing penalties to achieve the required regulatory effect.

The purpose of the Competition Act is to further competition and thereby contribute to the efficient utilisation of society's resources. Section 1 of the Act also states that when applying this Act, special consideration shall be given to the interests of consumers. If actors in food

supply chain negotiations are conducting themselves in a manner that restricts competition contrary to sections 10 and 11 of the Competition Act, these provisions can be applied. However, situations that involve unreasonable business conduct in negotiation situations, etc, but which do not restrict competition are not contrary to the Competition Act. Therefore, in the opinion of the majority of the Food Supply Chain Commission, specific statutory provisions should be introduced that ensure fair trading practices in the food supply chain and that the interests of the consumer are adequately protected. Such situations and considerations also formed the basis for the formulation of the British GSCOP, which regulates factors not covered by the British Competition Act.

A majority of the inquiry commission recommends that the code of conduct be warranted in a new act relating to negotiations and fair trading practices in the grocery sector, etc.

The act relating to negotiations and fair trading practices in the grocery sector, etc

Regulation of the negotiations mechanism ought to be based on a principle of fair trading practices. The principle of fair trading practices relates to integrity and fair practices in the negotiations process. At the core of this principle is the notion that negotiations should be conducted in a fair manner and that the stronger party in a contractual relationship should not exploit its bargaining position to secure unreasonable advantages for itself. An unreasonable advantage could be, for example, payments for marketing measures that are not followed up by genuine measures aimed at consumers, requiring the taking over of strategic tools such as distribution, or competition sensitive information such as recipes, innovation plans, etc. A general principle of fair trading practices in the grocery industry could contain the following:

- The actors in the food supply value chain must at all times treat each other in accordance with the principle of fair trading practices. The principle of fair trading practices involves companies conducting themselves in a fair manner, basing business relationships on reciprocity, avoiding unreasonable business terms, striving to achieve a reasonable division of risk, and respecting the other parties' intangible rights.

One consequence of this principle is that the parties' rights and obligations must be clearly stated in the contractual relationship. Services and services in return ought to be clearly described, and there should be a balanced relationship between services and services in return. This would be a prerequisite for ensuring that the services also benefit the consumer. Therefore, the general principle of fair trading practices ought to be combined with a principle that consumers shall be secured a fair share of the resulting benefits. A consumer principle could contain the following:

- Consumers shall be secured a fair share of the resulting benefits in the food supply value chain through prices, choice, quality and accessibility.

Other factors one should consider regulating in an act relating to negotiations and fair trading practices are:

- Joint marketing (JM).
- Price driving costing models.
- Payments for shelf space.
- Delisting, e.g. terms, notice and time limits.
- The division of risk.
- The use of penalties in the contractual relationship, including a requirement for balance and penalties not being retaliatory in nature.
- Access to information about costings, including in those cases where the chain markets its own competing retailer own brand products (ROBs).
- Discrimination between the chain's retailer own brands (ROBs) and other producers' products.
- The imitation of national brands (intangible rights).
- Written agreements and agreements with retroactive power.
- Long-term thinking and predictability in the contractual relationship.
- Unspecified lump sum payments.

A minority of the inquiry commission comprising the following members: Aina Bartmann, Jan-Egil Pedersen, Eli Reistad, Grete Sjurgard, Kristin Taraldsrud Hoff and Bent Sofus Tranøy, is of the opinion that below-cost selling should also be regulated by an act relating to negotiations and fair trading practices, etc.

The umbrella chains use a number of methods for pricing, including below-cost selling. These members point out that below-cost selling/dumping food distorts healthy competition in the market. Dumping helps to make it harder to produce quality products and a diversity of food, and undermines important national food production goals.

These members note that a number of sources pointed out this problem to KPMG. The suppliers and umbrella chains also describe the practice as a problem.

Below-cost selling can basically be paid for by four possible sources: consumers, suppliers, shopkeepers and the umbrella chains. There must be a requirement concerning pricing transparency and it must be clear to the consumer how below-cost selling is funded.

As far as below-cost selling is concerned, it should generally be prohibited, although exceptions to this general rule could be specified.

For example, countries in which below-cost selling is generally prohibited have made exceptions for: 1) when food is about to pass its use-by-date or in some other manner is at risk of deteriorating, 2) when food is sold for charitable purposes, or 3) seasonal sales.

These members thus request that a study of how below-cost selling could be regulated be carried out. These members suggest that the study be carried out by an ombudsman for the grocery sector.

2. An ombudsman for the grocery sector

Enforcement and sanctions

The regulations intended to ensure fair trading practices in the grocery trade and protect the interests of consumers in a well-functioning negotiations mechanism throughout the entire

value chain will be of a marketing, contractual and consumer rights nature. Therefore, the regulations should be enforced by a special agency, an ombudsman, which from an organisational perspective should be part of the consumer and food authorities.

All actors in the food supply chain, i.e. primary producers, suppliers, umbrella chains and shopkeepers, could report cases to the ombudsman. Employees and consumers should also have the same access. The ombudsman should also be able to actively monitor and report compliance with the act on its own initiative. The ombudsman should have both the authority to point out breaches of the regulations and the authority to order a party to remedy a breach of the regulations, with penalties if necessary. The ombudsman's decisions must be subject to a right of appeal. In the opinion of the inquiry commission it would be natural to attach it to the Market Council.

The majority of the inquiry commission, with the exception of Thomas Angell and Bjørn Kløvstad, refer to the report from Professor dr. juris Olav Kolstad concerning the need for statutory regulation in this area, the legal basis for the ombudsman, and other proposals relating to statutory regulation.

It particularly refers to the observations concerning consideration of the need for specific statutory regulation for acts that are contrary to fair trading practices.

The inquiry commission has no opinion about whether or not such statutory regulation ought to be applicable in more areas, possibly to all sectors within commerce. Such an assessment is not covered by the mandate of the inquiry commission.

Statement from a minority of the inquiry commission, the members Thomas Angell and Bjørn Kløvstad: The proposal for a special act relating to fair trading practices between grocery chains and suppliers is based on two main considerations: the interests of the consumer and ensuring a well-functioning negotiations mechanism throughout the entire value chain.

A minority of the inquiry commission is of the opinion that a specific act is not required in this area since these interests are already addressed by current legislation. The interests of consumers are protected by acts such as the Competition Act, which states in Section 1 of the Act that one of its purposes is to protect the interests of the consumer. Consumers are addressed in the Marketing Control Act in the general provision concerning unfair commercial practices. Thus no further statutory regulation is needed to protect the interests of the consumer.

Current legislation also limits the parties' actions in contractual negotiations. Chapter 6 of the Marketing Control Act forbids conduct contrary to good business practice, which covers things such as deceitful competitive actions. Furthermore, the act relating to the conclusion of agreements, etc, and general contract law rules stipulate provisions that impose restraints on the parties. Special statutory regulation for negotiations in the grocery trade would not necessarily help to ensure that negotiations are better conducted than they are today. Moreover, trade between commercial actors is based on a fundamental principle of contractual freedom, which includes both negotiations prior to the conclusion of any agreement and the actual contents of agreements. Therefore, one should as a matter of principle be wary of encroaching on this contractual freedom through legislation. The proposal concerning a special act on fair trading practices should also be rejected for this reason.

It is unclear who would be covered by the proposed act. A special act relating to fair trading practices between grocery chains and suppliers would create definition problems, especially in the case of chains that sell some food besides their primary products. Laws should as far as possible be general in scope and extent, and only be sector-oriented if other solutions are inadequate to achieve the objective. There is no documentation that indicates there is a need to specifically regulate negotiations between grocery chains and suppliers.

The draft act contains a proposal concerning a new ombudsman who would be empowered to impose penalties. That there is a need for greater supervision in this area beyond that which already exists is disputed. Were one to assume there is a need for greater control, one should avoid building up new agencies and bureaucracy. The grocery trade reported and provided information to the Norwegian Competition Authority for a number of years. Should one wish to opt for greater supervision of the grocery trade and negotiations between chains and suppliers, one ought to strengthen the Norwegian Competition Authority rather than establish new agencies.

3. A grocery web portal

In the opinion of the inquiry commission it would be proper to develop better tools that would improve the consumer's opportunities for checking assortment and quality, and making price comparisons. Better informed consumers help to increase competition between grocery stores and chains, and will thereby increase the likelihood of consumers receiving their fair share of the benefits the chains realise as a result of greater buyer power.

A publicly funded grocery portal should as far as possible help the individual consumer obtain perfect information about all the alternative choices available in the market. Perfect information means both that the properties of the entire assortment are made available, such that the consumer is shopping in as transparent a market as possible, and that the information the consumer receives is correct and current at the moment of purchase.

It is important to address two considerations: the information must be complete and it must be continually updated.

A market portal for groceries ought to inform consumers of the options they have before any decision to buy is made. This is crucial if the consumer is to reap the greatest possible benefits in the market. The portal must have a user-friendly design that enables the user to rank products according to price and/or properties. For example, it should be just as easy for a user to find organic options or nutritional declarations as the lowest price for a specific product. The primary goal of the market portal shall be to empower consumers and enable them to make good choices.

What should a public portal do for the consumer?

- Collate: Produce a comprehensive overall picture of the products or services in a market, such that the consumer has a thorough basis on which to make a decision based on price and quality. The service should also show the nutritional content of the food and handle any labelling schemes. A market portal could also provide information about the various properties and quality of a product, e.g. environmental

properties. This could increase competition based on the properties one chooses to highlight.

- Communicate: A market portal should communicate data in a pedagogic and easily accessible manner.
- Simplify: A market portal should spare the consumer the time consuming job of collecting large amounts of information from a variety of individual sources.
- Result in safer shopping: The information presented in a market portal should be reliable such that the consumer can be confident that the price and product properties are correct.

What should a public market portal do for and with the actors in the food supply chain?

- Contribute to greater transparency with regard to prices, product properties and market structures.
- Lead to greater competition.
- Constitute an arena for presenting products to customers in a good, reliable manner.

The inquiry commission proposes that the Consumer Council be commissioned to study and prepare the establishment of a price portal, and that a reference group with representatives from BLD/LMD, the competition authorities and industry organisations be appointed.

4. Food labelling

It is important that consumers receive sufficient information about the food they buy if they are to make informed choices. A prerequisite for the exercise of consumer power in the area of food is knowledge about what the food contains and where and how it is produced. Therefore, it is crucial for consumers that product labelling is relevant, precise, understandable and visible. Precise declarations of the contents of products are important to people with allergies and people with food intolerances. Labelling must also be verifiable. The consumer should receive information about where and how the food is produced and where the ingredients in the food come from. The consumer's right to information has been weakened in this area in line with the increase in ROB products without satisfactory labelling. This not particularly satisfying from a consumer perspective.

Therefore, the Food Supply Chain Commission recommends that:

1. Nutritional declarations be made compulsory on groceries. Consumers should always receive information about what food contains, e.g. how much sugar, saturated fats, dietary fibre, salt, etc, the food contains. At the same time, the labelling must be uniform so that it is easy to make comparisons between products.
2. Labelling that states a product's origin, producer and place of production should be made compulsory. This should also apply to ROB products.

5. Amendments to the merger control provisions in the Competition Act

Section 1 of the Norwegian Competition Act states that when applying this Act, special consideration shall be given to the interests of consumers. Notwithstanding this, a total welfare standard is applied in the control of concentrations. This means that the concentration's effect on the utilisation of resources must be considered without taking into account the effects on the division of benefits. This contrasts with the EU's merger directive, which applies a consumer welfare standard, which means that any efficiency benefits must benefit the consumer through lower prices in order to be taken into account.

The inquiry commission is aware that the tasks of the inquiry commission established on 17 December 2010 in order to review the Competition Act include considering Section 1 of the Competition Act and whether or not there is a need to specify which welfare standard shall be applied. The Food Supply Chain Commission agrees that such a need exists.

6. A study of ownership restrictions in the grocery trade

A minority of the inquiry commission comprising the following members: Aina Bartmann, Jan-Egil Pedersen, Bent Sofus Tranøy, Kristin Taraldsrud Hoff and Gro Tvedt Andersen, request that the food and consumer authorities study the question of statutorily regulating ownership in the grocery trade.

The right to food and the right to freedom of expression are both embedded in the UN's Universal Declaration of Human Rights. Both sets of rights depend on political regulation that ensures that no actors become so powerful that they alone can define the content of food diversity or a diversity of opinion. Therefore, these members wish to point out that in the same way as the ownership restrictions in the Media Ownership Act are intended to "promote freedom of expression, genuine opportunities to express one's opinions and a comprehensive range of media", an act on ownership in the grocery trade ought to promote food diversity and real consumer choice.

These members point out that the umbrella chains' control over the Norwegian grocery market is almost unique in Europe given the fact that four chains control more than 99 per cent of the market. In recent years, one has also seen a trend in which cross-ownership, acquisitions and various cooperation agreements afford the chains greater control over the value chain, and thereby strong agenda control vis-à-vis the product stream. Therefore, every actor who wishes to reach out to the consumer with their products requires an agreement with at least one of the chains. This represents an entry barrier to new actors. The following members: Aina Bartmann, Jan-Egil Pedersen, Bent Sofus Tranøy, Kristin Taraldsrud Hoff and Gro Tvedt Andersen, are also of the opinion that the trend in the umbrella chains has not sufficiently benefited the consumer in the form of greater choice and cheaper prices. It is, from a democratic and consumer perspective, an undesirable development that the four umbrella chains have such a determining influence over what Norwegian consumers are offered by way of assortment, quality, food safety, accessibility and prices.

There has been greater concentration, cross-ownership and vertical integration despite the Norwegian Competition Authority's control of concentrations. This indicates that they may

be a need for ownership restrictions beyond those addressed by the merger regulations in the Competition Act.

The following members: Aina Bartmann, Jan-Egil Pedersen, Bent Sofus Tranøy, Kristin Taraldsrud Hoff and Gro Tvedt Andersen, therefore suggest that the a need for a specific act on ownership restrictions within the grocery trade be studied. The study should consider an upper ceiling for acquisition and acquisition-like agreements for actors with a significant ownership stake.

An act on ownership restriction in the grocery trade should also aim to ensure that together the umbrella chains do not control more than 90 per cent of the total grocery market. This will provide room for the emergence of an independent sector of independent shopkeepers, specialist stores, food halls and alternative sales channels. This is necessary to ensure consumers better access to traditional food, organic food and other unique quality products.

7. Other recommendations

With reference to Chapter 6, the inquiry commission recommends that the following factors should also be kept under close observation/be studied in more detail by the relevant authorities and actors:

- A closer examination of the competition situations within foodservice and convenience retailing.
- Commission a study of price transmission in the food supply chain.
- Develop cost reducing distribution solutions for small-scale producers.
- Closely monitor developments in the EU with a view to relevant measures that may further balance power relations and healthy competition in the Norwegian food supply chain.
- A closer examination of the need for a Norwegian franchise act.

Administrative and economic consequences of the inquiry commission's proposals

Proposals 1 to 7 could have various consequences vis-à-vis administrative and economic factors. Proposal number 1 concerning a new act relating to negotiations and fair trading practices in the grocery sector, etc. would entail the government proposing and the Storting (Norwegian parliament) adopting the act. Proposal number 2 concerning an ombudsman for the grocery sector would entail the institutional establishment of such an ombudsman. The ombudsman envisaged by the inquiry commission would be a small agency that would not cost a lot of public money. In relation to this, the inquiry commission would like to point to the British model which proposes that the actors in the grocery sector fund the ombudsman. The inquiry commission would encourage the discussion of different funding models in Norway if such an ombudsman is established. In the opinion of the inquiry commission the economic and administrative consequences of the other proposals are minor.