

Taken over by the superstores

The domination of companies like Tesco and Wal-Mart is the result of a regulatory failure fully endorsed by New Labour

After wriggling its way through every possible excuse for inaction, last week the Office of Fair Trading decided to launch an inquiry into the behaviour of the big grocery chains. It's about time. But alongside it we need another one: into whether the OFT, like almost everything else in this country, has itself been taken over by the superstores. The problem the competition authorities are investigating – the dominance of companies like Tesco and Wal-Mart – is the result of 25 years of regulatory failure.

The failure was at first engineered by government. The policy imposed by Margaret Thatcher's administration – which later came to be known as the Tebbit doctrine – determined that the public interest could be reinterpreted as “the consumer interest”, and even this could be defined in the narrowest terms. The regulators would look at price, but not at issues such as employment, local investment, diversity, social networks, environmental impact or even competition in the wider sense. As long as the superstores were deemed to be competing among themselves, there was no need for any other shops.

In 1981, the Monopolies and Mergers Commission decided that the way in which the superstores twisted the arms of their suppliers to extract special concessions was “beneficial to competition and to the consumer”. In 1985, the OFT announced, to the amazement of those who supplied the big chains, that it “was unable to identify any particular case which amounted to an abuse of buying power or other anti-competitive practice”. In 1996, after discovering that the superstores were engaged in predatory

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pricing – driving bakeries out of business by selling bread at less than the cost of production – it decided to take no action.

The regulators' refusal to acknowledge any wider public interest sent thousands of small shops, farmers and food processors to the wall. The survivors looked to the Labour government and its new body – the Competition Commission – for relief. They were disappointed. The authorities stuck to the doctrine.

The selective vision this required became weirder by the year. In 2000 the commission released a report which announced that big stores and corner shops were “separate markets”. As Tesco controlled only 6% of the country's convenience stores, it should be allowed to expand in that sector as much as it pleased, even though – in grocery sales as a whole – it had already passed the monopoly threshold of 25%. The commissioners were plainly suffering from the misapprehension that human beings have two sets of digestive systems. While they decided that predatory pricing did operate against the public interest, they refused to take action. Nor would they do anything about the fact that the big chains charged more for their goods in poor places than in rich ones. The result, which all those of us who had been following the issue predicted, was that thousands more shops went bust. The OFT's own figures show that between 2001 and 2005 the number of “unaffiliated independents” in this country fell from 34,250 to 26,873: a decline of 22%. Last month a parliamentary inquiry predicted that by 2015 independent convenience stores and grocers are “unlikely to survive” and independent newsagents and filling stations are “very unlikely to survive”. Tesco, on the other hand, has increased its share of the grocery market by 15% (to 31%) since the commission's report was published.

The commission also found that the big chains had been engaging in what looks like blackmail and extortion. Because the farmers and other producers had nowhere else to go, the superstores were able to demand payments to stock the farmers' produce; retrospective “discounts” on produce they had already bought; “compensation” when sales were deemed insufficient; and “contributions” to the costs of opening new stores. Any supplier who did not cough up was threatened with “de-listing” and therefore bankruptcy. The commissioners noticed “a climate of apprehension” among farmers and processors. “Even very large suppliers were concerned about what action their supermarket customers might take if they found adverse evidence had been given against them. Most suppliers were concerned that their comments should be kept confidential ... Even so, many suppliers refused to submit evidence.”

So how did the regulators address this problem? By asking the superstores to sign a code of practice, under which they would undertake to stop extorting money. But though it knew that they were too frightened to speak out, the OFT “was unable to

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guarantee the anonymity of suppliers”. When the office reviewed the code last year, it found that not a single case against the superstores had been processed. It concluded that because “evidence has not come forward that the code is being breached”, it “should remain unchanged”. Because the farmers hadn’t complained, in other words, there was evidently nothing to complain about. But a survey in 2003 by Friends of the Earth – which did guarantee anonymity – found that 34% of the suppliers who had not come forward “gave their reason as being ‘fear of de-listing’.”

Now, having been bounced into reopening their inquiries by a series of damning reports, the competition authorities are starting to admit that they might have got it wrong. But their hand-wringing exercise seems to have more to do with public relations than any serious intention to change the way the market works. There is still no sign that the Tebbit doctrine has been abandoned.

It is true that the OFT has now accepted that human beings have only one stomach (“it appears that grocery stores of very different sizes can exercise a degree of competitive constraint on one another”). But it sees the new takeovers, “overall”, as a good thing. “We believe that consumers have benefited from competition between the supermarkets and their expansion into the convenience store sector.” And while it concedes that “aspects of the supermarkets’ pricing behaviour ... provide grounds for suspecting that competition is being distorted”, it “cannot conclude, on the basis of the evidence we have collected, that consumers are harmed”.

Instead, its referral document emphasises the barriers, such as the planning system, which prevent other large superstores from entering a local market. There is no discussion about whether superstores as a body are a problem: as long as they are seen to be competing with each other, the regulators’ job is deemed to have been done, even if this means that the UK is left with just one farmer and no independent shops.

But the worst thing the OFT has done is to give the Competition Commission two years in which to report. By the time it publishes a new list of excuses, its conclusions will be of greatest use to social historians. Even the OFT recognises that the wholesalers who supply the small shops are approaching the “tipping point”, beyond which they go out of business. This would trigger a chain reaction through the independent sector, pulling down thousands of businesses. The network of small farmers, wholesale markets, dairies, auctioneers, news distributors and small abattoirs, with all its expertise and investment, is collapsing at an extraordinary rate. It is hard to see how it could ever be replaced.

For 25 years the competition authorities have claimed that there isn’t a problem. Now they have half-acknowledged that there is. I suspect that they intend to keep wringing their hands until there is nothing left to weep over.