



# A response

Provisional decision on remedies relating to supply chain practices

- 1 We warmly welcome the Competition Commission's (CC) provisional decision on remedies relating to supply chain practices, particularly the proposals to strengthen the Supermarket Code of Practice and to appoint an ombudsman. The proposals however need careful and effective implementation if they are to address in practice the adverse effects on competition (AEC) that have been found.
- 2 The comments and suggestions we submit will, we hope, help lead to relationships between retailers and all suppliers that are more constructively focused on the needs and interests of consumers.
- 3 The elements that we consider essential to the delivery of an effective remedy that benefits consumers include:
  - a clear focus on the adverse effects on competition (ie. the transfer of excessive risk and unexpected costs to suppliers (para 12)), however these may be brought about, rather than simply on one mechanism for transferring that excessive risk, namely through retrospective adjustments;
  - the inclusion of measures to deter retailers covered by the Groceries Supply Code of Practice (GSCOP) from seeking to threaten and punish their suppliers;
  - a means of monitoring and enforcing compliance with the GSCOP that is not wholly reliant on complaints from suppliers;
  - a recognised role for trade associations to act collectively on behalf of groups of suppliers;
  - an ombudsman with the powers and the resources to exercise the role effectively;
  - a deterrent to encourage retailers to both observe the GSCOP and to co-operate with the ombudsman;
  - a clear, defined remedy in the CC's Final Report, with the crucial elements not being left for negotiation with the parties;
  - a mechanism to allow the GSCOP to be amended without the need for another groceries market investigation.

- 4 While the focus of the provisional decision on supply chain practices understandably places emphasis on resolving disputes between suppliers as the means to remedy the AEC, we are conscious that this, from a presentational viewpoint, may lead to misunderstandings over the purpose of the GSCOP. It risks misrepresenting the GSCOP as concerned with resolving disputes between retailers and suppliers rather than remedying the AEC which we understand to be its real purpose.
- 5 Furthermore, an appropriate ambition for the remedy is to go beyond the resolution of individual disputes to changing the nature of relationships more generally between grocery retailers and their suppliers which will have real benefits for consumers. To this end, we concur with the CC's hope that by "investigating areas of recurring complaints [rather than focusing solely on disputes], the ombudsman would help build confidence in the operation of the groceries supply chain" (para 118). We would encourage the CC to give greater emphasis to this overall goal in its final decision on remedies.

7th March 2008