



Brand Briefing

13th July 2012

GROCERIES CODE ADJUDICATOR BILL

Briefing for the House of Lords, Report Stage, 16th July 2012

The British Brands Group fully supports the Groceries Code Adjudicator Bill which implements the final piece of the Competition Commission (CC)'s remedy to the transfer of excessive risks and unexpected costs from large grocery retailers to suppliers. Some proposed amendments threaten the effectiveness of this remedy.

This briefing supplements our [Brand Briefing](#) at Second Reading which addressed why an Adjudicator is needed, its benefits, the consumer interest, the impact on retail prices, the fairness of anonymous complaints and the impact on bureaucracy.

No case for appeals against naming & shaming

We do not support the granting of a right of appeal against naming & shaming as this would be disproportionate and may disrupt the Adjudicator's role, damaging its effectiveness.

- The Adjudicator is not required to name & shame and is only likely to do so when necessary;
- Prior to a retailer being named, the Bill requires the retailer to be pre-notified, giving an informal opportunity for appeal;
- A right of appeal is not available in other naming & shaming remedies (eg Press Complaints Commission, ITV CRR Adjudicator, Food Standards Agency);
- There is a record of retailers using legal process to disrupt and delay (eg they did not establish an Adjudicator voluntarily as invited by the CC). An appeals process could be abused;
- The Competition Appeals Tribunal (CAT) deals with competition matters, not breaches of the GSCOP which are more contractual in nature;
- Were the Adjudicator to name & shame without justification, it may be subjected to judicial review or an action for defamation, providing a strong deterrent against a reckless approach.

No basis to restrict the launching of an investigation

We see no reason to restrict the ability of the Adjudicator to launch an investigation if it has reasonable grounds to suspect a breach of the GSCOP.

- Third parties such as trade associations have credible evidence of breaches of the GSCOP and may provide this without jeopardising the identity of individual suppliers. They have an important and credible role to play;

- Were the adjudicator to have credible evidence of a breach but be prevented from investigating because the evidence was not submitted through an 'authorised' channel, the remedy would fail and quickly lose credibility amongst suppliers. Evidence is evidence, irrespective of the messenger;
- Safeguards are in place to ensure third parties do not bring vexatious cases. They must provide 'reasonable evidence', they will incur costs if they bring vexatious complaints and ultimately the ability to contribute evidence can be withdrawn if it is abused.

Fines from day one are preferable but not essential

The ability of the Adjudicator to impose fines from day one was recommended by the CC and would strengthen the remedies available. However it is more important that the passage of the Bill is not delayed and the Adjudicator is appointed as soon as possible.

- The CC recommended fines from day one were retailers to fail to set up an Adjudicator voluntarily. Retailers declined to do so, causing significant delay and incurring substantial public and private costs;
- It is unlikely that a retailer will persist in a practice that breaches the GSCOP once the Adjudicator has published guidance on that practice and / or reached an adverse finding following an investigation;
- Fines will add strength to the naming & shaming remedy, encouraging media scrutiny;
- It would be helpful were the Bill amended to speed the introduction of fines if evidence shows they are needed, including the publication of guidance on how a fines regime would work before the Secretary of State makes an order authorising them;
- Amending the Bill to include fines from day one may delay its passage. A fines regime would need to be accompanied by an appropriate appeals regime;
- We believe the GSCOP is being breached, necessitating the appointment of the Adjudicator as soon as possible.

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NOTE

The British Brands Group provides the voice for brands in the UK. It speaks on behalf of brand manufacturers and seeks to deepen understanding of how brands benefit consumers, society and the economy through the provision of choice, value for money and innovation.

Many of its members supply branded grocery products to supermarkets.