



Brand Briefing

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GROCERIES CODE ADJUDICATOR BILL

Briefing for the House of Lords, Second Reading, 22nd May 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 their suppliers. The CC's adverse finding was made in 2008 following its investigation of the groceries market, so the remedy is long overdue.

Groceries Supply Code of Practice (GSCOP)

The CC introduced the GSCOP by Order on 4th August 2009 and it came into force on 4th February 2010. It lays down a principle of fair dealing and explicitly prohibits certain practices. The CC stated that, to be effective, the GSCOP needed to be monitored and enforced by an Adjudicator.

Why is an Adjudicator needed?

While the CC's Order required the ten designated retailers to include the GSCOP in their supply agreements, it does not place a duty on those retailers to comply with its provisions. Without the Adjudicator, were a retailer to breach its provisions, the only mechanisms for redress are for an individual supplier to bring a complaint under the dispute resolution procedure or bring a case before the courts under contract law. This simply will not happen in most cases, due to the prevailing "climate of fear" and the high level of dependency of suppliers on large retailers.

Furthermore, such an approach would only apply to an individual supplier and an individual retailer. The Adjudicator has the scope to assess practices that affect many suppliers, and potentially more than one retailer, ensuring the wider market works well.

The Adjudicator will also issue guidance, a light touch approach to regulation.

What benefits will the Adjudicator bring?

- it will be **impartial**, being independent of supermarkets and government;
- it will provide a **dedicated resource**, focused on this market alone;
- it will develop a high level of **knowledge and expertise** on how this market works;
- guidance notes and reports published over time will build **certainty** and **transparency**.

However, to be effective, it is essential that the Adjudicator:

- is able to act **proactively** to investigate complaints;
- keeps the identity of whistleblowers **confidential**;
- has **access to information** from a wide range of sources on market practices;
- has the **power to enforce**, to stop practices continuing and to deter future breaches.

The Adjudicator - in consumers' best interests?

The GSCOP effectively enforced by the Adjudicator will be good for consumers because:

- choice of **products** will be preserved, as small suppliers and products will not be driven from the market through anti-competitive practices;
- choice of **retailers** will be preserved, as small retailers will not be driven from the market through disparity in buying terms exacerbated by anti-competitive practices of larger retailers;
- all suppliers will be better able to (1) plan their businesses, yielding **efficiencies**, and (2) **invest** in innovation, new products and product quality, improving choice and competition.

Will the Adjudicator increase costs to consumers?

No, because:

- the costs of the Adjudicator will be borne by large retailers, not consumers;
- benefits to consumers will far outweigh the cost of the Adjudicator;
- retailers have a long and strong tradition of passing costs upstream to suppliers, not downstream to consumers. The costs of the Adjudicator are unlikely to be treated differently;
- the choice isn't between an Adjudicator or nothing. Without an Adjudicator, the CC requires monitoring and enforcement by the OFT. This would be a new duty, requiring funding by the taxpayer rather than by retailers.

Is the GSCOP alone sufficient?

No. The Adjudicator is an integral part of the CC's remedy so the GSCOP does not function effectively without it (see previous page, **Why is an Adjudicator needed?**).

Furthermore, the GSCOP has not stopped potentially harmful practices. At least three retailers have [reported](#) instances of alleged breaches.

Should fines be available from day one?

In an ideal world, yes, for persistent or extreme breaches. The CC recommended fines from day one, after retailers failed to set up an Adjudicator voluntarily. Furthermore, the media and the public do not believe a company has done anything wrong unless a fine is involved. Swift passage of the Bill is, however, a more important goal at this point.

Is it fair that retailers will not know the identity of their accusers?

In the case of an investigation, the accuser will be the Adjudicator, acting on reasonable evidence of a breach. In the case of a dispute resolution, the accuser will be a named direct supplier.

Isn't an Adjudicator just more bureaucracy, unhelpful in these straitened times?

An Adjudicator is needed now more than ever. Large grocery retailers have been found to act anti-competitively in their relations with suppliers on two separate occasions by the CC. Unfair practices continue, damaging consumers, suppliers and smaller retailers.