



Brand Briefing

25th March 2010

THE CASE FOR A GROCERY OMBUDSMAN

The British Brands Group fully supports Albert Owen MP's Private Members' Bill to appoint an ombudsman to oversee the new Groceries Supply Code of Practice (GSCOP). The Competition Commission (CC) recommended the GSCOP, monitored and enforced by a proactive ombudsman, to remedy the adverse effect on competition it identified whereby grocery retailers pass unexpected costs and excessive risks to suppliers.

Groceries Supply Code of Practice (GSCOP)

The CC introduced the new GSCOP by Order on 4th August 2009 and it came into force on 4th February 2010. To work however, it must be effectively monitored and enforced.

Why is an ombudsman needed?

While the CC's Order requires the ten designated retailers¹ to include the GSCOP in their supply agreements, along with other duties such as compliance reporting and staff training, it does not place a duty on those retailers to comply with its provisions. Without an ombudsman, were a retailer to breach its provisions, the only mechanisms for redress are for suppliers to bring a complaint under the dispute resolution procedure or bring a case before the courts under contract law. Neither will happen, due to the prevailing "climate of fear" and the high level of dependency of suppliers on large grocery retailers. This was the experience of the old code of practice (SCOP).

The British Brands Group is clear that any remedy that relies on **individual suppliers making complaints** will not work.

What benefits will an ombudsman bring?

An ombudsman as envisaged by the CC will have a number of significant strengths:

- it will be **impartial**, being independent of the 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;
- the guidance notes and reports published over time will bring a high level of **transparency**.

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

- 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.

¹ Aldi, Asda, Co-op, Iceland, Lidl, M&S, Morrisons, Sainsbury, Tesco, Waitrose

Where should an ombudsman sit?

The CC recommends an independent ombudsman. We agree. If however this is politically impossible, the ombudsman may fit structurally under the OFT but only if in all other respects it is independent (ie. with its own premises, structure, staff, budget, way of working, targets, computer systems, etc).

We would strongly oppose the OFT itself performing the ombudsman function because:

- the OFT has a wide range of consumer and competition roles but limited resources. It must prioritise its activities, raising the fear that the ombudsman's duties may not be a priority;
- the OFT does not consider it desirable that it should have this role².

An ombudsman - in consumers' best interests?

The GSCOP effectively enforced by an ombudsman 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 or enhanced, as small retailers will not be driven from the market through disparity in buying terms exacerbated by anti-competitive practices of larger retailers and new retailers will be encouraged to enter the market;
- 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.

An ombudsman will not increase costs to consumers because:

- the costs are very small. Grant Thornton has estimated that, in the unlikely event of all costs being transferred to consumers, the impact would be 1¼p on the weekly shop;
- benefits to consumers will far outweigh the cost of an ombudsman;
- Retailers have a long and strong tradition of passing costs upstream to suppliers, not downstream to consumers. The costs of an ombudsman will be treated no differently.

Should large suppliers be covered by the ombudsman?

The CC envisaged "that the GSCOP Ombudsman would prioritize the resources of its office to focus on those disputes and complaints concerning suppliers without market power over and above those concerning suppliers of major branded products that have market power"³. We agree.

Large suppliers however should not be specifically excluded from the ombudsman's work because:

- the CC considered this and found the difficulties too significant to be practical;
- the GSCOP applies to all suppliers so its monitoring and enforcement should too;
- the ombudsman is the gateway to the dispute resolution procedure. With no access to the ombudsman, large suppliers only have the courts for redress;
- the ombudsman's role will be significantly more difficult if evidence from large suppliers on retailers' compliance cannot be taken into account;
- it would not be in the interests of consumers. Large suppliers impact far more consumers than small suppliers.

² Memorandum accompanying Peter Freeman's letter to the Secretary of State, paragraph 3.4

³ Competition Commission, Final Report 2008, paragraph 48 and 11.339

QUESTIONS AND ANSWERS

1. Retailers are working hard to keep household costs down. **Won't an ombudsman simply increase prices unnecessarily?**

No, the benefits that will flow to consumers from the ombudsman's interventions will far outweigh the costs. A very small improvement in the supply chain will bring about huge improvements, as more, fairer competition brings about more choice and lower prices. Furthermore, retailers have a strong tradition of passing costs upstream to suppliers, not downstream to consumers.

2. Isn't an ombudsman simply going to **add cost to the supply chain**, resulting in us all having to pay more in the shops?

The choice isn't between an ombudsman or nothing. If there is not an ombudsman, then monitoring and enforcement will be undertaken by the Office of Fair Trading, the costs of which will be picked up by taxpayers.

3. Isn't an ombudsman just introducing **unnecessary bureaucracy, red tape and regulation?**

No, large grocery retailers have been found to be acting anti-competitively in their relations with suppliers on two separate occasions. The remedy introduced the first time around hasn't worked, hence the need for better monitoring and enforcement via an ombudsman. Retailers who deal fairly with their suppliers will be unaffected.

4. If we have an ombudsman, won't it **prevent retailers extracting the very best prices from their suppliers?**

The new code and the ombudsman will not prevent retailers from using their scale and negotiating skills to obtain the very best terms from their suppliers. That will not change. An ombudsman will however help stamp out anti-competitive practices that are bad for shoppers, retailers and suppliers.

5. Isn't this just a **whinger's charter for suppliers?**

No. If an individual supplier has a problem, it can go to arbitration. This is unlikely to happen though – the option was available previously but was hardly used as suppliers have too much to lose by antagonising crucial retail customers. It is more likely that suppliers will inform the ombudsman of problems with individual retailers. The ombudsman may then investigate, not to protect individual suppliers but to stop anti-competitive practices and ensure the market is working well – for shoppers, for all retailers and for suppliers.

6. **But your members are large companies** who do not need the protection of an ombudsman?

The British Brands Group represents companies of all sizes, from the family-owned business to the multinational. Even the largest companies can be threatened by de-listing of some of their product ranges. We need fair dealing throughout the supply chain but it is true that smaller suppliers are particularly vulnerable to anti-competitive practices. The Competition Commission thinks the Ombudsman should focus on those disputes concerning suppliers without market power and we agree. However, the evidence of large suppliers will be valuable to the ombudsman; it is natural justice that large suppliers should have access to dispute resolution procedures as well as others; and more consumers are likely to be adversely affected by anti-competitive practices exerted on large suppliers than on small. They should not be excluded.