



Brand Briefing

10th December 2012

GROCERIES CODE ADJUDICATOR BILL

Briefing for the House of Commons, Committee Stage, 11th December 2012

The British Brands Group, which represents suppliers of branded products, fully supports the Groceries Code Adjudicator Bill. This implements the final piece of the Competition Commission (CC)'s remedy to stop large grocery retailers transferring excessive risk and unexpected cost to suppliers, a practice found to act against the interests of consumers. The Group calls for the Bill to be passed without delay.

This briefing supplements our [Brand Briefing](#) at Second Reading which addressed why an Adjudicator is needed, its benefits, the consumer interest, its cost and fines.

Summary

The Group fully supports the Bill as currently drafted and wishes to see it implemented and the GCA appointed as soon as possible.

The case against over-drafting

We consider the Bill as currently drafted a fair interpretation of the recommendations made by the CC to address the adverse finding it made. There are risks in over-specifying the Bill's provisions as this may remove flexibility from the Adjudicator, preventing him / her from adjusting rulings and remedies to reflect changing industry practice. This would result in an unnecessary involvement of lawyers in the day-to-day operation of the GSCOP and the GCA than would otherwise be the case. This would increase the costs and complexity of operating the remedy, reducing its effectiveness, while risking delay to the passage of the Bill.

Provisions on confidentiality are sufficient

Requiring the GCA to safeguard the anonymity of suppliers is crucial to the success of the remedy. If suppliers perceive a risk that they may be identified, they will not come forward with evidence of possible breaches. The Bill recognises this, requiring the GCA not to disclose information that may identify a party to an arbitration or lead to a suspicion that a supplier has complained. Importantly, the Bill also allows evidence of a possible breach of the GSCOP to be submitted by a third party (such as a trade association) and provides that such evidence, if reasonable, may be sufficient to launch an investigation. This allows a supplier to feed in relevant information confident in the knowledge it cannot be identified.

Why the GSCOP and GCA should not be extended to apply to indirect suppliers

The GSCOP and GCA is a remedy designed by the CC specifically to prevent the passing of excessive risk and unexpected cost from the designated retailers to direct suppliers, following an adverse finding based on evidence. No evidence has been found, and no adverse finding made, in relation to direct suppliers acting towards indirect suppliers in a way that adversely affects consumers. There is therefore no basis to extend the GSCOP and GCA to direct suppliers.

The GSCOP and GCA imposes costs on the 10 designated retailers in terms of the appointment of Code Compliance Officers, changes to internal procedures and a share of the cost of the GCA. That such costs should be imposed on direct suppliers too, of which there are many hundreds, without any cause or adverse finding, is wholly unwarranted, unjustifiable and impracticable.

The CC in its report laid down the approach to be followed. It stated that it did not seek any role for the GCA that goes beyond that necessary to monitor and enforce the GSCOP (paragraph 48, Final Report). It went on to state that, if direct suppliers transfer excessive risk and unexpected cost further up the supply chain, Defra and BIS should consider the introduction of appropriate measures, including the extension of the GSCOP and the role of the GCA (paragraph 51, Final Report).

As we have consistently argued, the recommendations of the CC should be followed, no more and no less. We also continue to urge that this is done without delay.

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