

[Please note that square brackets indicate figures or text which has been deleted for reasons of commercial confidentiality.]

Date 31 July 2007
Our ref 1272/M37.772
Your ref CC/Inq Sec(2)/Groceries/944-07
Partner Niamh Grogan

By Email

Dear Mr Oyler

Market Investigation: The supply of groceries by retailers in the UK - Working Paper on supply chain practices and the Supermarkets Code of Practice

On behalf of Marks and Spencer plc (“M&S”), we would like to make a number of comments on the working paper on supply chain practices and the Supermarkets Code of Practice (the “Working Paper”), which was sent to all the main parties by the Competition Commission (the “Commission”) on 23 May 2007.

1. General comments

- 1.1 As M&S has set out in its Main Submission¹, M&S competes on points of difference rather than lowest cost, on value, which includes quality and price, rather than on price alone, with innovation being central to its offer. The fundamental nature of M&S’ relationship with its suppliers is that of a long term partnership where both parties invest in innovation, quality, range and safe and efficient production, to their mutual benefit. It is therefore in M&S’ interests, in order to develop and sustain its business and those of its suppliers, to ensure that suppliers are able to invest in new products and processes so that M&S can, in turn, offer innovation and choice to its customers. []. This business model therefore aims to promote fairness to suppliers.
- 1.2 M&S believes its relationships with its suppliers are characterised by fairness and that its trade terms and trading practices capture the spirit of the principles of the SCOP. [].
- 1.3 Although M&S in principle believes that the SCOP is a mechanism capable of protecting suppliers against any “sharp” practices by grocery retailers², []. However, even if suppliers are in practice reluctant to use the SCOP procedures for whatever reason, suppliers are in any event adequately protected as many of the major retail multiples, including M&S, have programmes in place that seek to protect and encourage the growth of suppliers.
- 1.4 [].

2. Comments on current version of the SCOP

- 2.1 As stated above, M&S believes that although the SCOP is a mechanism capable of protecting suppliers against any “sharp” practices by grocery retailers, [].

¹ At paragraph C1.1 and the introduction to section E.

² Although, as noted in our email to Andrew Toner of 18 May 2007, as M&S is not a signatory to the SCOP it cannot comment further than this. M&S also cannot comment on the impact of the behaviour of other grocery retailers towards their supply base in supply or grocery retailing markets.

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3. Comments on a possible new version of the SCOP

- 3.1 If the Commission is of the view, at the end of the current inquiry, that the SCOP should continue in its current or in an amended form, M&S believes that of the practices identified as having an adverse effect on competition by the Commission in the Working Paper, a distinction should be made between retrospective changes to commercial terms, which should be prohibited due to their clear adverse impact on competition, and all other practices where the current reasonableness test should continue to apply.
- 3.2 M&S believes that all retrospective changes to contractual terms should be prohibited, as such changes can clearly give rise to significant adverse effects for suppliers and the risk of such changes occurring is likely to hamper innovation and investment in new products, which would be detrimental to grocery retailers, suppliers and consumers alike. On the other side of the spectrum, M&S believes that all other practices set out in Annex E of the Working Paper, which in M&S' opinion do not clearly impact adversely on competition (and which may indeed be beneficial for suppliers) should continue to be subject to the reasonableness test as set out in the SCOP.
- 3.3 M&S would emphasise that in relation to its dealings with suppliers, it would always discuss in advance and give reasonable notice to suppliers if any future changes in the terms of trade are planned. M&S believes that, rather than providing narrow and inflexible rules regarding certain conduct that may or may not have an adverse effect on competition, what is key is that there is a dialogue with suppliers that ensures that all changes are notified sufficiently in advance and discussed with suppliers before being implemented.
- 3.4 [].
- 3.5 Finally, M&S notes that the CC is considering whether a greater part of supplier-retailer dealings should be documented. Reference is made in this context to the grocery codes currently in force in Australia, in particular the mandatory code of conduct for the wholesale horticultural sector. []. M&S believes that if the requirements were too strict, it would interfere with the way business is conducted to the detriment of both M&S and its suppliers.
- 3.6 In conclusion, M&S believes [] that suppliers are protected against "sharp practices" by grocery retailers in a variety of ways. Although not currently a signatory to the SCOP, M&S has provided comments in order to assist the Commission as much as possible in its work in this area. As M&S has terms of trade in place which capture the spirit of the principles of the SCOP, M&S currently sees no need to sign up to either the current or any future version of the SCOP. However, if the Commission deems it appropriate that any future version of the SCOP should apply to M&S also, M&S would wish to participate fully in the process of drawing up the new version and to comment in detail on any aspects likely to affect the way that M&S deals with its suppliers.

Tim Oylar

12 July 2007

Needless to say, if you require any more information on any aspect of this submission, please do not hesitate to contact me.

Yours sincerely

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