



Comments of the Association of Convenience Stores ¹

Notice of proposal to accept undertakings pursuant to section 165 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed Undertakings

ACS (the Association of Convenience Stores) was a main party to the Grocery Market Inquiry. We welcomed the finding of the Commission in April 2008, that *there were features of the market (that) either alone or in combination, which prevent, restrict or distort competition within the relevant market.*

Adverse Effect on Competition

We believe the Commission was right to conclude that *one of the features of the grocery market that adversely affected competition was the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risk and unexpected costs to those suppliers.*

We agree with the Commission's conclusion that the consequences of the transfer of excessive risk and unexpected costs onto suppliers lessen supplier's incentives to invest in new capacity, products and processes. The Commission's final report focused on the future risk of this AEC, we believe that more could have been done to quantify the scale of current competitive or consumer detriment.

We believe that there are immediate risks presented by the transfer of unexpected costs and risks onto suppliers. For example:

- the potential for suppliers to increase costs to customers other than those represented by the market dominant largest retailers; or
- the removal of planned promotional activity from a customer in light of unexpected demands from large customers; or
- to not introduce or abandon the introduction of new products into other retail channels

¹ This paper has been produced by the Association of Convenience Stores Limited (ACS), and is supported by the Scottish Grocers' Federation (SGF), the Northern Ireland Independent Retail Trade Association (NIIRTA) and the Federation of Wholesale Distributors (FWD)

These types of activity present a real and immediate risk to fair competition and consumer interests. We strongly suspect that these practices have continued, and possibly even intensified, in the past year.

Grocery Ombudsman

It is for these reasons that ACS supports the introduction of a Grocery Ombudsman to oversee the relationship between retailers and their suppliers. We are concerned that the slow rate of progress in making this recommendation a reality presents a real risk to consumers interests.

The Competition Commission's remedy outlined a three tier approach to action in this area. The first tier, of which this notice forms part, is to seek voluntary undertakings from the affected retailers to submit themselves to an Ombudsman. The second tier is to make a formal recommendation to the Secretary of State for Business, Enterprise and Regulatory Reform that an Ombudsman is introduced through primary legislation and finally a system whereby the OFT retains its role as an arbitrator of disputes under the auspices of the Grocery Supplier Code of Practice that is subject to a separate Order of the Commission.

ACS has supported the Commission's attempts to deliver its remedy through voluntary agreement. Our main reason for supporting this approach is because we acknowledged that a legislative route takes longer to achieve. However we no longer believe that this is achievable and the reticence of some major companies to engage in discussions on the issue casts doubt on whether a voluntary system could be successful in changing the wider cultural approach to managing these relationships.

We now believe that the Commission should move to its second tier approach and recommend to Government that an Ombudsman be imposed through primary legislation. .

Setting up an Ombudsman on a statutory footing brings substantial benefits:

1. legislation can provide for retailers in breach of the code to face punitive fines, this would present a more credible deterrent than those proposed in the notice circulated;
2. the Ombudsman could be given more extensive powers of intervention; and
3. It would provide a legislative opportunity to make compliance with the GSCOP a direct obligation on retailers, which is not the case under the current approach which introduces the code into the contract between a retailer and their supplier. Therefore only the supplier themselves can make recourse where they believe a breach of the code has taken place.

Comments on Specific Provisions

Notwithstanding our view that an Ombudsman should be imposed through primary legislation, ACS broadly supports the form of the Scheme outlined Schedule to the Notice.

We would make the following specific comments:

Functions of the Ombudsman

- (3.1) ACS believes that the overriding objective of the Ombudsman should be to **prevent the transfer of excessive risk and unexpected costs onto suppliers**, through the conduct of investigation and arbitration of disputes arising from the *Code*; at all times focusing on delivering the best outcome for consumers.
- (3.2) (d) We believe that limiting the role of the Ombudsman to making recommendations and not providing the power to direct Designated Retailers to take action to ensure they are compliant with the code weakens them.
- (3.3) (c) The Ombudsman's ability to collect and evaluate commercial practices should be extensive for two reasons. Firstly because only with a comprehensive information can the Ombudsman be satisfied that the GSCOP provision to ensure *fair dealing* is upheld; and specifically this is necessary to detect and deter any avoidance practices.

Recommendations

- (7) This section should be more explicit about the extent of the Designated Retailers responsibilities in light of receiving recommendations from the Ombudsman. The sanction for ignoring the recommendations and continuing with actions that breach the GSCOP should be more explicit.

Resignation or removal from office

- (11.3) It is more appropriate that the Ombudsman should be prohibited from working for a retailer or supplier for a year after the termination of the Ombudsman's appointment.
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