

Market Investigation into the Supply of Groceries in the UK

BRC Response to 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

1.0 Introduction

1.1 The British Retail Consortium (BRC) is the trade association for retailers. This response represents the views of all the large food retailers in the UK, with the exception of Morrison's (non BRC member) and Waitrose, who are willing to give undertakings. Our members account for approximately 80% of grocery sales in the UK. We thank you for the opportunity to respond to the proposed Undertakings document.

2.0 Summary of BRC position

2.1 The BRC broadly supports the Groceries Supply Code of Practice (GSCOP) which will strengthen and widen the current supplier code. We do not, however support the proposal for an Ombudsman, which we believe is unjustified and will add costs to the supply chain. Unlike other examples of ombudsmen, we do not believe the proposal is in the interests of consumers as it will affect the efficiency of the supply chain.

3.0 Justification for an Ombudsman

3.1 The BRC believes that new regulation must be justified by clear evidence to demonstrate it is required. We remain unconvinced that this is the case with this proposal based on the extremely limited evidence that was found in the groceries investigation. The basis for further supply chain intervention appears to be based more on perception and concerns about the future influence of buyer power. It is not acceptable to propose significant regulation that will intervene in the market based on hearsay and unsubstantiated claims.

3.2 Even if there were the problems that have been suggested in the supply chain, which we reject, this proposal must account for the impact of the extended and amended supply code, the GSCOP. The new code will address a number of issues that were raised during the grocery investigation and extend its scope to more retailers. This combined with the number of measures on internal compliances that retailers have already taken, will result in a different framework overseeing supplier relationships from the one examined in the recent investigation. They will result in an increase in the administrative burdens on retailers, an important consideration for this proposal.

3.3 We believe it is important to consider the coverage of the code, and therefore the activity of an Ombudsman that would oversee it. The majority of direct suppliers to retailers are large companies, many of whom are multinational companies larger than our members. Retailers perform an invaluable role on behalf of individual customers, negotiating with these companies to deliver excellent value, a point confirmed in the groceries investigation. It seems perverse to us that these are the main companies that will have access to the Ombudsman and could use the office to alter the balance of negotiations which is currently working in favour of the consumer. Ombudsmen normally work on behalf of consumers whereas this proposal could work against their interests by increasing the power of global food manufacturers.

3.4 Our concern regarding the justification for an Ombudsman is clearly shared by one member of the Competition Commission's own investigating panel, Professor Lyons, who was specifically responsible for examining supplier issues. He objected to the proposal for an Ombudsman on the basis that it would be counterproductive and would end up proactively representing the interests of suppliers, particularly global manufacturers, reducing the benefits of competition between suppliers

3.5 We do not understand what an Ombudsman will deliver that is not available through the OFT. It already offers effective independent scrutiny of the existing code where suppliers can raise concerns and grievances. There is no justification for duplicating the OFT's role by creating the Ombudsman.

4.0 Additional Costs to the Supply Chain

4.1 We believe the creation of an Ombudsman would create extra costs in the system both as originally drafted and if it grows to meet demands for increased supply chain scrutiny

4.2 There are clearly set up costs for the new organisation and we do not have faith, based on previous experience, that there will be rigorous control of costs. We note that there would be a consultation by the OFT on the original budget but ultimately it will be the OFT that takes the decision on funding, not the retailers who will pay for it. We also note that the budget can be increased by 10% annually without consultation which means the budget could quickly spiral without challenge from the businesses that will pay the cost.

4.3 We have detailed above our concerns that the new organisation could upset the balance of negotiations between retailers and their suppliers, which has been shown to work in the consumers' favour. Any change in the balance which dilutes the opportunity for retailers to negotiate with large suppliers on behalf of consumers will add costs to the chain and increase prices in shops.

4.4 We have a real concern that the current proposal will not satisfy those groups that have been most vociferous in calling for an Ombudsman. The GSCOP does not cover the vast majority of primary producers who are lobbying for an Ombudsman. Our concern is that once the principle of an Ombudsman is established then its remit will be extended at a future date. An extended remit that provides for extensive investigation of the whole, complex supply chains will clearly require huge resources, which would be paid for by retailers and ultimately by UK consumers.

5.0 Conclusion

5.1 We do not believe there is evidence to justify an Ombudsman, which will add cost to the supply chain. We believe the GSCOP monitored by the OFT is the most effective way to protect the interests of suppliers without creating an unnecessary and expensive bureaucracy.

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