

PROPOSED SCOPE AND TERMS OF REFERENCE FOR A GROCERY ADJUDICATOR

1. Background

The Cross Cutting Remedies Group was set up by Andrew George MP with a view to achieving consensus on some key issues relating to the Competition Commission Inquiry into the UK grocery retailing industry. The need for an adjudicator to investigate and resolve problems arising from the abuse of power by retailers in their dealings with their suppliers was acknowledged by the whole group. The strength of the proposals lies in the support and agreement of a number of disparate organisations, operating broadly in the same arena, who consulted as an 'Adjudicator Working Group'.

The proposals are predicated upon:

- Supermarkets have acquired buyer power in grocery wholesale and direct supply markets coupled with seller power in retail markets;
- Evidence from many trade organisations and NGO's indicates that supermarkets are using buyer and seller power in such a way that each buttresses the other;
- The abuse of buyer and seller power works against the long term interest of consumers;
- The largest supermarket companies have been able to see off actual or potential rivals with the result that new entry or expansion on any scale that seriously challenges them is effectively non existent; and
- Given that the Supermarkets' Code of Practice has proved to be ineffective, and given the increased market power of the largest supermarket operators since the Code was introduced, self regulation should be regarded as unrealistic and impractical. Indeed, it is difficult to envisage how a solution can be found in the market without a regulatory framework.

In this proposal, retailers would include all grocery retailers and wholesalers, irrespective of size. Suppliers would include wholesalers and all packers, processors and manufacturers supplying directly to retailers, including suppliers based overseas. Suppliers acting as agents for either primary producers or retailers should be viewed as an extension of a retailer's own procurement activity.

2. Terms of reference

- i) The prime function of the Adjudicator would be to monitor relationships between retailers and their suppliers and to adjudicate disputes to ensure effective competition and fair dealing in wholesale and retail markets.
- ii) The Adjudicator would have power to initiate investigations but would always try to resolve tensions before disputes arise.
- iii) The Adjudicator would be independent with its own office and staff.
- iv) Operating costs should be 'exchequer neutral' and be borne by the industry. The cost of complaints judged by the Adjudicator to be frivolous would be charged to those making them.
- v) Protocols (schemes, rules and other instruments) should be developed over time, as the Adjudicator sees necessary, to enable regular reviews of market changes.
- vi) In addition to its enforcement role, the Adjudicator would have a responsibility to promote best practice and fair dealing between retailers and their suppliers (a role analogous to that of the Food Standards Agency, for example, in the areas of food safety and healthy eating).

3. Process

The role of the Adjudicator should comprise the following key functions:

- i) Operate a complaint dispute procedure, enforceable legally. Complaints can originate from a party outside the retailer and supplier relationship in question - for example, a retailer can complain about the relationship between a retail competitor and its supplier;
- ii) The Adjudicator would proactively monitor the market. He/she would have the power to access any relevant information from retailers and suppliers necessary to enable the function to operate effectively. This would include details of all trading terms and trade payment practice;

- iii) The Adjudicator would have a duty to find a remedy for any breaches of the regulations which are discovered and should have the power to enforce his/her rulings;
- iv) The results of the Adjudicator's findings would be published, perhaps in the form of an annual report, to the Competition Commission and be responded to and followed up (similar to the way in which the Advertising Standards Authority publishes its findings); and
- v) Serious cases could be referred by the Adjudicator or by one of the parties under the Competition Act to the OFT, whose decisions can be appealed to the Competition Appeal Tribunal.

Andrew George MP Cross Cutting Remedies Group

Members of the Adjudicator Working Group:

Sandra Bell	Friends of the Earth
John Breach	British Independent Fruit Growers' Association
Shane Brennan	Association of Convenience Stores
Dominic Eagleton	Action Aid UK
Iain Farquhar	Banana Link
Fiona Gooch	Traidcraft Exchange
Alan Hallsworth	University of Surrey
Michael Hutchings	Competition Lawyer
John Noble	British Brands Group
Robin Tapper	National Farmers' Union of England and Wales
Charles Trotman	Country Land and Business Association
Judith Whateley	Breaking the Armlock Alliance (<i>including: Banana Link, farm, Farmers for Action, Farmers' Link, Farmers' Union of Wales, Friends of the Earth, Grassroots Action on Food and Farming, International Institute for Environment and Development, National Federation of Women's Institutes, National Sheep Association, New Economics Foundation, Pesticide Action Network UK, Soil Association, Small and Family Farms Alliance and WyeCycle</i>)
James Withers	National Farmers Union of Scotland

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