



News Release

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CC PUBLISHES CODE OF PRACTICE AND OMBUDSMAN RECOMMENDATION

The Competition Commission (CC) has formally recommended to the Department for Business, Innovation and Skills (BIS) that it should establish an Ombudsman to arbitrate on disputes between grocery retailers and suppliers and investigate complaints under the new Groceries Supply Code of Practice (GSCOP).

The CC has today published on its website, www.competition-commission.org.uk, the Order setting out the GSCOP, the formal Recommendation to BIS to establish the Ombudsman, and a covering letter to the Minister of State at BIS, Kevin Brennan. These measures follow the CC's inquiry into UK groceries retailing which finished [last year](#) and concluded that measures were needed to address its concerns about relationships between retailers and their suppliers.

In February this year, the CC published a draft strengthened and extended GSCOP for consultation and, after considering responses, it has today published the final Order. Retailers covered by the Order now have six months to comply. The CC does not have the power to establish an Ombudsman itself, and so has been trying to secure the agreement of retailers, making it clear that without this it would recommend to BIS that it establish the Ombudsman instead. After the majority of retailers declined to agree, the CC is pressing ahead with the recommendation.

Peter Freeman, CC Chairman and Chairman of the Groceries inquiry said:

Our inquiry clearly revealed problems that require action and which, if left unchecked, would damage the consumer. We continue to believe that everyone's interests—and that includes retailers—would be served by tackling a problem that has clouded the industry for many years now. The current economic difficulties if anything reinforce rather than reduce the need for action.

Whilst some retailers have recognized this, regrettably the majority have not. We made every effort to persuade retailers of our case as it would be the quickest way to establish the Ombudsman. We are now left with no alternative but to set out the new Code of Practice and recommend that BIS set up the Ombudsman to oversee its operation.

It is clearly desirable that the Ombudsman be established as soon as is practicable. The new Code of Practice will work much better as a result and

suppliers and retailers will have greater confidence that its terms will be observed.

The costs of the Ombudsman, which we think would be about £5 million a year in total including initial set-up costs, are very modest compared with the annual turnover of £70 billion in grocery supplies to retailers. It is obviously for BIS to consider these matters very carefully but we are making our views as clear as we can.

The new Code of Practice will be included in all retailers' contracts with their suppliers and provide a much clearer framework for these agreements. The aim is to ensure that suppliers do not have costs imposed on them unexpectedly or unfairly by retailers.

The GSCOP is based on the existing Supermarkets Code of Practice, but will be amended so that:

- the provisions of the GSCOP are included in every contract between grocery retailers and their suppliers;
- all retailers with groceries turnover in excess of £1 billion per year are included within its scope;
- an overarching fair dealing provision is included;
- retailers are prohibited from making retrospective adjustments to terms and conditions of supply;
- retailers are prohibited from entering into arrangements with suppliers that result in suppliers being held liable for losses due to shrinkage;
- retailers are required to enter into binding arbitration to resolve any dispute with a supplier; and
- retailers are required to keep written records of all agreements with suppliers on terms and conditions of supply.

The Ombudsman would be appointed by the Office of Fair Trading (OFT), which would also set an annual budget for costs and expenses. These costs will be reimbursed from retailers using a formula which will take into account the size of retailers as well as the number of complaints involving them and requiring resolution. The overriding objective of the Ombudsman will be to undertake investigations and arbitrate disputes arising from GSCOP to promote the interests of consumers. Its principal duties will be:

- to act as an arbitrator between retailers and suppliers in relation to disputes arising under the GSCOP;
- to receive complaints in relation to a breach of the GSCOP, and where appropriate to conduct investigations;
- to publish guidance on specific provisions of the GSCOP when necessary;
- to make recommendations to retailers on how to improve compliance with the GSCOP and to monitor progress on the implementation of such recommendations; and
- to advise and report to the OFT on the operation of the GSCOP.

In its final report, the CC also outlined the need to improve competition between retailers in local areas. The CC is currently working on demonstrating the benefits of the 'competition test' following a legal challenge by Tesco. The CC published its [provisional decision](#) earlier this month. The CC will also shortly publish a draft Order outlining measures to prevent exclusivity arrangements and restrictive covenants being used by grocery retailers to restrict entry by competitors, in a further move to improve competition in local areas. On 29 July, BIS issued a consultation on amending the exemption for Land Agreements from the provisions of the Competition Act 1998 in response to another of the CC's recommendations.

Notes for editors

1. Under the Enterprise Act 2002 the OFT can make a market investigation reference to the CC if it has reasonable grounds for suspecting that competition is not working effectively in that market.
2. The inquiry was referred by the OFT on 9 May 2006. This market investigation reference followed an initial OFT study into the sector and public consultation. The CC published its final report on 30 April 2008. See news release at: www.competition-commission.org.uk/press_rel/2008/apr/pdf/14-08.pdf.
3. The members of the Inquiry Group are: Peter Freeman (Group Chairman), Jayne Almond, Barbara Donoghue, Alan Gregory, Alan Hamlin and Bruce Lyons.
4. Further information on the CC and its procedures, including its policy on the provision of information and the disclosure of evidence, can be obtained from its website at: www.competition-commission.org.uk.
5. Enquiries should be directed to Rory Taylor (email rory.taylor@cc.gsi.gov.uk) on 020 7271 0242.