



## News Release

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### **CC PUBLISHES CODE OF PRACTICE ORDER**

The Competition Commission (CC) has today published a draft Order for consultation which will see the creation of a new strengthened and extended Groceries Supply Code of Practice (GSCOP).

The Order, which is available at [www.competition-commission.org.uk](http://www.competition-commission.org.uk), follows the CC's inquiry into UK groceries retailing last year, which concluded that measures were needed to address its concerns about relationships between retailers and their suppliers. 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 order to improve competition in local areas. The CC will consider responses to the draft Orders before finalizing them.

The CC will also be consulting publicly in the next couple of weeks on draft undertakings which would establish an Ombudsman to oversee and resolve disputes under the new Code. Unlike with the GSCOP, the CC does not have the power to establish an Ombudsman itself, so this requires the agreement of retailers.

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

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

The Code will prohibit retrospective changes to terms and conditions, and limit the extent to which suppliers are required to pay for listings, promotions, inaccurate forecasts or customer complaints. It will also set out a clear procedure for resolving disputes and the requirement for retailers to provide reasonable notice and commercial justification before a supplier is de-listed.

We are not seeking to impose overly restrictive rules on commercial negotiations and it is not possible to set rules for every set of circumstances in supply agreements, given the variety of products, suppliers and situations.

What we are introducing are clear standards so that, for example, those elements in a supply agreement that could be subject to uncertainty and change

are discussed up front, so that both parties are agreed on how costs and payments will be allocated in those situations.

Suppliers are entitled to know where they stand and invest with greater security, which is provided by the strengthened Code. By extending the Code to include other retailers, it will also ensure that more suppliers benefit from this protection. Without it, the uncertainty and hardship caused by certain practices could significantly damage investment and innovation by suppliers and in turn, therefore, also harm consumers.

We remain clear that an Ombudsman is needed but the Code in itself will be a major improvement to relationships between retailers and suppliers and ultimately we think that will be in everyone's interest.

The GSCOP is based on the existing SCOP, but will be amended such 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 CC's recommendation for the inclusion of a 'competition test' in planning decisions on larger grocery stores was challenged by Tesco in a hearing at the Competition Appeal Tribunal (CAT) in November 2008. The CC is awaiting the CAT's verdict.

### **Notes for editors**

1. Under the Enterprise Act 2002 the Office of Fair Trading (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 April 30 2008. See news release at: [www.competition-commission.org.uk/press\\_rel/2008/apr/pdf/14-08.pdf](http://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](http://www.competition-commission.org.uk).
5. Enquiries should be directed to Rory Taylor (email [rory.taylor@cc.gsi.gov.uk](mailto:rory.taylor@cc.gsi.gov.uk)) on 020 7271 0242.