

The Competition Commission's  
recommendation to establish a  
groceries supply code of practice  
(GSCOP) Ombudsman.

The Government Response

JANUARY 2010

## **Competition Commission report into the supply of groceries in the UK**

### **Government Response to the Competition Commission's recommendation on the groceries supply code of practice (GSCOP) Ombudsman.**

#### **Introduction**

The Government thanks the Competition Commission's (CC) for its work on this important sector and the further recommendation arising from its 2008 report into the UK grocery market. The CC's final report was published on 30 April and the Government responded on 29 July 2008.<sup>1</sup>

The report highlighted a number of complex and important issues for the future of the groceries market. The CC report recognised that large grocery retailers with buyer power can pass on excessive risk and unexpected costs to their suppliers. The CC believes that consumers could suffer harm as a result of reduced investment and innovation in the supply chain.

It is the role of Government to provide the right market conditions to enable fair and free competition. The Government is keen to establish what can be done, to address the issues identified by the CC most effectively. This response is therefore the start of an ongoing dialogue and plan of work to deliver better competition in the sector and benefits to consumers.

The CC has put in place a new grocery supplier code of practice (GSCOP) and this comes into effect this February. It has also been working on a package of planning remedies including the lifting of existing exclusivity arrangements and restricting future ones, a ban on the imposition of future restrictive covenants, and a requirement for grocery retailers to release existing restrictive land covenants.

Government has consulted on the future of the Land Agreements Exclusion Order and has taken the decision to revoke the order in its entirety.<sup>2</sup>

The remainder of this Response considers one of the two remaining recommendations on the creation of a GSCOP Ombudsman.

We intend to respond to the remaining CC recommendation on introducing a Competition Test into the planning system in due course.

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<sup>1</sup>Competition Commission Market Investigation - The supply of groceries in the UK [http://www.competition-commission.org.uk/rep\\_pub/reports/2008/fulltext/538.pdf](http://www.competition-commission.org.uk/rep_pub/reports/2008/fulltext/538.pdf)  
Government Response to the Competition Commission's report into the supply of groceries in the UK July 2008 <http://www.berr.gov.uk/files/file47089.pdf>

<sup>2</sup> The Decision to Revoke the Competition Act 1998 (Land Agreement Exclusion and Revocation) Order 2004 <http://www.berr.gov.uk/files/file54193.pdf>

## The recommendation and the Government Response

### Supply Chain Practices

**The CC recommends that BIS take the steps necessary to establish an effective Ombudsman as soon as practicable. It is further recommended that the Ombudsman be given the power to levy significant monetary penalties on retailers for noncompliance with the GSCOP.<sup>3</sup>**

### Government Response

At the time of the Government's original response, the CC took the decision to replace the Supermarket Code of Practice (SCOP) with a new strengthened Groceries Supply Code of Practice (GSCOP). It also stated its intention to seek voluntary undertakings to establish a GSCOP Ombudsman to monitor and enforce compliance with the GSCOP. The CC added that if it did not obtain satisfactory undertakings within a reasonable period, BERR should take the necessary steps to establish the Ombudsman. In its response the Government said that if the matter came back to Government, any assessment would primarily be based on what is likely to be in consumers' best interests. Despite the CC's best efforts it has not been possible for the CC to obtain agreement from the grocery retailers about the establishment of the Ombudsman. On 4 August the CC formally published the GSCOP Order and recommended that the Government takes steps to establish an Ombudsman.

Over recent months Government Ministers and officials have received many written submissions and met with numerous parties with an interest in the outcome of this proposal to hear the full range of views.

It is widely acknowledged that the new GSCOP is a major improvement on the SCOP and if complied with should largely deal with the practices highlighted by the CC. For example, it requires the provision of standard terms and conditions, binding arbitration 21 days after the dispute is notified and conditions around de-listing of suppliers. However, the CC has pointed out during its main investigation that there is a reluctance of suppliers to come forward with specific instances of the type of conduct that illustrate the general concerns being raised. The CC believes that there is a greater need for an Ombudsman now than when the report was first published. The new GSCOP, although likely to be more effective, would still come up against this problem.

Retailers have stated that it is not in their interests to treat suppliers badly and that any additional costs of an Ombudsman were likely to be passed on to consumers. There is a feeling that the GSCOP should be allowed to bed

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<sup>3</sup> [http://www.competition-commission.org.uk/inquiries/ref2006/grocery/pdf/gscop\\_2\\_bis\\_letter.pdf](http://www.competition-commission.org.uk/inquiries/ref2006/grocery/pdf/gscop_2_bis_letter.pdf)

down before any decision is taken on establishing an Ombudsman. Retailers have also been concerned that an Ombudsman might broaden its activities and add to costs.

Government has considered very carefully all sides of the debate. On balance, Government believes that enforcement of the GSCOP is desirable. Government wants to ensure that the GSCOP can be independently enforced, and have the important power to hear anonymous complaints. Government is mindful of placing unnecessary costs on to business especially in a period of economic difficulty.

We are keen to ensure that large retailers covered by the GSCOP, especially those who are new to the regime, are able concentrate on the immediate task of complying with the GSCOP by 4 February 2010. We accept in principle the need for a body to enforce the GSCOP, and plan to consult in February who that body might be (including possibly the OFT) and the powers that it might have.