



# Regulatory intervention in trading relationships

## A recipe for fair play?

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The voice for brands



# British Brands Group

- A trade body representing brand manufacturers
- The UK arm of AIM (European Brands Association)
- 1998 – first meeting on Unfair Trading Practices
- A core workstream from 2001
- Full range of activity – political lobbying, member services, consultation responses, liaison with regulators



# Background

- Competition Commission finding (2000) – 27 unfair practices
- Supermarket Code of Practice, enforced by Office of Fair Trading
- Competition Commission finding (2008) – practices continue
- Stronger Code (GSCOP) with a dedicated monitor / enforcer
- 2010 – GSCOP introduced
- Aim: to increase certainty for suppliers to benefit consumers
- 2013 – Groceries Code Adjudicator appointed



# Background

## Market overview

- 2008 – top 4 supermarkets had c. 75% market share
  - Tesco the largest retailer (27% share)
  - Suppliers represent an income stream
- Today – Rapid growth of discounters at expense of top 4
  - Changes in shopper behaviour – to convenience / online
  - Shift from promotions to EDLP and front margin
  - Shift to simplification



# Groceries Supply Code of Practice

## Key features

- Covers all direct suppliers to supermarkets, irrespective of size
- GSCOP must be in Supply Agreements (contract law applies)
- Agreements and changes must be in writing
- Retailers must have Code Compliance Officers
- Retailers must: report annually; Train annually
- Onus on retailers to demonstrate compliance
- Adjudicator can use information from any source
- Adjudicator has information gathering power
- Adjudicator required to protect supplier anonymity



# Groceries Code Adjudicator

- A supplier background
- Established by Act of Parliament
- Funded by levy on retailers
- Roles: guidance; investigations; arbitrations
- Remedies: recommendations; publication; fines (since April 2015)





# The GCA's Approach

- Clear guidance on how she will work + transparency
- Collaborative approach with Code Compliance Officers
- Active promotion of her role and proactive
- Broad interpretation of the Code
- Five priority areas, ongoing
- *"Two strikes and you are out"*
- Recognises the need to change culture
- Keen to work with trade associations
- Supplier insights from annual survey of suppliers
- Annual conference + quarterly newsletter + workshops



# Enforcement actions

- 4 case studies published
- 2 best practice statements published
- 1 consultation – on indirect payments for better shelf position
- Agreement on forensic auditing with 8 out of 10 retailers
- Facilitating industry solution to *drop and drive*
- 1 investigation
  - Broad interpretation of *delay in payments*
  - Clarity on margin maintenance requirements
  - Tesco referred to CMA on Supply Agreements
  - Concerns over range reviews and category captaincy
- 4 arbitrations





# Retailer responses

- *“We will not tolerate GSCOP being used tactically”*
- Buyers sensitive / responsive to GSCOP and its language
- More polite!
- Insights from forensic auditing exercise
- Focus on Supply Agreements
- Iceland – Supplier promise
- Waitrose – Improved payment terms for small suppliers
- Morrisons – No charges for consumer complaints; improved payment terms for small suppliers



# Supplier responses

- High levels of ignorance
- High levels of scepticism
- Deep concern over anonymity / unwilling to inform
- Slow to train their teams
- Slow to consider implications for company processes
- Some wish to extend the Code



# Role for trade associations

- Shaped the remedy
- A source of information for members / advice line
- A further line of protection for supplier anonymity
- Training courses give insight to prevailing practices
- Adjudicator requires the oxygen of information
  - Half yearly reports from training courses
  - Reports on prevalent practices



# The future

- The GSCOP and GCA considered a success
- The Tesco investigation demonstrates the need
- Pressure to extend her role (indirect suppliers; milk pricing)
- First GCA review – awaiting results
- The approach has been replicated in the pub sector



# Summary

- A 'grey' code works in suppliers' favour
- The style of the Adjudicator is crucial
- The Adjudicator is having a significant impact
- A light is being shone into murky places - evidence
- Culture change takes time
- Suppliers have been slow off the mark but are catching up



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