

WHAT HAVE WE LEARNED FROM THE REGULATION OF UNFAIR TRADING PRACTICES?

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Barriers to effective enforcement

▶ Supplier side

- ▶ Fear of retaliation
- ▶ Lack of clarity as to outcomes (unclear rules/guidance)
- ▶ Length of time prior to decision

▶ Buyer side

- ▶ Lack of consequences
- ▶ Lack of publicity
- ▶ Inertia

67% fear negative consequences in case of complaint (EC Public consultation 2013)

Finnish Farmers Union leaves national SCI due to lack of sanctioning possibilities (2015)

Effective enforcement regime

- ▶ **Publicity**
- ▶ **Independent enforcer**
- ▶ **Enforcer/retailer interaction**
- ▶ **Enforcer/supplier interaction**
- ▶ **Sanctions/consequences**
- ▶ **Managing risks for suppliers**



United Kingdom



Key Features

- ▶ Grocery Code Adjudicator
- ▶ Ability to initiate own investigations
- ▶ Power to fine
- ▶ Monitoring of progress e.g. Annual Survey
- ▶ Code Compliance Officer

Key Issues

- ▶ Lack of awareness and understanding of GSCOP in some places
- ▶ Reluctance of suppliers to use dispute resolution systems

ASDA

Waitrose

TESCO

CO
OP

Morrisons
Since 1899

M&S



Australia



Key features

- ▶ Voluntary regime
- ▶ Code Compliance Manager (CCM) within each signatory
 - ▶ Investigate and resolve supplier complaints
- ▶ Commission monitors compliance
 - ▶ Enforcement action
 - ▶ Compliance checks

Key Issues

- ▶ CCM not sufficiently independent
- ▶ No requirement for CCM to protect supplier's confidentiality



Ireland



Key features

- ▶ Applies to retailers/wholesalers with >€50m turnover
- ▶ Commission monitors compliance
 - ▶ Investigates complaints
 - ▶ Power to issue contravention notices
- ▶ Criminal sanctions

Key Issues

- ▶ No dispute resolution procedure
- ▶ Irish Farmers union has called for industry-specific independent regulator



France

Key features

- ▶ Retailers governed by French Code on commercial practices
- ▶ New law prevents excessive price cutting
- ▶ Judicial dispute process
- ▶ DG for Competition has investigative powers



Key Issues

- ▶ Judicial recourse
 - ▶ No confidentiality
 - ▶ Cost implications

Belgium



Key features

- ▶ Supply chain initiative
 - ▶ Based on EU SCI
- ▶ Dispute resolution
 - ▶ Individual
 - ▶ Aggregated
- ▶ Yearly survey



Key Issues

- ▶ Voluntary
- ▶ No independent monitoring committee

Jurisdiction	Supplier anonymity	Sanctions			Enforcement action
		Fines	Publicised	Other	
Australia	No	No	Optional	Injunctions	No
Ireland	N/A	€3000 (1st summary conviction) €100,000 (subsequent conviction on indictment)	N/A	6 months imprisonment (1 st summary conviction) 2 years imprisonment (subsequent conviction on indictment)	No
Spain	Yes	€3000-€1m	Yes	recommendations	347 sanction proceedings/ 95 fines (2016)
France	Yes	Admin fines €75,000(ind.) €375,000(entity) Civil sanctions €5m	Yes	Injunctions	52 investigations/ 6 civil proceedings/ 134 criminal sanctions (2016)
Czech Republic	Yes	Up to €39,141,000/10% of turnover	Yes	Injunctions	31 investigations (2016)
Hungary	Yes	Up to €1,591,000/10% of turnover	Yes	Injunctions Trader commitments	152 investigations/ 29 fines/ 11 trader commitments
UK	Yes	1% of UK turnover	Yes	Recommendations	2 Investigations

Conclusion

Key qualities of an effective regime

- ▶ Continuous engagement
- ▶ Supplier anonymity
- ▶ Sanctions
 - ▶ Fines?
 - ▶ Publicity?



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