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

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

Key qualities of an effective regime

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