



News Release

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GROCERIES MARKET INVESTIGATION— FINAL REPORT

The Competition Commission (CC) has today published its final report in its inquiry into UK groceries retailing, including measures to improve competition in local areas and to address its concerns about relationships between retailers and their suppliers.

The measures include:

- a recommendation for the inclusion of a 'competition test' in planning decisions on larger grocery stores;
- action to prevent land agreements which can restrict entry by competitors;
- the creation of a new strengthened and extended Groceries Supply Code of Practice; and
- a recommendation to establish an independent Ombudsman to oversee and enforce the Code.

In its final report, the CC has concluded that, whilst UK grocery retailers are, in many respects, delivering a good deal for consumers, action is needed to improve competition in local markets and to address relationships between retailers and their suppliers.

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

The size of the market, the number of parties involved and the range of issues examined all mean that this has been a major inquiry. We have looked extensively and listened very carefully when looking at all the matters raised with us but our overriding concern throughout has been whether the market is working well in the interests of consumers.

In many important respects, consumers are receiving the benefits of competition, such as value, choice, innovation and convenience, but we need to take appropriate action to address those areas where they could be served better and where their interests could be damaged in future. We have been very careful to ensure that our actions match the scale of the problems we have identified.

Some aspects of the way retailers deal with their suppliers could, if left unchecked, also harm consumers. The changes to the existing Code of Practice,

along with the recommendation of an independent Ombudsman to police the code, aim to improve the existing system by making it more robust and proactive in tackling those practices which can damage investment by suppliers. We think that it would be in everyone's interest that a code governing retailers and suppliers enjoys the confidence of all those involved. Retailers with good practices and relationships should have nothing to fear.

In other cases, whilst we have been sympathetic to those finding themselves under pressure in this market, particularly independent retailers, this does not mean that competition is not working well—it is often the effects of rivalry between retailers which benefit the consumer. Competing with large retailers is difficult but our evidence does not show that independent retailers or the wholesalers that supply them are in terminal decline. It is not impossible for them to compete and in the current economic climate the benefits of vigorous competition are as relevant as ever.

Although, in many areas, there is a good choice and strong competition between retailers, there are also a significant number of local areas where larger grocery stores face limited competition and local shoppers lose out. That is why we want to see the introduction of a competition test as part of the planning regime to prevent local areas developing like this in the future. We are also taking action to prevent retailers using restrictive covenants and other agreements to frustrate entry by competitors in such areas.

We have obviously noted the Office of Fair Trading's reported recent actions in relation to possible price fixing in this market and will continue to assist its continuing investigation. It would be quite wrong to jump to any conclusions on this at this stage. The focus of our investigation has been different although we have looked critically at the conditions for coordination. Our conclusion that this is a generally competitive market is not inconsistent with the possibility of some occurrences of anti-competitive behaviour, either now or in the future, and it is quite right that such allegations are thoroughly investigated.

The CC has carried out an exhaustive inquiry into the business of groceries retailing, having received over 700 submissions from retailers, suppliers, consumers, local authorities and other interested parties; held 81 hearings in England, Scotland, Wales and Northern Ireland; as well as analysing existing data and research covering the whole industry.

Since first highlighting its concerns in its provisional findings report published last October, the CC has been discussing its proposed remedies with retailers, suppliers, trade associations, the Office of Fair Trading (OFT), other government departments and interested parties. Following these discussions, the CC has now finalized a package of measures which it considers will be practical and effective in addressing its competition findings to the benefit of customers.

The full package of remedies comprises the following.

Local competition

The CC is recommending that:

- The Department of Communities and Local Government (CLG), the Scottish Executive, the Welsh Assembly Government and the Northern Ireland Executive should take such steps as are necessary to make the OFT a statutory consultee to LPAs on all applications for planning permission, whether submitted by a grocery retailer or a third party, for

development of a grocery store (including new stores and extensions) where that store had, or after the proposed scheme has been implemented will have, a net sales area in excess of 1,000 sq metres.

- The OFT should provide advice to the LPA on whether a particular retailer has passed or failed a 'competition test'. Applications would pass the test if within the area bounded by a 10-minute drive-time of the development site: the grocery retailer that would operate the new store was a new entrant to that area; or the total number of fascias in that area was four or more; or the total number of fascias in that area was three or fewer and the relevant grocery retailer would operate less than 60 per cent of groceries sales area (including the new store).
- In addition to the above measures, the CC has also decided to recommend to the Department for Business Enterprise and Regulatory Reform (BERR) that it amend the Competition Act 1998 (Land Agreements Exclusion and Revocation) Order 2004 to remove from its scope the type of exclusivity arrangements which the CC has found to raise competition concerns.

The CC will implement the following measures:

- Large grocery retailers will be required within six months of the date of the CC's report to release the 30 existing restrictive covenants in highly-concentrated local markets that the CC has identified in its report.
- Large grocery retailers with a strong local market position in a highly-concentrated local market may be required to release any existing restrictive covenants in that local market which may restrict grocery retailing or have equivalent effect and which were not notified to the CC, in accordance with a prescribed procedure involving an assessment by the OFT.
- Large grocery retailers will be prohibited from imposing new restrictive covenants that may restrict grocery retailing or which have equivalent effect (with exceptions for clauses in leases to secure residential use, and for user clauses setting out the use of the land in a way that mirrors a planning obligation).
- Large grocery retailers will be required not to enforce or seek the enforcement of any of the 30 existing exclusivity arrangements identified in the report where those arrangements have been in place for more than five years from the date of this report.
- Large grocery retailers with a strong local market position in a highly-concentrated local market may be required not to enforce certain exclusivity arrangements in that local market which may restrict grocery retailing or have equivalent effect and which were not notified to the CC, in accordance with a prescribed procedure involving an assessment by the OFT.
- Large grocery retailers will be required not to enforce or seek the enforcement of other exclusivity arrangements after the longer of five years from the date of this report or five years from the date the grocery store benefiting from the exclusivity opened.
- Grocery retailers will be required to provide to the OFT on request accurate figures for the groceries sales area of any store in the UK, and any other information that the OFT may require for the application of the competition test.
- Large grocery retailers will be required to notify to the OFT all acquisitions of existing stores of more than 1,000 sq metres net sales area.

- The CC is not requiring any divestiture of stores or land holdings or any action by the retailers in respect of their leasing or subleasing of stores. It believes that the measures proposed are sufficient and proportionate in addressing its concerns.

Supply chain practices

Establishing a Groceries Supply Code of Practice (GSCOP), based on the existing SCOP, but amended such that:

- All retailers controlled by corporate groups with UK retail groceries turnover in excess of £1 billion a year are included within its scope.
- An overarching fair dealing provision is included.
- Retailers are prohibited from making retrospective adjustments to terms of supply.
- Retailers are prohibited from entering into arrangements 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 under the GSCOP.
- Retailers are required to provide notice of and reasons for de-listing suppliers or significantly reducing suppliers' business.
- Retailers are required to establish an in-house compliance officer responsible for compliance with the GSCOP, with a direct reporting line to the audit committee (or non-executive director).
- Retailers are required to keep written records of all agreements with suppliers on terms of supply.
- Retailers are required to provide to the body monitoring and enforcing the GSCOP such information as it may reasonably require in pursuit of its functions.

In addition to the above remedies, the CC will seek undertakings from grocery retailers to establish a GSCOP Ombudsman to monitor and enforce compliance with the GSCOP, and whose functions are to include:

- the arbitration of disputes between suppliers and retailers arising under the GSCOP;
- gathering of information (for example, by receiving confidential complaints from suppliers and primary producers) and proactively investigating retailers' records in areas subject to complaint in order to identify whether breaches of the GSCOP have occurred;
- the publication of guidance on specific provisions of the GSCOP where it considers that differences of interpretation exist; and
- the publication of an annual report on the operation of the GSCOP.

In addition, the CC is recommending to BERR that if the CC does not secure satisfactory undertakings from the retailers creating the GSCOP Ombudsman within a reasonable period, BERR should take such steps as are necessary to establish the Ombudsman. The

CC further recommends that, if this is the case, BERR take steps to give the Ombudsman the power to levy significant financial penalties on the retailers for non-compliance.

If neither the CC nor BERR are successful in establishing the Ombudsman within a reasonable period of time, the functions of the Ombudsman will be carried out by the OFT, although arbitration of disputes under the GSCOP will be conducted by an independent body with expertise in dispute resolution.

The CC's terms of reference do not permit it to make a finding with respect to relations between primary producers and intermediaries, and it is therefore unable to make any formal recommendations in this regard. However, if it subsequently appears that, despite the operation of the GSCOP (and the Ombudsman) intermediaries continue to transfer excessive risks and unexpected costs further up the supply chain, it suggests that Defra and BERR should consider the introduction of appropriate measures, including the extension of the GSCOP and the role of the Ombudsman or the introduction of a similar, complementary code and arrangements to cover the intermediaries and primary producers, such as farmers.

Overall balance of measures

Bearing in mind that the relevant government departments are already intending to make changes to the planning regime as it affects grocery retailing, the CC has not made any recommendations for other changes to the planning system such as to the 'need' test or 'town centre first' policy.

Notes for editors

1. Under the Enterprise Act 2002 the 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 follows an initial OFT study into the sector and public consultation. The CC is required to publish its final report by 8 May 2008.
3. The members of the Inquiry Group are: Peter Freeman (Group Chairman), Jayne Almond, Barbara Donoghue, Alan Gregory, Alan Hamlin and Bruce Lyons. The Inquiry Director is Andrew Taylor.
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.
5. Enquiries should be directed to Rory Taylor (email rory.taylor@cc.gsi.gov.uk) on 020 7271 0242.