



Groceries Code
Adjudicator

Addendum: Response to consultation on payments for better positioning

16 March 2018

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Background

On 7 February 2017 the Groceries Code Adjudicator (GCA) published her response to the consultation on payments for better positioning.¹ Following this, an issue was raised with the GCA regarding possible payments made by suppliers to secure better positioning of their products on regulated retailers' online shopping portals. The GCA wanted to understand in more detail what retailers did to position supplier products in their virtual stores and asked the regulated retailers about their practices in this area. The GCA also discussed the issue with the Competition and Markets Authority (CMA).

Following this, the GCA considered her position in relation to supplier payments for increased or enhanced visibility of their products on the online shopping portals of regulated retailers, which may potentially raise an issue under paragraph 12 (No Payments for better positioning of goods unless in relation to Promotions) of the Code.

GCA conclusions

Regulated retailers are the retailers designated under the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order). There is no differentiation applied by the Order between the business channels selected by the designated retailers to reach consumers, whether convenience stores or virtual stores. The GCA will interpret paragraph 12 of the Code in the same way for all channels.

It is the GCA's view that in relation to the supply of groceries for resale online:

- The Code does not permit retailers directly or indirectly to require suppliers to make any payment for better positioning or more space, unless in relation to a promotion.
- Discussions about investment and offers of payment made by suppliers that might come together with a discussion about better positioning should demonstrably be freely held as part of normal commercial negotiations.
- Retailers should make clear on their websites where goods not on promotion appear more visible to customers as a result of:
 - Advertising paid for by a supplier; or
 - Any other payment received from a supplier to secure more space or better positioning.
- As websites develop and increasingly complex consumer choice algorithms emerge, retailers should be able to demonstrate that they are minimising the risk of any breaches of the Code arising in this area, not just in relation to payments for better positioning of goods but in all relevant areas of the Code.

¹ See 'Groceries Code Adjudicator – Response to consultation on payments for better positioning' (7 February 2017) for the full consultation response.