

Supply Agreements under the Groceries (Supply Chain Practices) Market Investigation Order 2009

CMA's report on compliance

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1. Introduction and purpose

1. The purpose of this document is to
 - explain the CMA's work on monitoring compliance¹ with those parts of the Groceries (Supply Chain Practices) Market Investigation Order 2009 ('the Order')² which relates to Groceries Supply Agreements³ ('Supply Agreements');
 - summarise the findings of the CMA's review of the Supply Agreements of the 10 Designated Retailers (the Appendix lists the Designated Retailers⁴ to which the Order and the Groceries Supply Code of Practice ('GSCOP') apply);
 - provide a checklist of key points for Designated Retailers in dealing with suppliers and compliance with Supply Agreements; and
 - advise suppliers what to expect from Designated Retailers regarding Supply Agreement practices.
2. This document is for guidance purposes only. It does not cover every aspect or eventuality of retailers' compliance with the Order. Instead the CMA has focused on key areas and highlighted examples of best practice carried out by Designated Retailers.
3. Following the Groceries Code Adjudicator's ('the GCA') work on delay in payments under paragraph 5 of the GSCOP, the CMA carried out a review of the Designated Retailers' Supply Agreements.
4. We found that Supply Agreements varied in style and content from standard terms and conditions to bespoke agreements. Therefore, we have produced a checklist of key points (see paragraph 29 of this document), which Designated Retailers can use as a checklist to assist in complying with the Order.
5. During this review, the CMA has not identified any breaches of the Order.
6. Designated Retailers should contact the CMA immediately if any non-compliance issues are identified and should not leave any issues until they file their annual compliance reports.

¹ This is as part of the CMA's statutory duty under section 162 of the Enterprise Act 2002 to monitor undertakings and orders.

² See [Groceries \(Supply Chain Practices\) Market Investigation Order 2009 and explanatory note](#).

³ Supply Agreements as defined in Article 2 and Article 6 of the Order.

⁴ Designated Retailers as defined in the Order.

2. The Order and GSCOP

7. The CMA is responsible for monitoring compliance with the obligations on Designated Retailers that are set out in the Order, among other things ensuring that these retailers:
 - incorporate the GSCOP into Supply Agreements and make those agreements available in writing to their suppliers;
 - ensure that Supply Agreements do not contain any provisions that are inconsistent with the GSCOP;
 - train staff on the GSCOP;
 - appoint Code Compliance Officers;
 - respond to any requests from suppliers to initiate dispute resolution proceedings;
 - produce compliance reports and submit them to the CMA and the GCA; and
 - procure that their subsidiaries comply with the terms of the Order as if they were themselves bound by them.
8. The GCA is responsible for monitoring and enforcing the GSCOP.
9. The CMA has no role in resolving disputes between suppliers and retailers on the operation of the GSCOP. It is for the GCA to arbitrate in disputes raised and not resolved between suppliers and retailers; and for the GCA to encourage and enforce compliance with GSCOP on issues raised by suppliers that have wider implications for the sector. The CMA, therefore, does not provide guidance on the interpretation of the GSCOP or determine whether or not matters fall within the scope of the GSCOP.
10. The CMA has reviewed Supply Agreements to see whether they are compliant with the Order. In 2014 and 2015, the CMA sent a series of questions to all Designated Retailers asking for information about their Supply Agreements and dealings with suppliers. In its assessment of compliance, the CMA focused on the incorporation of the GSCOP into Supply Agreements; communication and dealings with new and existing suppliers; on-going changes to supply agreements; and staff training on the GSCOP and the Order.

3. CMA's observations on the level of compliance

Incorporation of the GSCOP into Supply Agreements

11. Article 5(1) of the Order requires that a Designated Retailer must not enter into or perform any Supply Agreement unless that Supply Agreement incorporates the GSCOP and does not contain any provisions that are inconsistent with the GSCOP. Supply may be either on retailer terms and conditions or those of the supplier. Where it is agreed that supply is to take place on the retailer's terms and conditions, these must incorporate the GSCOP.
12. In a number of cases highlighted by Designated Retailers to the CMA, agreement was not reached as to whether the contract was governed by the terms and conditions of the retailer or those of the supplier. In these circumstances a Designated Retailer is responsible for ensuring that its own terms and conditions incorporate the GSCOP and are communicated to suppliers as required by Article 5(1) of the Order.
13. All Designated Retailers have reported that they have incorporated the GSCOP into their Supply Agreements and that those agreements are in writing. Most Designated Retailers simply have a statement within their terms and conditions referring to the incorporation of the GSCOP.

Communication with suppliers

14. When communicating with suppliers on Supply Agreements, Designated Retailers use various methods, including letter, emails and electronic portals. The CMA considers that communication should not be solely through posts on electronic portals: see paragraph 22 of the Order's explanatory note for information on the use of electronic communication. Designated Retailers should draw to the attention of the supplier any changes which are published on any internal electronic portal or anywhere else and where possible demonstrate proactive contact with suppliers. For example, some Designated Retailers use of 'delivery receipt' and 'read receipt' email functions to help ensure that suppliers receive documents or notifications via email systems.
15. A number of Designated Retailers have established their own dedicated email addresses for supplier queries. The CMA notes the benefits of dedicated email addresses, so that suppliers have a clear channel to email the relevant retailer for particular queries. This also can help retailers manage their communication with suppliers effectively.

Dealing with new suppliers

16. A notice must be provided by a Designated Retailer to a new supplier before entering into a Supply Agreement. The notice should contain specific information as provided in Article 6(6) of the Order. Designated Retailers have confirmed that they have provided the required notice to new suppliers.
17. Article 6(2) of the Order reads, 'A Designated Retailer must not enter into a Supply Agreement with a Supplier unless the Supplier has a written copy of the Supply Agreement and of all terms and conditions which are intended by the Retailer and the Supplier to be incorporated, but are not fully documented, in the Supply Agreement.' Therefore, Designated Retailers should ensure that suppliers are provided with a Supply Agreement originating from the Designated Retailer, or that there is a Supply Agreement in place originating from the supplier.
18. Some Designated Retailers have reported that there is implied acceptance of terms if they do not receive a response from suppliers. The CMA requests Designated Retailers to communicate clearly to suppliers that they will be deemed to accept the Designated Retailer's terms and conditions in the event that they do not respond to correspondence about setting up a Supply Agreement.

Changes to supply agreements

19. Designated Retailers must hold written copies of all terms of Supply Agreements, as well as any subsequent agreements or arrangements made in accordance with the original Supply Agreement, and must ensure that their suppliers are provided with a copy of these documents.
20. Subsequent changes to Supply Agreements should be made clear to suppliers by Designated Retailers within a reasonable time frame. The CMA encourages Designated Retailers to communicate directly with affected suppliers and to review their processes for communicating changes to suppliers, in order to ensure compliance with the Order and maintain a good on-going relationship with their suppliers.
21. Designated Retailers reported that changes to supply arrangements occur more often in respect of seasonal grocery items/fresh produce than in non-seasonal items. Designated Retailers reported that these arrangements tend to be agreed verbally and then confirmed in writing and vary from weekly agreements to seasonal agreements. In all cases, Designated Retailers should provide confirmation of any changes in writing. Designated Retailers

have reported that these changes are communicated directly with the suppliers and/or through their electronic ordering systems.

22. Designated Retailers must provide full information on Supply Agreements to suppliers and written terms of Supply Agreements must be held by the Designated Retailer for a period of 12 months after the relevant supply agreement has expired. All such records held by the Designated Retailer must be made available on request to the Supplier to which they relate.
23. Designated Retailers reported that Supply Agreements are stored for the minimum period of 12 months and in some cases for years past the expiry date or indefinitely on electronic systems.

Staff training

24. Article 8(1) of the Order requires that Designated Retailers must train staff on the Order and GSCOP.
25. Some Designated Retailers reported training to be face to face, or to comprise e-modules, training slides or staff manual guides on the requirements of the Order. Some Designated Retailers reported that they provide monthly or annual training to new staff and refresher training for existing staff.
26. The CMA considers that ensuring a high level of staff awareness on the requirements of the Order and GSCOP is key for compliance. Therefore, it is important both new staff and existing staff undertake regular training on the requirements and for Designated Retailers to carry out staff assessment on training to evaluate effectiveness, staff understanding, awareness and practical application of the requirements.
27. The CMA considers that a dedicated email address to which staff are encouraged to send any queries relating to compliance with the GSCOP and Order would be useful in helping Designated Retailers to monitor compliance and to help identify any potential issues.

Dispute resolution procedures

28. The CMA notes that Designated Retailers have dispute resolution procedures in place. The CMA is keen to see Designated Retailers review the effectiveness of their procedures and ensure that these procedures are up to date, robust and communicated to relevant staff and suppliers.

4. Checklist of key points relating to Supply Agreements

29. The CMA expects Designated Retailers to have internal systems and procedures in place for maintaining effective relationships with suppliers and ensuring compliance with the Order and the GSCOP. Each Designated Retailer should consider how best to ensure compliance within the context of its own organisation. The key points are the following:
- Ensure that Supply Agreements do not contain any provisions that contradict the terms of the Code.
 - Be particularly careful and thorough in providing information on the Code to new suppliers.
 - Ensure that all suppliers know who to contact to raise queries about the terms and/or practical application of Supply Agreements.
 - Ensure that Supply Agreements are easily accessible to suppliers.
 - Ensure that internal processes are in place to enable suppliers to be clear about what is in their Supply Agreements.
 - Adopt effective communication channels to draw to the attention of the supplier any changes which are published on any internal electronic portal or anywhere else – for example, demonstrate proactive contact with suppliers.
 - Ensure that internal processes are in place to ensure that suppliers are updated with contact details for the Code Compliance Officer and the Buying Team.
 - Ensure GSCOP-related complaints, including complaints about supply terms and conditions, are recorded and reported as openly as possible in annual compliance reports.
 - Provide regular staff training awareness around the requirements of the Order and the Code.
 - Monitor the effectiveness of staff training on the Order and the Code.
 - Ensure any material relating to the Order and the Code is consistent and has been updated to refer to the 'Groceries Code Adjudicator' and the 'Competition and Markets Authority'.
 - Maintain regular and effective contact with suppliers.

- Present Supply Agreements in plain English and in a clear and easy to read font size.

5. Contacts

In what circumstances should suppliers bring concerns to the attention of the CMA?

30. Complaints about breaches of the Order will be investigated and pursued as the CMA considers appropriate.
31. Suppliers should inform the CMA if they believe that a Designated Retailer is in breach of any of the requirements of the Order. Such breaches might include, for example failure to:
 - incorporate the GSCOP into supply agreements;
 - ensure that their suppliers have a written copy of the Supply Agreement; and
 - follow the dispute resolution procedure when a dispute is raised by a supplier.

What should suppliers do if they want to pursue a dispute under the GSCOP?

32. The Order sets out a dispute resolution procedure under which suppliers can raise a dispute with the Designated Retailer concerned, involving the retailer's Code Compliance Officer in trying to resolve the dispute. Suppliers can also raise an issue with the GCA, for the GCA to engage with retailers according to its published collaborative approach, escalating the issue as appropriate. This is more appropriate for cross-cutting issues.

Enquiries about the GSCOP should be addressed to:

Groceries Code Adjudicator
Victoria House
37 Southampton Row
London
WC1B 4DA

Email: remediesmonitoringteam@cma.gov.uk

Telephone: 0203 738 6537

Enquiries about the Order should be addressed to:

Remedies Monitoring Team
Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: remediesmonitoringteam@cma.gov.uk

Telephone: 0203 738 6000

Appendix: List of Designated Retailers to which the Order and the Groceries Supply Code of Practice apply

- Aldi Stores Limited
- Asda Stores Limited
- Co-operative Group Limited
- Iceland Foods Limited
- J Sainsbury plc
- Lidl UK GmbH
- Marks & Spencer plc
- Tesco plc
- Waitrose Limited
- Wm Morrison Supermarkets plc