

CMA Response to BEIS' Statutory Consultation on the Groceries Code Adjudicator

1. The CMA is the UK's principal competition and consumer authority. It is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries, and enforcing competition and consumer law. The CMA's statutory duty is to promote competition, both within and outside the UK, for the benefit of consumers.
2. The CMA provides its response to the following questions in the consultation

The Competition Commission's investigation into the UK's retail grocery market recommended the creation of an Ombudsman to monitor and enforce compliance with the Code. This recommendation was taken forward in the Groceries Code Adjudicator Act 2013.

For the statutory review period, please comment on the GCA's effectiveness in fulfilling the role intended for it by the Competition Commission in 2009?

Please comment in particular on whether the GCA has sufficient and proper powers to enforce the Code effectively.

We would also welcome any comments you may have on how effective the GCA has been in exercising its powers.

3. The Competition and markets Authority (CMA) was established in April 2014 through the Enterprise and Regulatory Reform Act 2013, being comprised of a number of functions previously held by the Competition Commission and the Office of Fair Trading.
4. The Competition Commission investigated the supply of groceries, publishing its final report in April 2008, in which it noted that:

'We found that the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers, was a feature of the markets for the supply of groceries by all grocery stores, which prevents, restricts or distorts

competition in connection with the acquisition of groceries by large grocery retailers and some wholesalers and buying groups.’¹

‘[w]e decided to implement remedies establishing a Groceries Supply Code of Practice (GSCOP), based on the existing Supermarkets Code of Practice (SCOP), but amended such that:

(a) All grocery retailers with groceries turnover in excess of £1 billion a year are included within its scope.

(b) An overarching fair-dealing provision is included.

(c) Grocery retailers are prohibited from making retrospective adjustments to terms and conditions of supply.

(d) Grocery retailers are prohibited from entering into arrangements with suppliers that result in suppliers being held liable for losses due to shrinkage.

(e) Grocery retailers are required to enter into binding arbitration to resolve any dispute with a supplier arising under the GSCOP.

(f) Grocery retailers are required to keep written records of all agreements with suppliers on terms and conditions of supply.

(g) Grocery retailers are required to provide to the body monitoring and enforcing the GSCOP any information as it may reasonably require in pursuit of its functions, those functions to include the investigation of issues not the subject of dispute, including complaints from primary producers.’²

‘In addition to the above remedies, we 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:

(a) the gathering of information and proactive investigation of retailers’ records in areas subject to complaint in order to identify whether breaches of the GSCOP have occurred;

(b) the publication of guidance on specific provisions of the GSCOP where it considers that differences of interpretation exist; and

¹ [The supply of groceries in the UK market investigation – final report 30 April 2008](#) (paragraph 41).

² Ibid (paragraph 46).

*(c) the publication of an annual report on the operation of the GSCOP.*³

5. The CMA considers that, based on its interactions with the independent Groceries Code Adjudicator (GCA), and the work carried out by the GCA, the GCA has sufficient and appropriate powers to enforce compliance with the GSCOP effectively.
6. The CMA considers that the GCA has been effective in undertaking its role and exercising its powers. Before the GCA and the GSCOP were created and implemented, there were concerns around the behaviour of the then large grocery retailers in relation to some of their suppliers with this being one of the causes of the Office of Fair Trading referring the market to the Competition Commission on 9 May 2006 for a detailed investigation.
7. In the period leading up to this investigation, the Office of Fair Trading found there to be some suppliers concerned that it would not be in their interests to raise complaints regarding the above practices directly with the grocery retailers on which they depended as buyers of their products. This was because such suppliers considered that this could jeopardise their supply and the willingness of grocery retailers to purchase their products, or to do so on acceptable terms.
8. The creation of the GSCOP and the independent GCA with appropriate powers have collectively made significant progress in addressing these concerns. The GCA appears to be considered a valuable and trusted adjudicator, and has been effective in reducing the number of issues that suppliers experience with grocery retailers.⁴

Questions 8 and 9 on the advantages and disadvantages of transferring the GCA functions to the CMA, and question 10 on transferring the GCA to another public body

9. The decision whether to transfer the GCA's functions to the CMA or another public body is a matter for the government and Parliament. The CMA understands and supports the government's wish to ensure the most efficient and effective delivery of public services. The CMA stands ready to assist the government as necessary in developing the government's proposals to help deliver this.

³ Ibid (paragraph 47).

⁴ As shown by the graph on page 35 of the [GCA Annual Report 1 April 2021 to 31 March 2022](#)

10. The CMA explained the reasons for the GCA being established above, and highlighted that these reasons included addressing a former reluctance among suppliers to raise concerns with grocery retailers directly, due to concerns about their supply relationship.
11. The CMA considers that the independence of the GCA is an important reason why the GCA has been effective in improving supplier and retailer relationships. Moreover, independence is also a driver of the effectiveness of the option for suppliers using a confidential complaint route where information will be provided to the GCA about a particular retailer. The CMA would therefore encourage the government to ensure that, if it does decide to transfer the GCA's functions to the CMA or another public body, it does so in a way which preserves the trust that the GCA has developed with grocery suppliers and retailers. If the government wishes to ensure that the GCA's effectiveness is preserved it will also be important that any changes preserve the GCA's tools and resources. In particular, the CMA believes irrespective of any other changes that government may wish to make, it would be desirable to preserve the GCA's current funding arrangements. The CMA notes that because this funding comes from an industry levy, rather than through taxation, there would be no costs to the taxpayer from retaining this funding.