

COMPETITION AND MARKETS AUTHORITY - WRITTEN EVIDENCE (FDO0120)

Baroness Walmsley
Chair of House of Lords Food, Diet &
Obesity Committee

From: Sarah Cardell
Chief Executive

Thank you for your letter of 23 April 2024 asking the Competition and Markets Authority (CMA) and the Groceries Code Adjudicator (GCA) to submit information on questions relating to your Committee's inquiry into food, diet and obesity.

I understand that the GCA has separately responded to a number of your questions. In what follows, I have answered those questions where the CMA is able to provide further information: in particular, I set out how issues regarding food, diet, obesity and healthy eating relate to the CMA's remit and day-to-day work, and the CMA's role in respect of the Groceries Supply Code of Practice (GSCOP).

The CMA's remit in respect of food, diet and obesity

The CMA's statutory duty is to promote competition for the benefit of consumers. Parliament has given the CMA powers and functions to meet this duty, including the enforcement of competition and consumer protection law; merger control; and the ability to look across markets to assess whether they are working well for consumers.

The competition-focused duty and functions do not give the CMA a direct role in promoting healthy eating or tackling obesity. In reviewing a merger between groceries retailers, for instance, we would typically consider whether it could lead to higher prices, reduced quality or choice for consumers, or reduced innovation.¹ In looking at the market as a whole, we would similarly consider whether competition operated in a way that benefitted consumers. Our recent work in the groceries sector, for instance, has focused on whether weak or ineffective competition has

¹ See, for example, the CMA's investigation of the merger between Sainsbury's and Asda – [J Sainsbury PLC / Asda Group Ltd merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/sainsbury-plc-asda-group-ltd-merger-inquiry)

been contributing to high food prices, and ensuring people can shop around and compare prices easily and with confidence.²

In assessing whether markets are working well for consumers, the CMA does not ignore government policy objectives, however; and it is clearly important that the groceries market provides consumers with access to a range of healthy food at competitive prices. As part of our recent work in the groceries sector, we did not see evidence that competition was operating in a way that undermined this objective; and we heard that fresh fruit and vegetables are often “key value items” on which large groceries retailers compete strongly on price. However, we remain open to considering any information relevant to this question. The concerns expressed in your letter regarding product positioning may in part be a reflection of the fact that fresh fruit and vegetables (and unprocessed food more generally) is often unbranded, meaning there is less in-store promotional activity than for products where brands have a larger market share.

The CMA’s role in respect of the Groceries Supply Code of Practice

The GSCOP was created by a remedy – the Groceries (Supply Chain Practices) Market Investigation Order 2009 – imposed by the Competition Commission (the CMA’s predecessor) following its 2006 to 2008 market investigation into the supply of groceries in the UK. The investigation found there were features of the markets for the supply of groceries which adversely affected competition in the UK. One of these features was the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transferred excessive risks and unexpected costs to those suppliers. The remedy was intended to address the adverse effects of this feature on competition, innovation and the consequential detrimental effects on customers.

The GCA is the statutory body created by the Groceries Code Adjudicator Act 2013 to monitor and enforce compliance with the GSCOP. The CMA’s role today is limited to ensuring the Order remains appropriate, and specifically considering those retailers that should be designated to fall within the scope of the GSCOP and the GCA.³ The GCA ensures these

² [Price inflation and competition in food and grocery manufacturing and supply - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

designated retailers treat their direct suppliers lawfully and fairly.

The Order that created GSCOP can only be changed by the CMA where there are one or more changes of circumstance that mean the Order is no longer appropriate for remedying the stated adverse effects on competition identified in the original 2008 report. In particular, the CMA cannot revise the Order to take account of new or additional matters or areas that have subsequently come to light, and consequently it cannot be changed by the CMA to take account of wider concerns around the promotion and placement of unhealthy food in grocery retailers' stores.

I hope you and your Committee find this information helpful. Please do not hesitate to get in touch if you have any further questions.

13 May 2024

³ In practice there is a turnover threshold of £1bn for the sale of groceries over which the CMA has discretion over whether to designate a retailer to become part of GSCOP.