

MARK WHITE, GROCERIES CODE ADJUDICATOR - WRITTEN EVIDENCE (FDO0149)

Dear Lady Walmsley,

Thank you for your letter dated 23 April 2024 addressed jointly to Sarah Cardell of the Competition and Markets Authority ("CMA") and to me. I welcome the opportunity to submit evidence to the Committee's inquiry.

1. Can you explain in what ways (if any) issues and concerns relating to food, diet and obesity, and healthy eating, impinge upon your respective remits and day-to-day work?

As Groceries Code Adjudicator ("GCA"), I am responsible for regulating the relationships between the UK's 14 largest grocery retailers and their direct suppliers by encouraging, monitoring and enforcing compliance with the Groceries Supply Code of Practice ("the Code"). The Code sets out how designated retailers ("Retailers") must act across a range of supply chain practices and is intended to prevent the transfer of excessive risk or unexpected costs by Retailers to their direct suppliers that were identified by the Competition Commission ("CC") in its 2008 findings following its investigation into the supply of groceries by retailers in the UK.¹

Since the establishment of the GCA in 2013, its work has resulted in improved compliance with the Code. In the first GCA annual survey in 2014, the average reported overall Code compliance among the then-designated retailers was 73%. This compares to 92% in my 2023 survey. Where this improved compliance by Retailers enables suppliers to invest in new capacity, products and production processes (issues identified by the CC investigation) the supply of products may be improved, enabling consumer choices about the food they buy.

The Code, and therefore the work of the GCA, does not explicitly cover diet, obesity or healthy eating. The practices prohibited or mandated by the Code apply to all groceries as defined in the Code ("Groceries"), regardless of categorisation.

2. We note that the Competition and Markets Authority owns, and determines which retailers should be covered by, the Groceries Supply Code of Practice (GSCOP). Article 12 of the GSCOP states that "a Retailer must not directly or indirectly Require a Supplier to make any Payment in order to secure better positioning or an increase in the allocation of shelf space for any Grocery products of that Supplier within a store unless such Payment is made in relation to a Promotion." Could you indicate whether the GSCOP provides any guidance in relation to supporting the supply and

¹ Competition Commission (2008), The supply of groceries in the UK market investigation

positioning of healthier products? If not, could you give your opinion on whether the GSCOP could or should be modified to better ensure the provision and display of healthier products?

The Code does not contain any specific provisions relating to any of the groups of products that comprise Groceries, including healthier products.

The Groceries Code Adjudicator Act 2013 ("the Act") states that if I consider it appropriate for any changes to be made to the Code, I must recommend them to the CMA. I have not recommended any changes to the Code, including about the positioning of healthier food products, because I do not believe any change is necessary to achieve the original aims of the Code.

Were the CMA to make any changes to the Code or were there to be any changes to the role of the GCA, I would want to make sure the GCA received the powers and resources required to deliver any additional responsibilities.

3. Can you explain how the Groceries Code Adjudicator (GCA) is funded? How in practice does it fulfil its responsibility for enforcing the GSCOP? How does it work with retailers to ensure that they treat suppliers lawfully and fairly? What criteria does it use to deciding whether to investigate breaches, fine retailers and compensate suppliers?

In line with the Act, the GCA is funded through a levy on the Retailers, approved by the Secretary of State for Business and Trade. Unspent levy funds at the end of each financial year are returned to the Retailers in the proportions in which they were contributed.

The GCA takes a collaborative approach to regulation, intervening when it becomes aware of an issue, ideally before a supplier has faced any detriment or incurred any costs. I encourage suppliers and representative bodies to confidentially provide information about Retailers' treatment of their direct suppliers. That and other information, such as supplier opinions in response to my annual survey, informs the issues that I discuss with Retailers and the steps that Retailers take to resolve issues related to the Code.

When considering whether to launch an investigation and other activities, I apply the four prioritisation principles that are set out in the GCA's "Statutory guidance on how the Groceries Code Adjudicator will carry out investigation and enforcement functions": impact, strategic importance, risks & benefits, and resources.

Following an investigation, the GCA has the power to enforce through the imposition of financial penalties but these must be paid into the Consolidated Fund, rather than used to compensate suppliers. Suppliers can, however, bring arbitrations to the GCA to which a Retailer must submit in line with the Groceries (Supply Chain Practices) Market Investigation Order 2009. My decisions as arbitrator are binding (which may include the award of damages to the supplier) with the exception

that a party may appeal on the grounds set out in section 67 to 68 of the Arbitration Act 1996.

4. The Committee has heard evidence that the largest food and drink manufacturers derive most of their sales from unhealthy products and that large amounts of shelf space in supermarkets is given over to such products. What is your assessment of whether the application of the GSCOP favours the promotion of unhealthy foods in grocery retailing in the UK through more prominent placement and amount of shelf space?

The Code, having no provisions in relation to healthy or unhealthy products, does not explicitly favour the promotion of unhealthy food. I have discussed with Retailers government measures in relation to foods high in fat, salt and sugar (mainly in relation to how non-compliant products would be de-listed or supply agreements varied to accommodate the new regime) but, given the scope of the GCA's role, I have made no specific assessment regarding the on-shelf placement of unhealthy foods.

5. The Committee's attention has also been drawn to concerns that the Code does not adequately protect primary producers (i.e. farmers, growers). In that context, what is your assessment of the impact of the current system on large suppliers of unhealthy foods compared to suppliers of fresh and healthier produce?

The Code is intended to address the issue of Retailers holding buyer power over their direct suppliers that was uncovered during the CC investigation; it therefore applies equally in relation to all direct suppliers to Retailers whether they are primary producers or otherwise.

Given the importance to the GCA of understanding which businesses are likely to be the direct suppliers that receive the protections of the Code, I have recently discussed with Retailers both the degree of control that Retailers exert over subsidiary suppliers where an intermediary is in place and any addition or removal of intermediaries by Retailers. Intermediaries are indeed used by Retailers to supply produce but also exist in other categories, including alcoholic drinks. I have not made any specific assessment about any varying impact of the Code between categories caused by their differing levels of intermediation.

With regard to farmers and growers specifically, I engage with even those producers that are not direct suppliers, including given the information they can provide about changing supply chain structures and the impacts of Retailer behaviour on upstream suppliers. My interventions with the Retailers, for example to lengthen buyer tenure within a particular category or examine the setting of produce supply programmes, may benefit indirect suppliers of fresh produce as well as the direct suppliers that are covered by the Code.

I hope you will find the information in this letter useful. I shall consider the issues that you raise in delivering my work to ensure fair and lawful

treatment of suppliers, including seeking further relevant information directly from suppliers about the challenges that they face.

14 May 2024