



An Roinn Fiontar, Trádála agus Fostaíochta
Department of Enterprise, Trade and Employment

Code of Practice for Grocery Goods Undertakings

Consultation Paper

Competition & Consumer Policy Section
Department of Enterprise, Trade and Employment
www.entemp.ie/commerce/competition/whatsnew.htm

August 2009

Background:

Interest in proposals to introduce a Code of Practice for the grocery sector has its genesis in the context of the wider debate in relation to prices and in particular the differential in prices between this jurisdiction and Northern Ireland and the UK.

Since the publication of the Forfás report on the “*Cost of Running Retail Operations in Ireland*” in December 2008, the focus of the debate in relation to grocery prices and the differential in prices between here and Northern Ireland and the UK has shifted to issues in relation to the cost of sourcing products and distribution/supply arrangements attaching to the supply of products.

Retailers have strongly contended that the cost of sourcing grocery goods products is much dearer in Ireland than the cost of sourcing such products in the UK and elsewhere. On the other hand suppliers and distributors have contended that there is a significant imbalance in the relationship between retailers and suppliers, which is giving rise to suppliers being squeezed by the increasingly difficult demands being made by retailers.

The Government, for its part, is concerned to ensure that Ireland continues to have vibrant and successful food and retail sectors, given the important role these sectors play in the national economy.

With this in mind, the Tánaiste and Minister for Enterprise, Trade and Employment has announced her intention to introduce a Code of Practice which will have as its key objective the need to achieve a balance in the relationships between grocery goods undertakings, taking into account the need for a fair return to both suppliers and retailers, the need to enhance consumer welfare and the need to ensure that there is no impediment to the passing-on of lower prices to consumers.

While contractual agreements between suppliers and retailers are essentially matters for themselves, subject to compliance with the provisions of the Competition Act

2002 and the Competition (Amendment) Act 2006 as these apply to the grocery retail sector, the justification underlying the introduction of a Code of Practice in this area is to provide a framework in which the different elements of the retail chain can enter into negotiations and agree contractual arrangements between themselves which will help to ensure that those arrangements are balanced and fair and ultimately ensure that interests of all parties, including consumers, are respected.

A public consultation process is now being launched to seek the views of all stakeholders in relation to the details of the provisions of such a Code.

This document seeks to gather public views. A series of questions is posed in order to focus the debate. An initial draft outline of the form such a Code of Practice for Grocery Goods Undertakings might take is also set out as a guide for comments.

Summary of questions to be addressed:

Apart from the general question of whether there should be a Code or not in the grocery sector, the following questions have been set to help focus the consultation process:

- Q.1 Should the introduction of any Code be on a voluntary or statutory basis? Who should draw-up such a Code? How do you see compliance costs varying between a voluntary and a statutory Code?
- Q.2 Depending on whether any Code is voluntary or statutory, how should it be enforced? How should such enforcement be funded?
- Q.3 Should a separate Ombudsman's office be established, and, if so, how and by whom will this be funded, both on establishment and on an ongoing basis?
- Q.4 What type of grocery chain elements should be covered by the Code? Should a threshold be introduced to limit the application of the Code? If so, on what criteria should it be based and at what level should it be set?

- Q.5 Should any Code be limited in geographical extent and, if so, what should that limitation be and how would the provisions of the Code be enforced against grocery goods undertakings located outside the jurisdiction?
- Q.6 Will the provisions of the attached initial draft outline Code help to achieve a fair balance in the relationships between retailers and suppliers? Are there any specific provisions, which inhibit achieving that balance? Are there other provisions, which might help to achieve that balance?
- Q.7 What will be the impact of any Code on the consumer and prices of goods for consumers and how should any Code be framed to enhance consumer welfare and the need to ensure that there is no impediment to the passing-on of lower prices to consumers?
- Q.8 Have you any specific comments to make on the contents of the draft outline Code of Practice for Grocery Goods Undertakings, appended to this document?

Detailed questions:

The Department would welcome comments and observations in relation to any aspect or issue in relation to the introduction of a Code, including whether or not a Code is needed.

The issue of compliance costs associated with the introduction of any Code, on all parties, should also be considered. Any Code (irrespective of its status as voluntary or statutory) will have an inevitable knock-on administrative burden associated with it along with associated costs. Comments and observations on this are also invited.

The Department would particularly welcome comments in relation to a number of specific issues which it is considered need to be addressed in any examination of this matter. These are set out below; subsequent review of the consultation process will give particular attention to these issues.

Persons, enterprises or groups wishing to make submissions are encouraged to draw on their own experiences, whether within or outside of Ireland.

1. *Voluntary –v- Statutory Code*

Q.1 Should the introduction of any Code be on a voluntary or statutory basis? Who should draw-up such a Code? How do you see compliance costs varying between a voluntary and a statutory Code?

The first issue that arises is the basis upon which such a Code could be introduced, namely whether the Code should be a voluntary or a statutory Code.

Insofar as a voluntary Code is concerned, the feasibility of introducing a Code of this nature is very much dependant on the willingness of the different sides of the grocery goods sector to subscribe to a Code and to submit to the compliance provisions proposed in the Code. It also raises the issue of who would be responsible for the drawing-up of a voluntary Code; the term “voluntary Code” would imply that the relevant grocery goods undertakings would carry that responsibility.

If the Code is to have statutory authority, then legislative provision will have to be made for its introduction. There is currently no legislative basis for introducing a statutory Code of this nature. If a decision is taken to introduce a statutory Code, then the opportunity could be taken in the context of the legislation currently being drafted to merge the Competition Authority and the National Consumer Agency to make provision to allow the Minister/merged body to draw up Statutory Codes of Practice. Alternatively, rather than making provision to allow for the promulgation of a statutory Code, the legislation itself could specify whatever obligations should apply to grocery goods undertakings, similar to the manner in which the Competition (Amendment) Act 2006 set out particular obligations for grocery goods undertakings.

2. Enforcement

<p>Q.2 Depending on whether any Code is voluntary or statutory, how should it be enforced? How should such enforcement be funded?</p>
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Central to any consideration of the introduction of a Code is the question of enforcement and how the provisions of any Code or other legislative measure are to be policed and what sanctions can be applied to those found in breach.

The options that need to be considered are very much dependent on the status of the Code viz. whether it is to be voluntary or statutory.

If it is a voluntary Code, then the issue of how one enforces any breach or adjudicates in relation to disputes would appear to lie in the use of an agreed dispute resolution mechanism, which would have the power to investigate complaints, arbitrate on the issue and possibly impose sanctions in instances of breaches of the Code. In that context, the funding for any new agreed dispute mechanism would appear to require contributions from the grocery goods undertakings covered by the Code.

If it is a statutory Code, then the issue of how one enforces any breach would appear to:

- continue the current mechanism whereby a statutory authority investigates complaints;
- make legislative provision for the establishment of a jurisdiction of the Courts which would allow a grocery goods undertaking to apply to Court for an order to enforce the terms of the Code of Practice;
- use the proposed merged NCA/Competition Authority body, which would have the power to investigate complaints and impose sanctions in instances of breaches of the Code;

- create the new office of a statutory Ombudsman, which would have the power to investigate complaints and impose sanctions in instances of breaches of the Code.

In the case of a statutory Code, the issue of funding of any enforcement body would also arise. Given current tight Government finances, and the move towards rationalisation of State bodies as opposed to creation of new ones, using Exchequer funding may not be feasible. Thus, the issue arises of whether a levy on grocery undertakings should be considered to pay for any new office being established and/or the running costs of enforcement of a Code by any of the options outlined above.

Insofar as sanctions are concerned, it is worth noting that the proposal in the UK is that complaints would be investigated by the Ombudsman (which would include complaints received on a confidential basis) who would also be empowered to proactively conduct investigations and where the Ombudsman finds undertakings to be in breach of the Code, the Ombudsman would make specific recommendations to such undertakings to ensure that they comply with the provisions of the Code. The issue of how these recommendations would be enforced in the UK has not yet been decided upon as of the date of this consultation paper.

3. Ombudsman.

Q.3 Should a separate Ombudsman's office be established, and, if so, how and by whom will this be funded, both on establishment and on an ongoing basis?

In terms of establishing an Ombudsman to enforce the provisions of the Code and/or to adjudicate in relation to disputes arising under the Code, the status of an Ombudsman in the case of a voluntary Code would presumably be one agreed between the relevant grocery goods undertakings. In this context, the cost of establishing the Ombudsman's office and its continued running costs would be met by

the relevant grocery goods undertakings. This, by definition, would require co-operation and buy-in between all parties.

In the case of a statutory Code, if a decision was taken to set up a separate Ombudsman's office, the same issues arise regarding the cost of establishing the Ombudsman's office and its continued running costs. Given current tight Government finances, and the move towards rationalisation of State bodies as opposed to the creation of new ones, the creation of a new Ombudsman's office using Exchequer funding may not be feasible or appropriate. Thus it may be necessary to make legislative provision for the payment of contributions from, or levies on, the relevant grocery goods undertakings to fund this office.

4. *Type of grocery chain elements to be covered by any Code and the thresholds for elements of the grocery chain to be covered by any Code.*

Q.4 What type of grocery chain elements should be covered by the Code? Should a threshold be introduced to limit the application of the Code? If so, on what criteria should it be based and at what level should it be set?

The grocery sector is quite complex with various types of relationships between retailers and their suppliers. The Competition Authority, in its report entitled "A Description of the Structure and Operation of Grocery Retailing and Wholesaling in Ireland: 2001 to 2006" contains a comprehensive description of the Irish grocery sector at both wholesale and retail levels. These vary from vertically-integrated retailers, to affiliated retailers to independent retailers; in addition, there is also the situation of direct relationships between producers and retailers. Thus, consideration must be given to the types of bodies to be covered by any Code.

Once the relevant elements of the grocery chain to be covered by any Code are decided upon, the issue arises as to whether there should be a threshold to limit the coverage to operations of a certain scale or size. Such a threshold could be based on

parameters such as turnover, they could be based on operations globally, within the island of Ireland or just in the Republic of Ireland, etc.

The proposed UK Code makes a distinction between retailers and those deemed “designated retailers”, namely retailers with groceries turnover in excess of Stg£1 billion per year. The scale of the Irish market compared to the UK would render this figure too high to be of practical use.

The issue of balance between the relevant grocery goods undertakings needs to be continually borne in mind. For a Code to have sectoral wide support and application, such a balance is required. Thus, the question arises as to what level of threshold should apply to grocery goods undertakings, (be they retailers, suppliers, distributors, producers) given the scale of the market in Ireland.

5 *Geographical extent of any Code.*

Q.5 Should any Code be limited in geographical extent and, if so, what should that limitation be and how would the provisions of the Code be enforced against grocery goods undertakings located outside the jurisdiction?

In a modern, global economy, retailers in Ireland source goods from a wide geographical area. In many cases, this is directly from suppliers and producers outside of the Republic of Ireland. Thus, the question of how any Code would deal with this issue is important. This is particularly the case when considering the issue of enforcement and the need for balance in any Code. Inability to enforce the Code on a given element of the grocery chain or leaving only one element open to sanction is liable to lead to credibility issues for the operation of the Code and possible legal consequences.

The proposed UK Code foresees suppliers as including “any person carrying on (or actively seeking to carry on) a business in the direct supply to any Retailer of Groceries for resale in the United Kingdom, and includes any such person established anywhere in the world, but excludes any person who is part of the same group of interconnected bodies corporate (as defined) as the Retailer to which it supplies;”

6 *How balance can be achieved in any Code between retailers and suppliers*

Q.6 Will the provisions of the attached initial draft outline Code help to achieve a fair balance in the relationships between retailers and suppliers? Are there any specific provisions, which inhibit achieving that balance? Are there other provisions, which might help to achieve that balance?

Retailers have strongly contended that the cost of sourcing grocery goods products is much dearer in Ireland than the cost of sourcing such products in the UK and elsewhere. In addition, some retailers have claimed (anecdotally) that they have been prevented from sourcing goods more cheaply (even Irish goods) from outside the Republic by being forced to source them from Irish agents/distributors at higher prices.

On the other hand suppliers and distributors have contended that there is a significant imbalance in the relationship between retailers and suppliers, which is giving rise to suppliers being squeezed by the increasingly difficult demands being made by retailers (based on retailers’ buying power).

Given these conflicting views it is important that the provisions of any Code are framed to ensure that there is a fair balance in the relationships between suppliers and retailers. The initial draft outline Code attached to this paper (see Question 8 below)

seeks to achieve such a balance. The question arises as to whether the provisions of the attached draft do achieve that balance.

7. *The impact of any Code on the consumer and prices of goods for consumers*

Q.7 What will be the impact of any Code on the consumer and prices of goods for consumers and how should any Code be framed to enhance consumer welfare and the need to ensure that there is no impediment to the passing-on of lower prices to consumers?

While the provisions of the Code are concentrated on achieving a fair balance between grocery goods undertakings, it is important to ensure that the consumers' interests are protected and that the provisions of the Code should not militate against those interests by preventing consumers from benefiting from lower prices.

In a competitive market, retailers will vie for customers through a range of incentives be they lower prices, more convenient shopping, longer opening hours, etc. Equally, suppliers will compete to sell their good to retailers using whatever competitive advantage they can muster to do so. However, ultimately, the consumer will determine where s/he shops and the price that s/he will pay.

The introduction of any Code of Practice, while attempting to achieve a balance in the relationships between grocery goods undertakings, must also take into account the need to enhance consumer welfare and the need to ensure that there is no impediment to the passing-on of lower prices to consumers. This has particular importance in the current economic climate of rising unemployment and falling take-home pay.

8. *Draft outline of a possible Code of Practice for Grocery Goods Undertakings*

Q.8 Have you any specific comments to make on the contents of the draft outline Code of Practice for Grocery Goods Undertakings, appended to this document?

Without prejudice to the issues mentioned to this point, but in order to help focus consideration in this consultation process, a initial draft outline of a possible Code of Practice for Grocery Goods Undertakings is set out at Appendix I. This has been influenced by the text of the proposed UK Code of Practice but has been amended to suit Irish conditions. While many of the elements of the draft outline Code will be influenced by the inputs in relation to the series of questions already posed, observations and comments on the draft outline are also being sought.

Making a response to this consultation paper:

This consultation paper has been prepared to assist and inform those who wish to make a submission on the introduction of a Code of Practice for Grocery Goods Undertakings. Responses should be made in writing and are invited on any or all of the issues raised in this paper along with any additional comments you would like to make. Your attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Acts 1997-2003. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before making a decision on any Freedom of Information request. Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2003.

The Department may also decide to place submissions received on its Website. A decision on any such placement may take place **without prior consultation** with

respondents to this consultation process. Thus, it is in the interests of respondents to highlight, in their submissions, any commercially sensitive or confidential information at the time of submission.

Submissions should be marked “Grocery Code of Practice Consultation ” and sent by email to conspol@entemp.ie by post to the address below, not later than close of business on **Wednesday, 30th September 2009**.

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Appendix I

Draft outline of Code of Practice for Grocery Goods Undertakings

The Code is concerned with practices in the grocery goods trade and includes specific provisions to provide for fair trade between grocery goods undertakings. The key objective of the provisions of the Code is to achieve a balance in the relationships between grocery goods undertakings, taking into account the need to enhance consumer welfare and the need to ensure that there is no impediment to the passing-on of lower prices to consumers. The Code requires that these provisions be incorporated into contracts between grocery goods undertakings for the production, supply or distribution of grocery goods.

The Code applies to grocery goods undertakings with a [threshold of € X in (see question 4 above)]

1. The Code contains a number of definitions applicable throughout the Code.

Grocery goods means any food or drink for human consumption that it is intended to be sold as groceries, and includes:

- Any substance or thing sold or represented for use as food or drink for human consumption,
- Any substance or thing sold or represented for use as an additive, ingredient or processing aid in the preparation or production of food or drink for human consumption
- Intoxicating liquors.

Grocery goods do not include food or drink served or supplied on a grocery goods undertaking's premises in the course of providing catering, restaurant or take-away services or intoxicating liquor served or supplied for consumption on a grocery goods undertaking's premises or any similar hospitality services.

Grocery Goods Undertaking means an undertaking that is engaged for gain in the production, supply or distribution of grocery goods, whether or not the undertaking is engaged in the direct sale of those goods to the public. In the case of undertakings producing, supplying or distributing additives, ingredients or processing aids in the preparation of or production of food or drink for human consumption, such undertakings are not grocery goods undertaking unless the additive, ingredient or processing aid is intended to be sold by a retailer as an additive, ingredient or processing aid.

Retailer means a grocery goods undertaking that sells or resells grocery goods directly to the public.

Supplier means a grocery goods undertaking carrying on (or actively seeking to carry on) a business in the direct supply to any retailer of groceries for resale to the public.

Payment or Payments means any compensation or inducement in any form (monetary or otherwise) and includes more favourable contractual terms.

Promotion means any offer for sale at an introductory or a reduced retail price or with some other benefit to consumers that is intended to subsist only for a specified period.

Reasonable Notice means a period of notice, the reasonableness of which will depend on the circumstances of the individual case, including:

- a) the duration of the Terms of Business Agreement to which the notice relates, or the frequency with which orders are placed by a retailer for relevant grocery goods;
- b) the characteristics of the relevant grocery goods including durability and external factors affecting their production;
- c) the value of any relevant order relative to the turnover of a supplier; and
- d) the overall impact of the information given in the notice on the business of a supplier;

Shrinkage means losses that occur after goods are delivered to a retailer's premises and arise where due to theft, the goods being lost or accounting error;

Wastage means grocery goods, which become unfit for sale subsequent to them being delivered to retailers.

2. Terms of Business Agreements to be in writing

Agreements between grocery goods undertakings, including agreements between suppliers and retailers, for the supply of grocery goods for the purpose of resale must record in writing all the terms and conditions attaching to such agreements as should subsequent contractual agreements or contractual arrangements made pursuant to an original agreement.

3. Variation of Terms of Business Agreements

Grocery goods undertakings, including suppliers and retailers, are prohibited from varying the Terms of Business Agreements retrospectively once they have been agreed unless the Agreement includes specific provisions allowing for such changes and details the specific circumstances and the manner in which changes may occur and the amount of notice to be given by the party seeking to change the agreement to the other party/parties to the agreement.

4. Changes to Supply Chain Procedures

Where a grocery goods undertaking requests another grocery goods undertaking to make significant changes to previously agreed supply chain procedures, the undertaking making the request shall provide reasonable written notice of these

changes to the other undertaking or shall compensate the undertaking for any costs incurred by the undertaking due to a failure to provide such notice.

5. Prompt Payments

A retailer shall pay for goods received from suppliers within a reasonable time after the date of the supplier's invoice.

(Note: Directive No. 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions provides in the absence of a fixed payment period in a contract, that a payment will be considered late if it is not made within 30 days of the receipt of the invoice requesting payment (European Communities (Late Payment in Commercial Transactions) Regulations 2002 (S.I. No. 388 of 2002)).

6. Marketing costs

A retailer is prohibited from requiring a supplier to make any payment towards a retailer's marketing costs unless such a contribution has been agreed in the Terms of Business Agreement.

7. Shrinkage Payments

A retailer shall not require a supplier to make any payment to cover shrinkage unless the Terms of Business Agreement specifically provides for the making of such payment and details the circumstances in which such payments may arise.

8. Wastage Payments

A retailer shall not require a supplier to make any payment to cover wastage unless the Terms of Business Agreement specifically provides for the making of such payment and details the circumstances in which such payments may arise.

9. Limited conditions for Payments as a condition of being a Supplier

A retailer is prohibited from requiring payments as a condition of listing a supplier's products unless such payments are made in relation to a promotion or the payments reflect the reasonable risk run by the retailer in listing new products.

10. Compensation for forecasting errors

Terms of Business Agreements should provide that retailers communicate to suppliers the basis upon which forecasts for supply, compiled by retailers, have been prepared. Retailers are required to compensate suppliers for erroneous forecasts unless the retailer can demonstrate that those forecasts had been prepared in good faith and in consultation with the supplier and unless the Terms of Business Agreement includes an unambiguous provision that full compensation is not appropriate.

11. No Payments for better positioning of goods unless in relation to Promotions

Unless provided for in the Terms of Business Agreements, a Retailer may not seek payments from a supplier to secure better positioning or an increase in the allocation of shelf space unless such payment is made in relation to a promotion.

12. Promotions

A retailer shall not directly or indirectly require a supplier to make any payment or grant any allowance for the advertising or display of grocery goods. A retailer shall not seek a supplier's participation in a promotion regarding the advertising or display of grocery goods where this would entail a retrospective variation to the Terms of Business Agreement between the retailer and the supplier.

13. Due care to be taken when ordering for promotions

Where retailers and suppliers have agreed to participate in a promotion in relation to certain grocery goods, the retailer is obliged to take reasonable care when ordering those grocery goods at a promotional wholesale price not to over order and to ensure that the basis on which any order is made in relation to promotional products is transparent. Where a retailer fails to take such steps, the retailer must compensate the supplier for any product over ordered and which it subsequently sells at a higher non-promotional retail price.

14. Payment for consumer complaints`

Terms of Business Agreements between grocery goods undertakings shall include specific provisions limiting a grocery goods undertaking's responsibility for costs arising from consumer complaints to those complaints which are attributable to the undertaking's negligence or default and shall not result in a profit accruing to another grocery goods undertaking.

15. Continuation, Renewal and Termination of Terms of Business Agreements

Terms of Business Agreements between grocery goods undertakings shall include specific provisions in relation to the circumstances in which Agreements relating to the supply of grocery goods may be continued, renewed or terminated. The provisions in relation to termination should also set out the period of notice to be given by a grocery goods undertaking who wishes to terminate a Business Agreement with another grocery goods undertaking.

16. Ombudsman

Investigations, complaints and disputes between grocery goods undertakings in relation to the provisions of this Code shall be investigated by the Grocery Ombudsman.

The Grocery Ombudsman shall be appointed by the Minister for Enterprise, Trade and Employment.

The Ombudsman's principal duties will be:

- to investigate complaints in relation to alleged breaches of the Code
- to act as an arbitrator between grocery goods undertakings in relation to disputes arising under the Code;
- to gather information (for example, by receiving confidential complaints from retailers, suppliers, primary producers and consumer organizations or interest groups) and proactively investigate records in areas subject to complaint in order to identify whether breaches of the Code have occurred;
- to publish guidance on specific provisions of the Code as appropriate;

- to make recommendations to grocery goods undertakings on how to improve compliance with the Code and to monitor progress on the implementation of such recommendations; and
- to advise and report to the Minister for Enterprise, Trade and Employment on the operation of the Code.

Appendix II

Current legal situation:

The current legislative provisions, which are relevant to the grocery sector, are the Competition Act 2002 and the Competition (Amendment) Act 2006.

The Competition Act, 2002 covers a wide range of competition issues, which are not specific to the grocery sector alone. Of main interest are the sections of that Act which deal with anti-competitive agreements, decisions and concerted agreements (section 4) and abuse of dominant position (section 5).

The Competition (Amendment) Act, 2006 strengthens the existing provisions of the 2002 Act by continuing to prohibit certain practices previously prohibited by the Groceries Order, such as:

- the imposition of resale price maintenance in regard to the supply of grocery goods (resale price maintenance is the practice whereby manufacturers or suppliers specify the minimum prices at which their goods may be resold);
- unfair discrimination in regard to the supply of grocery goods (this is a reference to a supplier offering preferential terms to one buyer over another even though the transactions involved are equivalent in nature);
- retailers or wholesalers of grocery goods from compelling or coercing suppliers into payment of advertising allowances (e.g. where a retailer seeks payment from a supplier in order to advertise the supplier's goods as a means of attracting customers to the retailer's premises); and
- retailers from compelling or coercing suppliers into payment of "hello" money (i.e. where a retailer demands a payment from a supplier before agreeing to stock that supplier's products). The circumstances in which the practice is prohibited include on the opening of a new store, an extension to an existing store or a change of ownership of a store.

Following the removal of the Groceries' Order, the selling of grocery products below cost is not an offence, albeit that the provisions of competition law relating to the abuse of dominance which can occur where undertakings engage in predatory pricing, continue to apply. It should be noted, however, that the use of aggressive pricing as distinct from predatory pricing strategies is a perfectly legitimate marketing tool and is the normal outcome of the competitive process.

Any complaints in relation to such practices should be brought to the attention of the Competition Authority, which has responsibility for the enforcement of the Competition Acts.

Suppliers have argued that they are loath to make complaints to the Authority, as they fear that this would result in their products being delisted by retailers. For their part retailers in rejecting the view that they exercise unfair buying power over suppliers have pointed to the fact that there have been no prosecutions of retailers for engaging in practices prohibited under the Competition (Amendment) Act 2006.

Appendix III

UK situation:

A number of parties have pointed to the position in other member states in the EU where the relationship between suppliers and retailers is regulated to different degrees. In particular, reference has been made to the position in the UK where the UK Fair Trading Act 1973 allows the Secretary for Trade and Industry to seek and be given undertakings in relation to matters arising from a report carried out by the Competition Commission. In this regard the UK Supermarkets' Code of Practice (SCOP) forms part of statutory undertakings given to the Secretary of State following the Competition Commission's report on the supply of groceries from multiple stores in the United Kingdom published in October 2000. This Code provides for dealings between the supermarkets and their suppliers of groceries to be on a more transparent basis.

The operation of the UK Code has been the subject of criticisms particularly by suppliers as to its perceived effectiveness. The Code has been reviewed on a number of occasions. The latest review, which also followed an investigation by the Competition Commission undertaken at the request of the Office of Fair Trading, resulted in the Commission considering a number of remedies, which it felt would be effective in addressing the deficiencies in the existing Code. Prominent among the remedies is the Commission's proposal for the promulgation of a revised Groceries Supply Code of Practice (GSOP) and the establishment of an Ombudsman to adjudicate in relation to disputes arising under the Code.

As of 4 August 2009, the Competition Commission has published a new Grocery Supply Code of Practice (GSCOP) and has formally recommended to the UK Department for Business, Innovation and Skills that it should establish an Ombudsman to arbitrate on disputes between grocery retailers and suppliers and investigate complaints under the new GSCOP.