Frequently asked questions about the proposed extension of the Groceries Code Adjudicator (GCA)

Introduction

The case for extending the Groceries Code Adjudicator was made in 2008 by the Competition Commission, reflecting the concerns of many in the groceries sector since the early 2000s. In 2017 excessive risk and unexpected costs continue to be experienced by farmers and indirect suppliers to supermarkets. Extending the GCA’s remit to include indirect suppliers to supermarkets would support fairer, more competitive and more sustainable groceries supply chains. This is urgently needed at a time of such uncertainty for the groceries sector.

However, several frequently asked questions present the extension of the GCA as unwise or unworkable. These are outlined below, along with responses from the Groceries Code Action Network.

1. An extended Groceries Code Adjudicator would be too expensive to fund

The GCA is currently funded via a retrospective levy on supermarkets. Therefore, it represents no burden to the public purse. An extended GCA would be funded in much the same way, with extra resources be levied from the industry.

If the extended GCA expended much of its time and resources working with suppliers and manufacturers which were found to have been transgressing a code of fair dealing, it would be fair for the levy to be taken not just from supermarkets but from these suppliers as well.

Calculating how such a levy might work would not be complicated; the GCA already levies a larger proportion of its budget from some supermarkets based on an assessment of how much they have transgressed the Groceries Supply Code of Practice (GSCOP). A similar calculation could apply for non-supermarkets which created work for the GCA.

Extending the GCA’s remit would not mean that the regulator would be a drain on the resources of the industry. The economist employed on the Competition Commission’s 2006-08 enquiry into the groceries market pointed out that, given the size of the sector, an ombudsman that encouraged greater innovation and investment, and which costed £5-6 million a year, would justify its budget relatively easily. The GCA’s annual budget is currently around £2 million.

2. Extending the GCA is not as important as other pressing things that the government should be getting on with – such as Brexit

Brexit will cause major stresses to the food supply chains serving the UK market. The change in the UK’s trading relationships with many international markets is likely to cause shocks, which would be exacerbated by any further uncertainties in supply chains. Extending the GCA is vitally needed at this time to ensure that suppliers are not subjected to abusive purchasing practices and are able to maintain high quality and safety standards for their products.

3. The real problem is that farmers are not sufficiently entrepreneurial and competent at negotiating good deals
A system in which powerful buyers are able to subject smaller producers to unfair terms of trade is inherently skewed against farmers, regardless of their entrepreneurial skills. An extended GCA would rebalance power in supply chains, giving smaller producers the chance to conduct their business in a fair way and supporting competition.

4. The benefits of the GCA are now being experienced by the whole supply chain, and so extension is unnecessary

There is no evidence to suggest that the establishment of the GCA has created better supply chain conditions for those businesses that don’t fall within the GCA’s remit. Direct suppliers can treat their suppliers badly – pushing unfair risks and costs onto them – in a way that would be prohibited if a supermarket was doing it.

Additionally, the majority of food manufacturers believe there is a need for extending the powers of the Groceries Code Adjudicator.¹

5. Extending the GCA’s remit would entail unimaginable complexity, covering 1000s of suppliers

The GCA already regulates a hugely complex sector – ten huge businesses with multinational operations, 1000s of supplier relationships and lots of different supply chains each with a distinct dynamic.

The GCA has approached this challenge strategically: advertising its role, gathering information from a range of sources, and prioritising which issues warrant further investigation. There is no reason why this approach to regulation would need to change.

6. The Groceries Supply Code of Practice (GSCOP) is appropriate for the supermarket-direct supplier relationship, and an extended GCA would require an entirely new code

If the GCA’s remit were extended it would need to enforce the GSCOP as well as a new, complementary code. However, this new code would not need to be radically different in content to the GSCOP, retaining in particular Paragraph 2: The Principle of Fair Dealing. This was anticipated by the Competition Commission’s 2008 report:

“If it subsequently appears that, despite the operation of the GSCOP (and the Ombudsman – which became the GCA), intermediaries continue to transfer excessive risk and unexpected cost further up the supply chain, Defra and BERR (now BEIS) should consider the introduction of appropriate measures, including the extension of the GSCOP and the role of the Ombudsman or the introduction of a similar, complementary code and arrangements to cover the intermediaries and primary producers”²

7. Would an extension to the GCA not require a lengthy and expensive investigation by the Competition and Markets Authority?

¹ http://www.foodmanufacture.co.uk/Business-News/Food-Manufacturing-survey-reveals-managers-Brexit-fears
No. The government is able to legislate to establish a new regulator, or to add responsibilities to the GCA’s remit by amending the Groceries Code Adjudicator Act 2013. A CMA investigation might be required for any changes to the GSCOP, however this is not being proposed.

Again, the Competition Commission anticipated this situation in 2008, placing the responsibility for proposing solutions upon government departments:

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8. Extending the GCA would jeopardise its success thus far by taking focus away from the big supermarkets

There is no reason why an appropriately resourced regulator with the right legal powers cannot successfully support improved purchasing practices in all the businesses that fall within its remit.

Indeed, the GCA is currently undermined by the narrowness of its remit. Direct suppliers subjected to unfair purchasing practices by retailers are able to pass risks and costs onto their own supply chain, which lies outside the remit of the GCA. Therefore, there are few incentives for direct suppliers to report Code violations. The risks and costs often end up being borne by the weaker parts of a supply chain, who are not covered by the GCA, may not know about its role, and do not stand to gain from raising an issue.

9. Christine Tacon’s background is in retail, and therefore she might not be the right person to serve as GCA in an expanded role

Christine Tacon has been a popular appointee as the first Groceries Code Adjudicator, and her background is in retail, farming and manufacturing. However, the preferences and suitability of a particular office-holder should not dictate whether much-needed regulatory changes are made.

It may be the case that the structure of the GCA’s office could be changed so that less responsibility is invested in a single individual, perhaps by appointing Deputy Adjudicators with different areas of expertise or by changing the status of the office so it is a corporation aggregate rather than a corporation sole, thereby allowing staff members to exercise legal powers.

10. Will an extended GCA mean higher prices for consumers?

The GCA’s annual budget is currently around £2m. Even a larger Adjudicator would be tiny compared to the overall value of the groceries sector, and dwarfed by other considerations such as the fluctuating value of the pound and the tariffs applied to agricultural impacts.
There is no evidence to suggest that paying extra for a regulator will translate to higher consumer prices. Additionally, the imbalance of power within supply chains leads to inefficiencies and waste. A GCA that supported improved purchasing practices could eliminate some of this waste, leading to lower costs in the supply chain. These savings could be passed to the consumer.