

Intro to NZ Commerce Commission

Good morning.

As you know, the Groceries Code Adjudicator is the UK's independent supermarkets regulator. It was created in 2013 by Act of Parliament following 2 Competition Commission investigations into power imbalance and unfair trading practices in the sector, and after much Parliamentary lobbying from suppliers and their trade bodies. The Groceries Code Adjudicator is a Crown appointee and corporation sole, operationally independent of Government. I was the first UK Groceries Code Adjudicator. I started in 2013 and stood down towards the end of last year after 2 terms in office.

It took a considerable time for the GCA to be established. The Competition Commission first investigated the UK groceries market in 2002 following much lobbying by supplier organisations including the National Farmers' Union and Traidcraft who felt that the imbalance of power in the supply chain was leading to unfair trading practices. The Commission's remit is to protect the consumer and it found that far from being disadvantaged by supply chain practices, the consumer was doing very well out of the way the market worked, in the form of a good range of products and low prices. Nonetheless, it introduced a voluntary code for the largest UK retailers covering such issues as paying on time and not varying agreements without notice. Unsurprisingly, suppliers and their trade bodies were far from happy with this outcome and the Commission was persuaded to investigate a second time, in 2008. This time the Commission concluded that the practices investigated included some where excessive risk was being passed by the large retailers to their suppliers and as a result, it found there was a risk of large suppliers not innovating and smaller ones going out of business, leading to less consumer choice overall. This time the result was a legally binding Code of Practice effective from February 2010. It applied to the trading practices of the 10 largest UK groceries retailers, each with an annual groceries turnover over £1bn. The Commission gave these retailers 2 years to set up a voluntary Ombudsman to oversee the Code, but only one took the initiative forward and soon further lobbying led to the GCA Act.

The UK Code prohibits 15 specific practices found by the Commission to have caused harm to consumer interests, including that the large retailers must not delay payments to suppliers; that they can't unilaterally make changes to agreements or de-list suppliers without giving reasonable notice; they can't ask for payments for shelf positioning unless as part of a promotion; they can't require suppliers to use a third-party supplier and effectively get a kick-back from it that then means the supplier pays more than the market price for that service or product; and listing fees can only represent the risk of listing the product, not provide another income stream for retailers. There was and remains nothing in the UK Code about price, types of promotion, or below-cost selling, which I know you have been discussing. On promotions, there is in the UK Code only a rather ill-defined provision that the supplier can't be required to predominantly fund the cost of a promotion. But with now 13 UK groceries retailers being bound by the Code, the UK clearly has a different market

structure from yours in New Zealand. You may be interested to know that 5 of the 13 UK regulated retailers are limited-range discounters, 2 of which went over the £1bn annual groceries turnover threshold during my term of office and were designated as a result. A third additional designated retailer during my time in office was Ocado, which operates entirely online.

The Groceries Code Adjudicator was created to encourage, monitor compliance with and ultimately to enforce the Code. As GCA, I had the power to investigate and fine retailers found to be in breach of the Code, the maximum fine being 1% of UK annual turnover (not just groceries turnover). For the largest of the UK retailers, that would be about £500m. I also had the power to arbitrate in Code-related disputes and to make money awards as a result.

My route to becoming GCA was in industry rather than Government. I had worked in the food and farming sector for most of my career, including for M&M Mars and Fonterra and ran the largest farming business in the UK, so I understood the supply chain. All through my time in office I took time to listen to suppliers and used patterns of anecdotal as well as more granular evidence to identify the main issues. I took a collaborative approach with the retailers, working closely with their Code Compliance Officers, who were generally in legal or audit, first explaining the issues and why I thought they might be problematic from a Code compliance perspective, then giving them time to put things right. Occasionally I had to escalate issues to the CEO or Audit Committee Chair, with each of whom I had annual contact. Retailers were all too aware of my investigative powers and my willingness to use them should progress not be forthcoming. I had good relationships with all the retailers who quickly came to appreciate how regulation gave them all a level playing field in relation to one another.

I ran a supplier perception survey each year and published a league table setting out those retailers which were most compliant with the Code as ranked by their suppliers. Retailers quickly took up the challenge and competed as to which would be top, including using good results in their consumer advertising. I was able to use the information I learned from the survey returns to help individual retailers understand what they could do to improve and I shared best practice when it came to following the Code.

The survey showed huge improvements every year and I have shared the slides, which show positive trends on every measurement, with the Commerce Commission. Suppliers told me right to the end of my time as GCA that the retailers were still hard bargainers, but suppliers by then knew where they stood and increasingly had the confidence to challenge, knowing there was a regulator to turn to if necessary. I only did two investigations in my 7 years in office, imposed no fines, there were only 8 arbitrations and at most we had 5 FTE staff, but the change that suppliers experienced was much more than they had hoped for. Consumers benefitted from an 8% price decrease over the 7 years I was in office and markedly increased choice, driven by online businesses with greater ranges and a focus by many retailers on innovation to differentiate their offerings from each other.