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Keeping supermarkets in line

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THE ADJUDICATOR: The UK's Christine Tacon says countries should have an independent inquiry before introducing a grocery supply code or adjudicator.

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Britain's Groceries Supply Code adjudicator Christine Tacon is in high demand.

Almost every country in the world has the same concerns about the imbalance of power between supermarkets and their suppliers that have been played out in New Zealand in recent weeks.

The Commerce Commission is now investigating allegations against Woolworths-owned Countdown made in Parliament by Labour MP Shane Jones.

Tacon said, in an interview from the UK, that many countries had been beating a path to her door since she was appointed in the middle of last year, asking about the role of an adjudicator and how she will oversee the relationship between suppliers and

supermarkets.

The UK has had a code of conduct in place since 2001 which ensures there is no bullying of suppliers by the supermarkets and that retailers stuck to their contracts without making opportunistic demands for payments. It was toughened up in 2010.

Tacon said the interest has been so high that she's inviting countries to send representatives to a conference on June 23, so she can explain her role in one hit rather than to each nation individually. New Zealand, with which Tacon has links both through family and as a former commercial head of Anchor in the UK, is one of those likely to attend.

The Green Party has called for a code and ombudsman, but while that may be part of its negotiations to form a future government, the party says it does not have any bottom lines set for negotiations after the election.

There's a prima facie case for a code here given the virtual duopoly in the grocery sector between Foodstuffs (New World, Pak n' Save and Four Square) and Australian-owned Progressive (Countdown, Fresh Choice, SuperValue).

But Tacon said retailer concentration is not the test a country should look at. Indeed, the UK grocery sector isn't especially concentrated, with many major supermarkets including the biggest four - Asda, Morrisons, Sainsbury's and Tesco - which collectively account for around two-thirds of the sector.

"It's not the concentration of the market, it's the relative size [of supermarkets to suppliers], and that the supplier is so dependent on the retailer," she said.

To establish the need for a code and adjudicator, Tacon said most countries have to go through a major independent inquiry, such as the Labour Party here is pushing for. Britain had two, one in 2002 and one in 2008 before it had established the need for a code.

If there is a need for one, Tacon has firm views on what it should contain and on the person chosen to adjudicate it.

The code should be devised by the competition regulator rather than by the retailers, she said.

It must be specific about the things supermarkets cannot do. In Britain these include supermarkets requiring suppliers to share "losses" through retrospective payments or deductions, alter orders at the eleventh hour, and demand fees for promotions.

But as well as the specific prohibitions, there must be "woollier" principles which give the adjudicator the ability to enforce the spirit of the code in the face of actions designed to defeat it, she said.

Ad Feedback



Tacon gives the example of the UK code's requirement for supermarkets to pay suppliers on time.

Sometimes, supermarkets will make deductions similar to the retrospective demands for payment alleged by Jones under parliamentary privilege.

"I'm interpreting it [the code] also to say, if something has been deducted off that payment without agreement, then the supermarket hasn't paid them on time."

In the case of the British code, Tacon is required to report to the Office of Fair Trading on changes she thinks are worth considering.

That's important for future-proofing the code, she said.

It must also have teeth, she said. As yet the penalties for breaching the UK code have not been set and Tacon is pushing for a maximum penalty of 1 per cent of UK turnover of companies for any breaches. To put that into perspective, profit tends to be about 2-3 per cent of turnover, Tacon said.

But she added the aim was to ensure the supply chain was not abused rather than seek maximum penalties to enforce the code.

The adjudicator must be closer to being a policeman than an ombudsman, she said.

"I don't have to have a formal complaint to act. But I do have to have sufficient evidence to launch an investigation."

That means she can act on, and even seek, anonymous tipoffs but has to get enough evidence to get to a point of comfort that an investigation is merited.

To date she has been spending a lot of her time speaking at conferences to describe the code and how her role works, as well as meeting smaller, private groups of suppliers. From these meetings she has been gathering information on alleged abuses and is funded to do two investigations a year.

The adjudicator has the power to compel people and companies to provide the information she wants. It's a way of overcoming supplier fear over retribution but Tacon said it was not devised just for that reason. "The retailers are required to give me it as well," Tacon said.

While "passionate" about Britain having a strong, healthy grocery supply chain, she does not want to give the impression she is on a crusade against supermarkets.

"I don't want to catch retailers out," she insists, and she also says that supermarkets don't always know the tactics of their buyers.

Detractors of a code typically argue there is no consumer detriment to fix, that it threatens to increase grocery prices, and that many suppliers are powerful multinationals quite able to look after themselves.

Tacon says passing excessive risk down the supply chain does lead to consumer detriment in the long run.

An unhealthy supply chain results in economic inefficiency, such as over-production, food wastage, and middlemen taking a cut.

"There are people in Britain saying 'I don't know why it has taken so long.'"

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