

Adjudicator rules payment for shelf space is beyond remit

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Big suppliers are to be allowed to continue paying retailers for better positioning on the shelf than their rivals, after Groceries Code Adjudicator Christine Tacon ruled it was beyond her powers to tackle the issue.

The Adjudicator this week revealed the results of a six-month probe into whether supermarkets had flouted regulations by requiring suppliers to part with sometimes huge sums of cash for better placement on the shelf, or to be given so-called 'category captaincy'.

But, as predicted by The Grocer in December, the consultation did not find enough evidence to launch an official investigation into any of the big supermarkets.

Instead, Tacon found evidence that whereas in the past supermarkets like Tesco had been demanding such sums, practices had now changed and complaints mostly revolved around big suppliers using such payments voluntarily.

Tacon admitted that smaller suppliers had claimed during her probe that they were being left at a disadvantage by money changing hands between big suppliers and supermarkets.

But she said it was beyond the powers of the GCA to act against such practices and that it would be up to the Competition & Markets Authority, which refused to take part in her consultation, to take any further action.

Tacon's investigation into Tesco last year revealed evidence that companies had been expected to fork out sums running into "tens of thousands" for positioning on shelf at the supermarket and that those who failed to come up with such large sums risked being delisted.

But the results of the subsequent probe revealed today claimed that practices at the supermarkets had changed due to measures such as the clean-up of Tesco's buying practices, overseen by CEO Dave Lewis.

"The GCA has concluded that while some limited information or anecdotal evidence was provided of practices which might be in breach of the Code, there was not enough information provided to support the need for interpretative guidance or other regulatory intervention," the GCA said.

It added: "It appears that there has been a change in the approach taken by the regulated retailers in the period since the appointment of the GCA in 2013, to bring practices into line with the requirements of paragraph 12 of the Code. This is consistent with the general improvement in compliance with the Code reported in the GCA annual grocery sector survey and reinforces the benefits of the collaborative regulatory approach pioneered by the GCA."

Tacon told The Grocer that there was a key distinction between retailers expecting suppliers to part with huge sums of cash for being on the shelves, to suppliers willingly paying sums to get better positioning, even though she admitted some smaller suppliers felt the process to be unfair.

"I had some quite large suppliers telling me that they had a specific budget for this sort of thing but that this was something they used to negotiate on their terms and not on retailers' terms.

"I've made a very clear distinction between retailers expecting suppliers to part with sums of money and suppliers doing it voluntarily.

"It's fair to say that some smaller suppliers have told me they think this is unfair. They say 'I would love to be able to do that but I can't afford it'.

"But for other suppliers this is seen as part of a normal commercial negotiation."

Tacon also said today that any future breach of the Code by retailers would immediately result in an investigation.

The Code does not permit direct or indirect requirements from retailers to suppliers for payments for better positioning or increased shelf space unless in relation to a promotion.

The Adjudicator has also urged retailers to be clear in communicating to suppliers the policies they had in place to manage category advice from suppliers to provide more transparency over areas such as range reviews.

The Adjudicator, who launched her probe in June, said it would now be down to the CMA to act if it felt there were wider issues affecting competition instigated by suppliers. She again expressed disappointment that the body had failed to co-operate in her consultation.

"At the time I asked for their help," she said, "I could have done with someone helping me. But I feel that I have achieved what I set out to achieve with the consultation and hopefully the situation is now very clear for suppliers and retailers about what is and what is not a breach of the Code."

Tacon also insisted she was not disappointed at the lack of suppliers coming forward, despite it being revealed that only 15 suppliers had responded in writing to the consultation, including just two smaller companies.

Previous surveys have found many suppliers have been scared to come forward to report activity of the supermarkets for fear of reprisals.