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Body to monitor and enforce compliance with the Grocery Supply Code of Practice

Response by the Association of Labour Providers to BIS consultation

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Introduction

On 5 February 2010 the Department for Business Innovation and Skills (BIS) published a consultation [Taking forward the establishment of a body to monitor and enforce compliance with the grocery supply code of practice \(GSCOP\)](#). Responses to the consultation are requested by 30 April 2010.

This paper is the response of the Association of Labour Providers (ALP). The ALP represents businesses that supply labour to food businesses that, in turn, supply the supermarkets. Over the last few years, initially through the Ethical Trading Initiative and subsequently working with the Gangmasters Licensing Authority, the Association has worked with the supermarkets to seek to improve compliance throughout their supply chains with employment legislation and other regulations. However, labour providers are significantly affected by the practice of the supermarkets of driving down the price they pay to their suppliers. The members of the Association, therefore, have a very major interest in this exercise.

The Association currently has 250 members. It has invited the views of all of its members in preparing this response which has been approved by its Executive Committee.

Nature of the market

The consultation, and before it the work of the Competition Commission, was partial in not, to any significant extent, going beyond the immediate suppliers to the supermarkets. This is reflected in paragraph 1.10 of the consultation document where it is noted that the Competition Commission identified “practices carried out by large retailers that could lead to a significant reduction in the incentive and ability of suppliers to invest and innovate for new product lines or production processes”. The analysis has not looked at the effect throughout the supply chain of the practices of

the supermarkets. It seems to be assumed that any adverse effects are confined to the immediate suppliers.

It is well known that on many occasions the supermarkets have simply told their suppliers that they will pay less for the product they supply. Often, the suppliers have little ability to resist because the supermarkets may be their only, or at least, their largest, customer. There is little scope for food businesses to pay less for the product they buy, and the major cost which they can seek to influence is the labour cost. Labour providers are, therefore, caught between wanting to pay a reasonable rate of pay to their workers, underpinned by the minimum wage and other legislation, but continual downward pressure from their customers who, in turn, blame this on the downward pressure exerted by the supermarkets. Something inevitably has to give. In some cases that something has been the formal economy, as the only way that some labour providers could square the circle was by operating partially in the informal economy with a subsequent saving of tax and national insurance payments. This is not done on a wholesale basis but there is no doubt that it is done. It has also led to pressure for innovative devices to reduce tax and national insurance costs, particularly through travel and subsistence schemes, which now separately are a target of HMRC and the Gangmasters Licensing Authority.

Ostensibly, the supermarkets are cooperating with the Gangmasters Licensing Authority in the work that it is doing to seek to ensure compliance with minimum wage and other legislation. Certainly, when a labour supplier to a food business, which in turn supplies the supermarkets, is discovered to have been contravening the law, the supermarkets are quick to take action. But this rather misses the point in that the supermarkets have tolerated and turned a blind eye to the position for many years. They should be aware that their practices must in some cases encouraged labour providers to cut corners in a way that either unreasonably disadvantages their workers or, more likely, has a cost to the tax payer.

It is unfortunate that the Competition Commission failed to discuss this adequately and that the BIS consultation has taken this no further.

ALP view on the proposal

The Association has only one substantive comment relevant to its members in respect of the consultation. Question No.20 asks whether complaints to the body monitoring and enforcing compliance should be limited to those direct suppliers covered by the code. The answer must, of course, be no and, indeed, this seems a rather silly question given that the government has already decided that the body will consider anonymous complaints. Clearly, if it is willing to do this it cannot specify who anonymous complaints come from. Regardless of this point, given the analysis in the previous section, the Association would expect labour providers to be able to make complaints to the monitoring body.

Having said this, it is very likely, as has been the case with the previous code, that there will be few such complaints, simply because labour providers want to stay in business as do the food businesses. Making complaints about one's principal customer is not the best way of going about this.

Consultation

The Association cannot but help commenting on more general aspects of the consultation. This seems to have been put together rather hurriedly. Many of the questions are on very detailed administrative points that normally would not appear in a consultation document. One of the key issues, according to the consultation, is whether the monitoring and compliance body should be the OFT or another body. This is really a matter for the government to sort itself out rather than expecting consultees to do its operational analysis for it. Also, it is clear from paragraph 6.4 that the original intention was that the OFT should be the monitoring body as this paragraph specifically refers to it in that.

The Association also notes that the impact assessments are sparse to the extent of having 26 “unknowns” or “tbc’s” and just one hard figure (of £200,000 set up costs). This is completely contrary to how policy should be made and, again, reflects the very hurried way in which this exercise has been completed.