

Regulation of the supermarket sector



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Regulation is spoken of as if an identifiable and discrete mode of governmental activity. Selznick's notion of regulation as sustained and focussed control exercised by a public agency over activities that are valued by a community, has been referred to as expressing a central meaning. It is perhaps useful to think of the word regulation being used in the following different senses; As a specific set of command; As a deliberate state influence; As all forms of social control or influence. (Baldwin, R, Understanding Regulation) Introduction Due to its size, necessity and great public interest, the supermarket sector is regulated by a large variety of factions and organizations. The supermarket sector is primarily part of the food retail industry though it includes other areas of retail such as fashion and electronics.

The U. K government, the E. U and U. N have several interests in this sector such as political, environmental social and economical factors. There are various factions who influence regulation of the sector including The Consumer Association, The National Farmers Union, British Retail Consortium and The Advertising Standards Association. The need for regulation Regulation is commonly used to correct market failure.

Market failure is defined as when the uncontrolled market place will for some reason fail to produce behaviour or results in accordance with public interest. Public interest can be further subdivided into stakeholders. Supermarket stakeholders include employees, consumers and suppliers. The E. U.

U. N and government are also stakeholders in the sector whose actions are in theory supposed to be in the public interest The oligopolistic nature of the

supermarket sector means that the market is susceptible to market failure in various ways these are:; Collusion this is when firms in an oligopoly cooperate with each other and fix prices at artificially high rates, in order to maximise revenue. It is argued by many economists that such practice was apparent between Tesco's and Sainsbury's prior to Asda's rise in market share. The government played a pivotal role in the introduction of consistent price based competition when the monopolies and mergers commission gave the green light to allow Wal-Mart to acquire the Asda chain.

The government claimed this was done in order to ensure market competitiveness. The governments competition commission also began researching whether price fixing was present in 1998 two years later the government confirmed that competition was healthy due to price wars and profits were not deemed excessive. It did however identify areas which required legislation and set out a 5 month deadline of legislation on the manner in which suppliers are dealt with particularly farmers who the competition committee ruled were being mistreated. (BBC online news Tuesday, 10 October, 2000.) This can be linked to unequal bargaining which his discussed later.> Information inadequacies.

This occurs when consumers do not have access to sufficient information to evaluate competing products. E. U disclosure rules prohibit the supply of false or misleading information and may also require mandatory disclosure such as supplier obligation to provide information on price composition, quantity or quality. Disclosure regulation also involves the supply of information directly to the public by a government official, thus in October 1998 agriculture minister Jack Cuningham named and shamed suppliers of <https://assignbuster.com/regulation-of-the-supermarket-sector/>

Tesco and Sainsbury's for failing to declare the water content of their bacon and pork products. (Baldwin, R, understanding regulation).

The advertising standard authority also regulates in order to ensure consumers are not misled and recently attacked Tesco for false claims that their prices were 13% less than Sainsbury's. (BBC online, Tesco rapped by advertising watchdog 9 October, 2001,)> Unequal bargaining power appears to be present within the supermarket sector a prime example has been the treatment of suppliers. As mentioned above the government identified that the terms by which farmers were treated are subject to regulatory change. (This will be discussed later.)> Scarcity and rationing. The main source of regulation for this factor was established by the E.

U in the form of the common agricultural policy (CAP). Implemented in 1962 under Article 39 of the Treaty of Rome, (CAP) marked the birth of what was called " Green Europe". It was originally a move to encourage farmers to produce more food following the post WWII shortages. It was also intended to stabilise the EU agriculture market and guarantee EU farmers both a market for their produce and a ' fair' standard of living. The CAP was based on three main principles: Financial solidarity: The EU was committed to jointly financing the policy. Market unity: A single market was created with a common system of marketing and pricing and free movement of produce.

Community preference: EU producers were placed more favourably than competitors.> To correct externalities a prime concern for the government is pollution or environmental damage, that may be generated by supermarkets. The purpose of government intervention will be to enable that

all external cost is accounted by those responsible. How much regulation is needed? Perfect compliance and the eradication of hazard are unrealisable goals for regulatory bodies as a point is reached where gains are not justified due to greater costs.

Breyer refers to this problem as the last 10% and quotes Sheldon Meyers who states that it is relatively cheap to reduce risks to 90% more expensive to go to 99% and more expensive to go to 99%. In economic terms the socially optimal point occurs when cost exceeds the benefit to society. Costs include the following > The cost of agency monitoring > The expenses of prosecuting cases > The defence costs > The cost of misapplications of law, convicting the innocent and deterring desirable behaviour. The primary gains are a reduction in harmful behaviour and the reduction in private enforcement costs, thus when public enforcement agencies forestall harm this saves private individuals or firms from having to spend money on protecting their entitlements. (Baldwin, R, Understanding Regulation) The economic theory on how to calculate the deterrent affects of enforcement assumes that potential offenders are actors who seek to maximise their own welfare in an informed and rational manner. Deterrence is calculated by multiplying the probability of punishment by the magnitude of punishment. From the regulators view a key calculation is how much an offender will be deterred considerations are made not only on probability of application and level of fines but also based on the wealth of the offender i.

e. if a firm cannot afford to pay a large fine as it will result in insolvency then small fines and a high probability of application will be more effective than infrequent large penalties. Similarly if large sanctions are unable to be

enforced for reasons of social justice a high probability of application will have to be used especially when gains from offending are high. The economic model is used when calculating the degree of regulation required but is subject to variances such as public opinion, which may demand that certain activities are deterred regardless of cost.

In the case of supermarkets it appears the government ideals are fundamentally based on the economic model, as there appears to be little demand from the public or wish from the government to regulate otherwise. Variances normally include environmental there have been minor complaints as regard the government allowing building on greenbelt land. Although complaint has not been excessive enough to justify the implementation of new regulation, which would apply more costs to the economic model. The use of informal self regulation (see Tiebout later) by supermarkets has meant they have responded to environmental concerns by merging design with environment by using aesthetically pleasing architecture and by screening the area with trees and such in order to minimise environmental damage)The government has also implemented incentive schemes, in order to regenerate derelict industrial areas of low unemployment, by offering tax breaks and other incentives to encourage supermarkets to locate in these areas. Supermarkets have attempted to satisfy public interest as concerns recycling by encouraging consumers to reuse carrier bags and by using their own recycling programmes, which is economically beneficial as well as socially desired.

In fact the majority of supermarkets make provisions for recycling bins, which can be used by the public. Regulatory structureThe supermarket

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sector could be seen as made up of three types of regulatory theory each with varying degrees of relevance and applicability. Public interest groups This is when the regulator acts in pursuit of public interest the Advertising standard authority and consumer association can be seen as an example of this however these are independent bodies who are unable to enforce regulation However their findings are passed on to the government who can use the data to prosecute offences which breach consumer and/ or advertising acts on a local or national level. Interest groups This is when regulation is a product of relationships between groups and the state the national farmers union illustrates this in how they have discussed with the state on regulation concerning the treatment of farmers by supermarkets. This area illustrates the overlap of theory as the situation regarding farmers asks the question who controls regulation? It is held by the national farmers union that regulation is acting in the private interest of supermarkets who continue to have far stronger bargaining power.

The government however disputes this. Whilst it can be argued that the national farmers union only operates in its own interest of its members and not the public at large. Private interest groups This is where the role of private economic interests drives regulation as discussed above this is the view held by the national farmers union. Regulation in the supermarket sector is implemented by two major players, the U. K government and the E. U. Their role in the regulatory process is discussed below The U. K Government The U. K government Regulates the supermarket sector by implementing rules and procedure.

The government concurs with regulatory bodies such as the Advertising standards authority and the consumers association. Legislation is passed by an act of parliament and the government investigates claims that acts have been broken. If it is ruled in court that an act is broken then fines are made and in severe cases criminal prosecution may occur. The government will operate procedure on both a national and local level.

As discussed the government may not always act in the public interest and may be subject to corruption however Tiebout's local government context argues the government are forced to act in public interest because individuals can vote with their feet and can move to jurisdictions with the tax expenditure balances that meet their preferences this leads local governments to tailor their tax and spend regimes to the desires of residents if they do not do so they will be voted out of office or residents will move house out of jurisdictions. The same theory applies to national government, as they must satisfy public interest in order to ensure re-election. The E. U is considered by many to be the most powerful and strongest regulatory body. Like the government the E. U fundamental aims are to look after the public interest of its members.

E. U regulatory procedure works by conferring with member states who will also represent the view of regulatory bodies. Initial legislation takes place by the European commission the European parliament then offer their opinion and advise the E. U council then decides whether to pass the legislation. The E. U has on many occasions been subject to controversial debate.

A prime objective of the E. U over the years has been to harmonise product compatibility amongst member states in order to encourage trade between its members. a recent E. U directive which caused controversy was the weights and measures act which was enforced so that each member state has the same system to enable simple comparison. This directive was met with a barrage of criticism and resistance.

Tesco in particular responded by labelling its goods in both measurement though this was deemed legal it was seen as an act of defiance against the E. U. Who intend to eradicate the use of imperial measurement by 2009 (BBC online, Tesco faces court over pounds and ounces Friday, 21 July, 2000,)Regulatory changeRegulation within the democratic market has always been subject to cost and time It can be argued that the supermarket sector has shifted to a informal form of self regulation (regulating in the public interest without the use of regulatory bodies) the argument to support is market forces i. e. the increase in market competition (due to the rise in Asda market share and its everyday price campaigns and ultimately its takeover by Wal-Mart) has meant that supermarkets have had to place increasing emphasis on customer care and thus to increase or maintain market share supermarkets have had to act in the public interest. This theory is supported by Tiebout who stated that just as competition forces producers to manufacture the products that consumers want so competition will produce the regulatory regimes that consumers and citizens want” (informal self regulation)Tiebout’s theory indicates that firms that act in the public interest only do so for economic gain, which is greater than that which would be obtained from ignoring public interest.

Though this seems to be apparent in some areas such as price and competition (where prices appear to be competitive) and measurement (Tesco continues to use imperial measurement as well as metric) other areas suggest that governmental regulation has been captured in the past and present. The prime example appears to be pre 1998 where for a long time allegations of price fixing and unequal bargaining were rife and present in newspapers and journals yet the government appeared to be reluctant to research these allegations supporting the idea that capture had occurred. How and whether capture had occurred is unclear though the sheer size of the supermarket sector means that they wield considerable power, which could influence regulatory bodies (ultimately the government would not complain about price if price cutting could only be achieved by staff reduction). The extent of capture within the sector is extremely difficult to measure although it appears rather small. The argument as to whether capture occurred pre 1998 is questionable though evidence does support that within the U. K prices appear to have been high and less competitive than other nations for a substantial period of time a fact which newspapers kept the public well informed of suggesting capture could have taken place through incompetence i.

e. regulators were ignorant to facts which were frequently printed in newspapers (One could argue the opposite and that the regulator was well aware that the argument used by supermarkets that prices were restricted by the U. K tax system was true and thus deemed there to be no need to research, this is supported by the fact that the final report stated prices were fair)Alternatively capture may have occurred through corruption or capture

was not present and in fact the government were to blame as they kept prices high to serve their own goals i. e. to keep employment up at stores and to finance other governmental agenda such as NHS and schooling.

This is a prime example of the problem of the government attempting to look after public interest i. e. Public interest encompasses a wide range of varying views which may not be compatible e. g.

people want good schools and NHS but do not want to pay high rates of tax. Informal self regulation may be effective in governing competition, price and externalities (environment) and information inadequacies as concerns labelling laws however there appears to be two areas in which regulation is failing unequal bargaining and information inadequacies concerning advertising appear to exist. These points are illustrated by two BBC online articles entitled “ Supermarkets code ‘ too weak’ Thursday, 1 November, 2001,” and “ Asda fined for ‘ misleading’ customers Thursday, 20 September, 2001,” The first article suggests that new regulation rules concerning treatment of suppliers are wholly inadequate and that farmers will not benefit from such intervention. This lends support to the theory that capture has occurred to some extent meaning farmers are losing out through lack of government support.

This view is further confounded by the fact that the establishment of supplier regulation occurred 3 months later than the competition commission promised. The second article is one of many I found concerning advertising by supermarkets in all I found 7 complaints by the ASA in the past year stating supermarkets were misleading customers by claiming they were

cheaper than they actually were. Clearly the fines being administered have not been large enough to deter supermarkets from misleading customers and this is a prime area of concern. Perhaps an independent price evaluating committee could be established in order to enable customers to get the truth though the consumer association does attempt this. Otherwise greater and more frequent fines could be introduced in order to deter this practice.

How have supermarkets responded to regulatory change? The manner in which the supermarket sector has dealt with regulatory change in the past has been rather varied the current supermarket trend of encouraging ease of use to its customers in order to increase its customer base has meant that some response to regulatory change concerning labelling laws has been favourable. Asda in particular are behind reforms to enforce the price per unit of each of its products to enable direct comparison of products. It appears that due to increased emphasis on customer care that supermarkets are more than happy to respond to regulatory change, which acts directly in the interest of its consumers. (This illustrates a informal form of self-regulation see Tiebout above) However it appears that regulatory change which is indirectly linked to public interest has been met with defiance and rebellion There have been several high profile cases in which industry, government and the E. U have been embroiled in bitter conflict as concerns regulation and law. A prime example being that of Tesco's feud with Levi in which Tesco appeared to be acting in the public interest by importing goods from America and selling at a lower price the E.

U deemed this to be illegal and has prevented further action of this sort. (BBC online Q&A: The Tesco-Levi battle Tuesday, 20 November, 2001,)

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Though this ruling has been perceived by the public as a negative move by the E. U it has been executed in order to promote trade within Europe amongst member states in order to encourage European produce which will thus ensure jobs and increase The gross domestic product within Europe which when considered is of greater benefit to the public. This is yet another example of conflict amongst public interest.

Conflict concerning regulatory change is also present on an international level. Supermarkets and the U. K government and E. U appear to favour mandatory food labelling law as concerns the use of Gm food, America and Canada however wish to play down concerns. The U. N has yet to rule on the matter but there appears to be little room for compromise (BBC online Fight on GM food labelling Wednesday, 2 May, 2001,)SummaryThe supermarket sector is regulated by a great many factions and organizations all of which have different interests and agendas.

As a result the development of regulation is often an expensive, burecratic and time consuming process. This is due to the nature of Europe's dispersed democratic structure. Democracy itself could be held largely responsible, because it allows the formulation of an unlimited number of interest groups, which with enough members and campaigns are capable of becoming players in the development of regulation. The situation is intensified further because of the U. K relationship with Europe. On many occasions this relationship has resulted in conflict of interests and defiance of E.

U law. There are various ways these problems can be countered though none at present appear to be favoured by the majority of the British public. The

options available are 1. Sever all links with the E. U. This would give the British government complete control of regulatory policy meaning decisions would be quicker as the E.

U would have no control over regulation. However this decision could result in a significant reduction of trade with E. U nations. This would most likely leave the U. K economy unstable. Another option would be to give greater power to the E.

U this would allow compatibility amongst E. U states and would result in greater compliance with E. U regulation. (This appears to be the direction the British government favours.

This is illustrated by Mr Blair's readiness to hold a referendum as concerns the single European currency. At present opinion polls suggest this is not favoured by the British Public, however it is highly possible that opinion will change in response to Blair's impending pro euro campaign.)