

10 August 2022

Committee Secretariat
Economic Development, Science
and Innovation Committee
Parliament Buildings
Wellington
By email: competition.policy@mbie.govt.nz

SUBMISSION on Grocery Code of Conduct Consultation Paper

1. Introduction

Thank you for the opportunity to make a submission on the Grocery Code of Conduct Consultation Paper. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

Contact:

Privacy of natural persons



2. General comments on the Consultation Paper

As stated in previous submissions, we strongly support the introduction of a mandatory Grocery Code of Conduct (Code) to address the significant imbalance in power between suppliers and retailers.

Given the Code doesn't directly affect consumers, we have only answered selected questions in our submission.

3. Responses to select questions in the Consultation Paper

QUESTION 2: In relation to **section 3.3**, which of the three **Designation Options** do you think is best, and why?

Please type your submission below.

We support designation option b or c as these options present less barriers and increase certainty for potential new market entrants.

When a new retailer enters the market, they won't have the same bargaining or market power as the existing major retailers so there is no need for them to be brought under the Code until they have reasonable revenue.

We note the view that options b and c will involve higher administrative costs for government through investigation costs but consider these marginal as the proposed Grocery Commissioner will be undertaking an annual review of competition in the sector anyway, which should examine whether new entrants are meeting the Code threshold.

QUESTION 5: In relation to **4.2 purpose of the Code**, which of the three options do you agree with, and why?

Please type your submission below.

We support option 2 (a prescriptive Code) or option 3 (an alternative Code).

Direct reference to consumers is largely absent from the detail of the Code, so we believe it is important to state clearly that the purpose of the Code is to increase competition in the market for the long-term benefit of consumers.

We also strongly support the economic development objectives in option 3 as these are central to the development of a healthy, competitive sector with reduced market power at all vertical levels.

QUESTION 7: In relation to **4.3 overarching obligations**, which of the three options do you agree with, and why?

Please type your submission below.

We support option 3 (an alternative Code with a good faith and fair dealing obligation).

Based on the Australian experience, we consider it is important to include a fair dealing obligation in the Code.

Also, we consider option 3 is likely to be the most effective at addressing the existing imbalance of power between retailers and suppliers. By improving negotiating powers of suppliers, competition will be promoted in the longer term.

QUESTION 10: Do you have any comments on the preliminary assessment of the options against the criteria in **Chapter 4**?

Please type your submission below.

We support the preliminary assessment of the options in Chapter 4. However, we'd like to see further analysis of which option is likely to provide the best outcomes for consumers.

QUESTION 16: In relation to **6.4 Obligations in relation to ranging, shelf allocation, and delisting**, which option do you think is best, and why?

Please type your submission below.

We support option 2 or option 3 as we consider these options are most likely to address our concerns about the sale of private label brands by the major retailers.

As stated in previous submissions, although private brands may benefit consumers in the short term by offering lower prices, we consider they are likely to have an anti-competitive effect overall. In our view, private labels are likely to be setting price floors and preventing the introduction of lower priced goods. The use of private labels is also likely to be resulting in less choice for consumers because other brands are being squeezed out of the market.

QUESTION 32: Do you have any views on the Australian and UK approaches to monitoring, compliance obligations, and enforcement, and which might be most effective for New Zealand?

Please type your submission below.

Monitoring, compliance, and enforcement are critical to ensuring an effective Code.

In our view, the regulator should be required, by regulation, to monitor compliance with the Code and report on its findings.

We also support the Code specifying detailed compliance requirements on retailers to ensure they are keeping appropriate records, have trained their staff and have designated dispute resolution staff.

We consider the regulator needs serious enforcement powers under the Code to ensure the major retailers are incentivised to comply. Including strong enforcement provisions in the Code should give new entrants increased confidence that any issues with the major retailers will be dealt with effectively under the Code by the regulator. In addition, strong enforcement provisions (and enforcement action) will give consumers the confidence the designated retailers are complying with the Code. Consumers may also benefit from improved conduct between the retailers and suppliers.

Any penalties the regulator can impose should be large enough to deter non-compliance. The regulator should also have other tools available to it such as the power to issue public warnings and infringement notices.

We agree that if the regulator and dispute resolution scheme are different entities then the Code should contain information sharing provisions to ensure the regulator is aware of any issues raised in dispute resolution.

Finally, the regulator should also be able to compel retailers to provide information.

QUESTION 34: Do you have any views on how the Code should be implemented?

Please type your submission below.

We understand the rationale for having a staged approach to implementation. However, we consider all provisions of the Code should come into effect no later than six months after the Code comes into force.

Thank you for the opportunity to provide comment.

ENDS