

5 July 2023

Market Performance
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
By email: competition.policy@mbie.govt.nz

SUBMISSION on Exposure Draft Grocery Supply Code of Conduct Consultation Paper

1. Introduction

Thank you for the opportunity to make a submission on the Exposure Draft Grocery Supply 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.

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Privacy of natural
persons

2. General comments on the Code

As stated in previous submissions, we strongly support the introduction of a mandatory Grocery Supply Code of Conduct (Code) to address the significant power imbalance between suppliers and retailers. Rather than answering specific questions in the consultation paper, we only wish to make some general comments on the Code.

Complaints from suppliers

Despite the imminent introduction of the Code, we continue to receive complaints from suppliers about the conduct of retailers. In particular, we have heard allegations from a number of suppliers that Foodstuffs is not dealing with them in good faith. However, none of these suppliers are willing to go on record because of fear of retribution.

Retailers' margins

Some suppliers have also told us they are concerned about the margins retailers are charging on their products. These suppliers are concerned margins are not always transparent and have been increasing¹. As a result, consumers are paying substantially more at the till. Also, in some cases, suppliers are choosing to export their products, rather than selling them locally. This also has a detrimental effect on consumers.

We therefore see it as crucial that the Grocery Commissioner actively monitors retailers' margins as part of its price monitoring responsibilities. Margins persistently above an objective benchmark could indicate that further intervention is warranted in the market to reduce excessive margins to a fair level.

Transitional provisions

We support the good faith obligations coming into force from the day the Code takes effect and other provisions of the Code coming into force within six months of the Code coming into effect.

Private label products

As stated in previous submissions, we are concerned about the proliferation of private brands and the potential impacts this has on both consumers and suppliers. In our view, private label products 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. At the same time, they are resulting in higher profits for retailers.

¹ <https://www.newshub.co.nz/home/new-zealand/2023/04/group-of-supermarket-suppliers-speak-out-as-it-s-revealed-how-much-kiwis-are-paying-for-their-goods.html>

We therefore support the provisions in the Code relating to private label products and encourage the Commissioner to monitor the sale of these products by the two major players.

We also support the inclusion of the provision from the Australian Code that prohibits retailers from requiring a supplier to transfer or exclusively licence any intellectual property held by the supplier, as a condition of supply of an equivalent home-brand product.

Monitoring, compliance and enforcement

Monitoring, compliance, and enforcement are critical to ensuring an effective Code. However, in our view, the tier 2 penalties may not be sufficient to deter non-compliance with the Code.

We encourage the Ministry to consider setting the maximum penalty to tier 1 which would allow a penalty of the greater of \$10 million, or three times the value of any commercial gain, or 10% of annual turnover.

Review of the Code

Finally, we support the Commission being required to complete a review of the Code within two years of it coming into force.

Thank you for the opportunity to provide comment.

ENDS