

# THE PACKAGING FORUM



23 August 2023

Commerce Commission New Zealand

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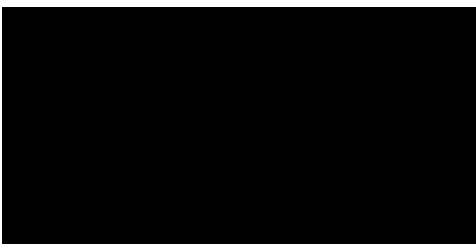
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Tēnā koe

Attached are the comments that the Packaging Forum wishes to present on the *Collaboration and Sustainability Guidelines: Draft for consultation*.

Ngā mihi nui



THE  
**PACKAGING**  
FORUM



# **Collaboration and Sustainability Guidelines: Draft for consultation**

**Submission by the Packaging Forum**

**23 August 2023**

## The Packaging Forum

1. The Packaging Forum (PF) welcomes the opportunity to comment on the *Collaboration and Sustainability Guidelines: Draft for consultation*.
2. The PF is a member-based organisation representing New Zealand's supply chain and packaging industry from suppliers and importers of packaging, brand owners and retailers to resource recovery businesses and processors. The PF has over 240 members that collectively generate around \$50 billion in the domestic market annually.
3. The PF operates two voluntary product stewardship schemes for glass and soft plastics which have received accreditation under the Waste Minimisation Act (2008). The Glass Packaging Forum Scheme was first accredited in 2010 and reaccredited in 2018 and The Soft Plastic Recycling Scheme was accredited in March 2018. The Packaging Forum also managed the Public Place Recycling Scheme between 2014 and 2021 and whilst the scheme has ended, continues to collate, and report on data and fund new recycling and litter bins. The PF signed a Deed of Funding with the Ministry for the Environment in September 2022 to lead the co-design of a plastic packaging product stewardship scheme (PPPS) for New Zealand.

### COMMENTS

#### Role of the Guidelines

4. The PF welcomes the general guidance provided in the Guidelines however would like to raise some specific examples which arise from the design and operation of stewardship schemes. The Government has recently released its [Cabinet paper on the legislative framework for Extended Producer Responsibility](#), from the Chair, Cabinet Environment, Energy and Climate Committee (Paper Five in a series seeking policy decisions on the content of proposed new waste legislation) and we recommend that the Guidelines are aligned with the policy direction.

#### Competition and Sustainability

5. The PF considers it important that businesses do not feel constrained to collaborate on achieving broad sustainability goals that require a whole-of-system approach 'for fear of breaching competition law'. As the Guidelines note to achieve the scale needed to address industry wide environmental issues, collaboration will be necessary. The emissions profile of the packaging supply chain is interconnected with direct emissions for one part of the chain representing indirect emissions for others.
6. We agree that collaboration on setting standards for industry and consumers is not contrary to competition. However, when competing on environmental outcomes as a point of difference for a business, we agree that sustainability claims are substantiated, and that sustainability is not used as an excuse for anti-competitive behaviour.
7. The PF is a member of the Extended Producer Responsibility Alliance ([EXPRA](#)). Through our membership and engagement with other members, it is evident that the design of a Producer Responsibility Organisation (PRO) is critical and that a single PRO for a material or material group (e.g. packaging) can deliver stronger environmental outcomes than multiple PROs competing for membership. We recommend the

Commerce Commission review this guidance in line with the government's cabinet paper, enabling a Statutory Monopoly to exist, without risk of breach.

8. We also recommend that the Guidelines clarify use of the word "industry" which is often used as a general description of all players within a sector or supply chain but when used in the context of EPR schemes relates to the obliged or liable parties or producers who generally fund a scheme.

Global guidance is that the obliged parties should be responsible for the success of a scheme, delivering to objectives set by the regulator.

Obliged parties will by nature be competitors in the market, however are working to a common sustainable outcome through a PRO.

### **Collaborative Sustainability Initiatives**

9. The Government's Cabinet paper sets out the proposed framework for mandatory product stewardship including scheme charges and eco-modulation. *"Eco-modulation is a differential pricing mechanism used to incentivise waste minimisation and circular economy outcomes. Higher charges may be set for products/materials that contribute less to meeting overall scheme outcomes, for example because they are hard to recycle, while products/materials that meet better objectives (e.g., those that are easier to recycle) may have lower scheme charges."*

10. We recommend that the Guidelines reference the proposed legislation which will outline the circumstances in which an appointed Producer Responsibility Organisation (PRO) should consider eco-modulation and that this approach to fee setting is recognised within the Guidelines. Ensuring this option, designed to improve material recovery, recycling and transition to more circular packaging, is best achieved when a PRO operates as a statutory monopoly. An example of this being created is MFE's proposed Container Return Scheme (CRS)

11. The Government's cabinet paper on EPR provides guidance on "managing the risk of private benefit from government imposed charges noting that *"the new legislation will establish the PRO as a statutory monopoly in that industry will be required to establish/won and operate a PRO; the legislation will require those participating in the scheme to pay charges to the PRO; and if participants do not pay charges to the PRO, they will not be able to supply their product to the market"*.

### **Supply Chain Restrictions**

12. We agree with guidance on purchasing decisions and restrictions in the supply chain. In the packaging and resource recovery sector in New Zealand and overseas there is vertical integration within companies as well as between companies. For example:

- a. Packaging manufacturers also operate recycling facilities and processing plants. In Germany Lidl has acquired a waste company which means that they have own a packaging manufacturing business, retail outlets and the waste logistics systems.
- b. Standards are being introduced in relation to materials used. For plastic packaging the CEFLEX standard sets a high standard for mono (single) polymers and as this is introduced to achieve sustainability targets, this can disadvantage manufacturers that do not have the technology and provide an advantage to those with the IP.

## **Cartel Conduct**

13. In the example provided it is noted that a key consideration will be whether agreeing to charge levies is reasonably necessary. As noted in 4 above, the Government has published a Cabinet Paper on EPR which should be referenced in these Guidelines with the guidance aligned.
14. The example of application of a measure (removal of plastic handles) is a useful one for the New Zealand market. It raises a question about the extent of involvement of the Commerce Commission in similar developments and whether the Netherlands Authority for Consumers and Markets agreement with industry players was a form of authorisation to proceed.

## **Agreements that substantially lessen competition**

15. Collective Market Power: See the comments made under Supply Chain Restrictions above.
16. Mandatory EPR schemes require a labelling system. We recommend that the guidelines acknowledge that sustainability labelling systems (e.g., recyclability label) may be a legal requirement. The PF promotes the Australasian Recycling Label (ARL) to its members and its Soft Plastic Recycling Scheme is integrated within the ARL. This means that where scheme members that pay levies to fund the collection and recycling of post-consumer soft plastics and meet the packaging specification requirements which underpin the ARL are granted permission to use the label. We would be concerned if companies which are not members of a scheme, developed to improve sustainable outcomes could argue that they are being discriminated against because they are not allowed to use the label. Use of the label must be directly related to compliance with the criteria and funding the scheme which enables the material to be collected and recycled.

## **Authorisations**

17. It would be useful for the Guidelines to advise or provide examples of when businesses or PROs should approach the Commission for authorisation.