

Submission by Nestlé New Zealand Limited (“Nestlé”) in respect of the Draft Report of the New Zealand Commerce Commission (“NZCC”) on the *Market study into the retail grocery sector* dated 29 July 2021 (“Draft Report”)

Nestlé is a supplier of food and beverage products to various retail and wholesale customers in New Zealand, including those in the retail grocery sector. Nestlé thanks the NZCC for undertaking this market study.

Nestlé makes the following comments regarding the Draft Report:

1. Nestlé strongly supports the introduction of a *Supplier Code of Conduct* (“Code”) to which grocery retailers and wholesalers/distributors operating in the New Zealand grocery sector would be signatories.
2. As a global company with experience in other markets with a retail landscape analogous to that of New Zealand, particularly Australia which has a duopolistic retail market like that of New Zealand, Nestlé has first-hand experience of the benefits a Code brings to suppliers, retailers and consumers alike. A Code is fundamental to define and establish a functional relationship between different market participants, providing guidance to the grocery retail sector on best practices and ways of working. Nestlé believes the Code would benefit the New Zealand grocery sector as it has that of Australia, the United Kingdom and many other countries.
3. Nestlé suggests any new Code be similar in format and scope to the Australian *Food & Grocery Code of Conduct* (as updated in December 2020) (“Australian Code”), which it considers covers the relevant topics and requirements. Also, by adopting the recently updated Australian Code, the New Zealand grocery sector would benefit from learnings identified in Australia. The relevance and applicability of the Australian Code is also evident having regard to similarities in the retail structure across Australia and New Zealand.
4. Nestlé strongly supports it being mandatory for all grocery retailers to become signatories to a Code, and can see benefits to it also being mandatory for wholesalers and distributors. Nestlé believes the Australian Code is weakened by its voluntary status, which has resulted in an uneven playing field between retail grocery operators.
5. Nestlé also suggests that some of the more nuanced concepts in the Australian Code – such as the concept of ‘good faith’, the parameters of a “promotion” and how it is funded, ‘genuine commercial reasons’ for de-listing, etc – could if adopted into any New Zealand Code be further developed and defined over time, based on experience in the New Zealand retail grocery context.

Nestlé would be glad to further participate in the NZCC’s review process, and in the development of a Code if it is a recommendation from the Draft Report which is selected to be taken forward.

**Nestlé New Zealand Limited
26 August 2021**