

ANONYMOUS SUBMISSION

Review of the Grocery Supply Code

Request for views paper

Date received

5/08/2024

Submitter

Submitter contact details

Submission on behalf of

SUBMISSION BEGINS:

Do you consider the code currently effective in supporting the objectives set out in paragraph 21?

1. No.

Following on from Question 6, are there certain objectives within paragraph 21 that you wish to comment on?

2. The three objectives which are not being adequately addressed are 1/ Promote fair conduct between RGR and Suppliers 2/ Prohibit unfair conduct between RGR's and Supplier and 3 / Contribute to a trading environment that includes a diverse range of suppliers.
3. The definition of "fair" and "unfair" are challenging hurdles to satisfy as it seems that the RGR's can largely avoid breaching these through procedural means and eventual agreement by the supplier.
4. Perhaps a better way to characterise as to whether the Code is working is the impact on the health of the industry. Observations include:
 - 4.1 Large suppliers recording record losses (Lion, Heinz, Arnotts, Ucc, Goodman Fielder, etc) and most others suffering extreme margin compression
 - 4.2 Unsustainable start-ups - even with scale by NZ standards cannot turn a profit and rely on continuous rounds of capital raising or looking off-shore to get to get scale (highly risky).
 - 4.3 Significant deletions of product ranges (and reduced consumer choice)
 - 4.4 Very little product innovation - RGR's not interested (Foodstuffs Emerge is just good PR) as are reducing range/increasing margin | supplier's focused on protecting core business

- 4.5 Exit of people from the industry due to the extreme stress and anxiety in their dealings with RGR's
5. The retailers continue to use their dominant power in negotiations to extract further margin - by performing range reviews (and stating the expected % margin increase) where it is made clear that their will be comprehensive deletions of a "brand". Suppliers are faced with a position of either conceding to the retailer terms or deletion of their entire brand. Any concession however is only good for a single range review (and not even that as we have seen other suppliers products brought back in based on "consumer requests" after terms for exclusivity have been given) after which the supplier is then faced again with the prospect of being deleted as other suppliers are again offered the opportunity to re-submit (where they will likely offer greater margin to get back in). This behaviour benefits only one stakeholder and that is the retailer - and not the consumer as there is never a conversation about a retail price decrease.
 6. The enormous imbalance in power (and implied "risk" of deletion - as "reducing range" or "Net Net Pricing" is a valid RGR strategy - substitutability, operational efficiencies, etc) enable the retailers to extract concessions and agreement to whatever terms they wish.
 7. There are also "unfair" terms being structured in agreements such as supplier rebates indexed to scan prices. Retail prices are beyond the control of suppliers - but if a retailer chooses to increase price the rebates would increase in proportion. Despite the irrationality of this - the RGR's are still getting these across the line.
 8. Similarly with agreements to terms such as the [REDACTED] merchandising term - it is clear that the concessions made are not translating at store level - additional staff not being employed or inability of store staff to know which suppliers have conceded to the term or not. This is validated in conversations with store buyers and owners. Suppliers are regretting their decision but despite this it would be almost impossible to reverse this term once agreed.
 9. Given New Zealand's very small size - unless a factory is viable or a MOQ can be met a product cannot be viably brought to market. This inevitably results in reduced innovation and the number of suppliers.

Are there any issues with the content of the Code that may be impacting the Code's effectiveness in supporting the objectives in paragraph 21.

10. No - I feel that the intent is good but the severe imbalance of power results in suppliers conceding to any terms due to the risk to their business.
11. It does seem if a supplier has an issue that the onus is on each individual supplier to make a complaint - and then they are required to take legal counsel. This is a very high hurdle and requires significant resource. Additionally most suppliers I suspect would feel that it would be a pointless effort with a indeterminate and potentially adverse outcome.

12. Suspect the whistle blower initiative has not delivered any results - as we all get trapped by our complicit agreement (under duress).

Are there any opportunities for improving the content of the Code to support the objectives in paragraph 21?

13. There is nothing obvious as unless the RGR balance of power is addressed (more competition) suppliers will be forced to concede to inequitable terms. The approach that the RGR's take is to divide and conquer - which over time creates momentum where it becomes a fait accompli.
14. In the absence of more RGR competition, I feel the only other avenue is the introduction of collective bargaining where suppliers can push back against specific RGR strategies or terms. Perhaps this is where the Grocery Commissioner can act as arbiter on specific issues (raised by a collective/NZFGC) and rule on whether a RGR course of action/strategy is "fair", "unfair", "oppressive" or impose additional procedural requirements on the RGR's. E.g. RGR to provide evidence that they have delivered a benefit - to consumer / supplier and if not then term can be unwound.

Are there any issues with the way the Code is being operated or implemented that may be impacting its effectiveness in supporting the objectives in paragraph 21?

15. No as long as procedural due process is followed and there is resulting agreement by the supplier - the outcome is deemed to be "fair".
16. Perhaps the Code of Conduct needs to have a greater focus as to whether the purported benefits (of an Agreement) have been delivered and if not, prescribing an RGR obligation to unwind the agreement. This would force RGR's to be accountable (burden of proof) for the agreements that are entered into - as opposed to a supplier having no easy recourse to recoup money after it has conceded it.

Do you have any suggestions about steps to include within the review process to support input into the review?

17. I think the Code of Conduct governs the process to an Agreement but perhaps it should have more do a review of supplier agreed concessions (Exclusivity, distribution, merchandising, displays/coop) made by suppliers - and as to whether they view they received the purported benefits. This may support the enhancement suggested in Point 10.

Do you have any other comments you would like us to consider when planning this review process?

18. No.