

24 July 2024

Mary Devine
Chief Executive Officer
Foodstuffs South Island Limited
Support Centre
167 Main North Road
Christchurch 8051

By email to:

[REDACTED]
[REDACTED]

Dear Mary,

Grocery Commissioner expectations to ensure customers are charged correctly

1. This letter reiterates the Commerce Commission's ongoing concern around pricing integrity issues in your supermarkets. It sets out our expectation on further steps Foodstuffs South Island (**FSSI**) should be taking to address these issues. We first raised price integrity issues with you in a letter from our Chair, John Small in May 2023, and in October 2023 I stated publicly that this was a priority issue for me.
2. During our conversations, I have raised customer refund policies with you, and the importance of customer complaints to identify potential compliance issues within your business. This letter sets out my expectations around these two initiatives.

Pricing integrity complaints

3. There continue to be examples of customers being charged incorrectly at the checkout. Inaccurate prices add up no matter how small, and customers' trust in markets may be eroded.
4. Customers can play an important role in bringing pricing issues to your attention. They will be motivated to bring issues forward if there is a benefit to them. A generous and well-promoted refund policy will help empower customers.
5. We are aware that when a customer is charged more than the advertised price, FSSI has a refund policy that provides a refund of the difference between the shelf or online price, and the price charged (**your refund policy**).

6. However, we are concerned that your refund policy is not effectively empowering customers to act because it is not advertised clearly and prominently for customers and not sufficiently motivating for customers when compared to similar policies operated by your counterparts in Australia¹.
7. Complaint data is also a helpful source of information to identify trends and issues. It provides a benchmark against which the effectiveness of internal compliance processes can be assessed and improved for the benefit of customers. We are concerned that currently, you may not be recording complaints efficiently across your organisation, including at a store level.

Requested changes

8. In this regard our expectation is that you:
 - 8.1 Review and amend your refund policy to ensure it demonstrates your commitment to pricing integrity and motivates customers to bring any pricing integrity issues to your attention by creating positive incentives. For instance, offering a full refund on mispriced goods. Such a change would also bring your supermarkets in line with the policies adopted by Woolworths NZ and the Australian supermarkets;
 - 8.2 Thereafter prominently promote your refund policy. You may consider in-store, online and direct mail communications about your refund policy and ensure that staff are appropriately responding to requests for refunds; and
 - 8.3 Ensure there are comprehensive systems and processes to record and categorise all complaints about pricing and promotional issues, and appropriately train staff in relation to the amended policy, systems and processes.
9. The particular information which your systems record on complaints is for each Regulated Grocery Retailer to determine but, at a minimum, we expect it would include details on the following information:
 - 9.1 Banner;
 - 9.2 Store;
 - 9.3 Date of complaint;
 - 9.4 Date of event (when the pricing issue occurred);

¹ <https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/buying-guides/misleading-pricing>

- 9.5 Summary of what happened (including the type of the complaint e.g., mispriced goods, misleading multibuys);
- 9.6 Whether the complaint was substantiated and how the issue was resolved for the customer; and
- 9.7 What steps were taken internally to escalate the complaint (i.e., steps taken to stop recurrence)?

Investigations under the Fair Trading Act

10. What I am requesting here are forward- looking steps that I believe will contribute to mitigating potential compliance issues in the future. These are separate from the ongoing investigations underway under the Fair Trading Act.

Proposal to set a GICA disclosure standard regarding pricing complaints

11. In addition to the matters we have asked you to action in this letter, we are considering taking formal, long- term steps to establish a disclosure standard which would require the disclosure of information about customer complaints, including around pricing and promotional issues. This is enabled by s191 of the Grocery Industry Competition Act (**GICA**).
12. The GICA also provides that the disclosure standard can specify a methodology for how this information is to be recorded and retained, whether it should be certified and by whom, and how information is to be disclosed, including to whom it should be disclosed (including to the public) and in what detail.²
13. Later this year we intend to publish a discussion paper regarding the introduction of a disclosure standard, - specifically addressing complaints - for consultation. This will support the requests outlined in this letter, which are aimed at improving the collection of complaint data to identify potential pricing and promotional issues. All industry stakeholders would be invited to comment. Precisely which supermarkets should be subject to that proposed disclosure standard will need to be decided; the GICA provides that the disclosure standard may apply to all participants, a particular participant, or a class of participants.³

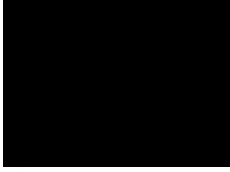
Next steps

14. Can you please let us know **by 7 August 2024** how you propose to respond to the expectations set out in paragraphs 8 and 9 of this letter. Please contact grocery.regulation@comcom.govt.nz with your response.
15. Please note that I intend to comment publicly on these issues including the likely public release of this letter and any subsequent correspondence.

² Section 194 of GICA.

³ Section 191(2) of GICA.

Yours sincerely,



Pierre van Heerden

Grocery Commissioner