

## FACT SHEET:

# WHOLESALE SUPPLY INQUIRY AND STRONGER REGULATION OPTIONS

## Overview

This fact sheet provides an overview of the stronger regulation options available under the Grocery Industry Competition Act 2023 (the GICA) as part of the wholesale regime. These options may be considered as part of the Wholesale Supply Inquiry that is being carried out between September 2024 and mid-2025.

### Who is this fact sheet for?

- Suppliers of grocery products
- Regulated grocery retailers (RGRs)
- Wholesale customers of grocery products
- Any grocery industry participants or members of the public who want to provide feedback as part of the Wholesale Supply Inquiry

### Why are we doing a Wholesale Supply Inquiry?

Our first [Annual Grocery Report](#) found that there are some fundamental issues in the wholesale grocery market (including uncompetitive wholesale prices and limited ranges of products) that are unlikely to be addressed under the regime's current settings.

### What will the Inquiry cover?

We are undertaking an Inquiry to consider if stronger regulation is needed, and if the legal requirements for stronger regulation are met, to confirm what it should look like.

The Inquiry will consider wholesale supply options via both the RGRs and directly from suppliers.

### What are the stronger regulation options?

Under the GICA there are four main options:

- Wholesale Framework
- Wholesale Code
- Non-discriminatory terms
- Specified access terms

More detail about each of these options is provided on page 2. As part of the Inquiry we may also look at other options, if we consider it will promote the purpose of the GICA.

### What is the wholesale regime?

The wholesale regime is established under Part 3 of the GICA and covers the supply of both groceries and ancillary services. More detail about the regime can be found [here](#).

It is intended to enable wholesale customers to have “reliable and cost-effective wholesale supplies of groceries” and “reasonable access to the benefits of the scale, and the efficiency, of operations of RGRs.”

Practically, this means it should help address a lack of wholesale supply options in New Zealand to enable potential competitors to improve their retail offering and compete more vigorously with the RGRs.

The wholesale regime's current settings include requirements for RGRs to:

- consider wholesale requests in good faith;
- have transparent pricing; and
- not engage in conduct that could prevent a wholesale customer from receiving the benefits or a range, quantity or frequency based discount, payment or rebate.

It also includes requirements for RGRs to establish and implement:

- rules, criteria and procedures for considering requests; and
- standard terms and conditions and principles for wholesale supply;

### Who are the RGRs?

They are defined under the GICA. They are the main grocery retailers and all related corporate entities, including: Woolworths New Zealand (including Countdown, Fresh Choice and Super Value) and Foodstuffs North Island and Foodstuffs South Island (including Pak'nSAVE, New World and Four Square).

## We want to hear from you

We are inviting your feedback on the issues affecting the wholesale supply of groceries and the tools we have to address them. More information about how to provide feedback can be found [here](#).

## What are the stronger regulation options under the GICA?

Stronger regulation may be necessary or desirable to promote the purpose of the wholesale regime. The GICA provides four options for stronger regulation, which could apply to one or more RGRs, suppliers and wholesale customers. Stakeholders will be consulted before any decisions or recommendations on these or any other options are made.

### Wholesale Framework

The Commission can make a determination requiring a RGR to establish and implement a wholesale framework.

The framework would be a manual or rule book that sets out how certain decisions will be made by the RGR, including about price, range, quantity, frequency and terms and conditions for the wholesale supply of groceries. Each framework would be prepared by, and tailored to, each RGR.

It would increase transparency for all parties about decision-making and would incentivise the RGRs to develop and offer competitive wholesale supply offers.

As it relies on the RGR to develop and implement an effective framework, it would likely have the least regulatory interference with commercial arrangements and the lowest regulatory costs. It may also be the least likely to make prices more competitive and increase available product ranges in a timely manner.

### Wholesale Code

The Commission can make a determination setting out a grocery wholesale industry participation code. It could apply to one or more RGRs, suppliers and wholesale customers.

The code could include provisions that:

- provide rules about wholesale supply;
- improve or clarify wholesale regime operations and expectations; and/or
- address some of the issues we're seeing.

Practically this could include provisions regarding the range of products available via wholesale, wholesale pricing models, and expectations for behaviour relating to rebates, discounts and payments (including trade/promotional spend).

A code could be used to improve the wholesale regime's operation by guiding behaviours of market participants towards public interest outcomes. It has less regulatory interference and costs than non-discriminatory and specified access terms.

### Non-discriminatory terms

The Minister of Commerce and Consumer Affairs, following an Inquiry and recommendation from the Commission, could seek an Order in Council from the Governor-General to require RGRs to supply wholesale customers on non-discriminatory terms.

This would require RGRs to supply like wholesale customers on a like basis. It would mean a RGR could not treat them differently from how they treat themselves, except in limited circumstances.

The Commission would issue a determination to specify how the non-discriminatory terms apply. This may include provisions about: their terms and conditions; systems, procedures and processes; and/or separating their retail and wholesale operations.

Non-discriminatory terms could be used to improve and re-shape the wholesale grocery market. It would have higher costs and more regulatory interference in commercial operations than a framework or code.

### Specified access terms

The Minister, following an Inquiry and a recommendation from the Commission, could also seek an Order in Council from the Governor-General to require RGRs to supply wholesale customers on specific terms.

The Commission would issue a determination that specifies how the terms apply. This determination must regulate the terms and conditions RGRs supply wholesale groceries on, related to price, range, quantity, frequency or any other matter. It would replace wholesale supply agreements.

The matters in the determination could vary depending on factors such as customer type, different product lines and/or location.

Specified access terms could be used to improve the wholesale grocery market, particularly for new entrants or expansions. It would likely have the highest level of regulatory interference and costs, and may be complex to develop in a manner that minimises costs and unintended consequences.