

13 March 2024

Dr Alice Hume  
Head of Grocery  
Commerce Commission  
Level 9, 44 The Terrace  
Wellington 6011

**By email**

Dear Alice

**FOODSTUFFS NORTH ISLAND LIMITED — RESPONSE TO GROCERY SUPPLY AGREEMENTS – COMMERCE COMMISSION COMPLIANCE MONITORING UNDER THE GROCERY INDUSTRY COMPETITION ACT 2023, FAIR TRADING ACT 1986 AND COMMERCE ACT 1986**

- 1 Thank you again for meeting with us on 22 February 2024. We appreciated the opportunity to provide further information about our business and discuss aspects of your 9 February 2024 letter setting out the Commerce Commission's (**Commission**) preliminary assessment of Foodstuffs North Island Limited's (**FSNI**) original Grocery Supplier Contract (excluding Fresh Produce) (**GSC**).
- 2 FSNI considers that its GSC is fully compliant with the Code. Our GSC was drafted and provided to suppliers in good faith. However, we understand that the Commission considers that the GSC is complex and could be difficult for a supplier to navigate. In our meeting, you used the term "over-complicated" (or similar phrase). We were disappointed to hear that view. Our intention was always to provide clarity and transparency in respect of commercial arrangements which because of the nature of the industry are not simple or similar to consumer agreements. We consider the GSC achieved that goal and is consistent with the purposes stated in sections 3 and 16 of the Grocery Industry Competition Act 2023 as well as compliant with the requirements of that Act and the Code. However, we appreciate your feedback and are keen to make constructive changes to ensure that our GSC is a helpful document for our suppliers.
- 3 Accordingly, we have decided to amend our GSC and simplify aspects of our commercial terms. Our amendments are extensive, to substantively respond to the Commission's concerns. Rather than in this letter go through each of the issues and questions that you raised in your letter about our original GSC, we have **attached** our full amended GSC and template commercial terms.
- 4 Our amended GSC is very similar to Foodstuffs South Island Limited's Master Supplier Terms and Conditions. Our amended GSC is in plain language. It has a comprehensive definitions section. To assist suppliers' understanding, our amended GSC sets out, verbatim, critical portions of the Code, including the delisting provisions. Clauses have been further simplified, with a focus on setting out the processes that we will follow in meeting our obligations under the Code.
- 5 Our amended GSC still sets out a hierarchy of documents that together define the relationship between us and a supplier. This is contemplated by clause 7(2) of the Code

and necessary because of the nature of our business and our dealings with suppliers. However, we have simplified the relevant provisions in our GSC.

- 6 Clause 1.3 of our amended GSC states that it does not apply to other contractual arrangements that are not for the supply of groceries. We have reviewed all those agreements and, where required, are proposing amendments so that they are not inconsistent with the Code.
- 7 Our amended GSC will be offered to all our grocery suppliers (and, if agreed to, will replace any existing GSC which has been signed). This will include sending our amended GSC even to those suppliers who had previously received or even signed the original version of our GSC. We will offer the amended GSC as quickly as possible. We may be back in touch with you to discuss any timing issues that might arise.
- 8 Thank you again for the feedback. Our team and I look forward to seeing you and your team at the upcoming meeting for the Code walkthrough.

Yours faithfully,



**Julian Benefield**  
General Counsel and Company Secretary

foodstuffs  
NORTH  
ISLAND

