



Tēnā koutou

I'm pleased to be sharing our second Grocery newsletter, with some updates on our work under the Grocery Industry Competition Act (GICA).

Last month I published an Open Letter about my focus this year as the Grocery Commissioner and particularly around the Grocery Supply Code, our upcoming Annual Review, the wholesale regime, and how we are implementing Unit Pricing Regulations. The Open Letter is available on the Commerce Commission website [here](#), and we've included a summary below.

Alongside the application from Foodstuffs North Island and Foodstuffs South Island which is being considered by the Commission under the merger regime, we have had a busy first few months of the calendar year with mahi as we now approach the first anniversary of GICA.

I want to thank everyone from across the sector for your input and time – whether you have been responding to requests-for-information from the Commission, updating or considering new supplier agreements to align to the Grocery Supply Code, engaging in the wholesale regime, or bringing insights forward to the Commission through our Anonymous Reporting Tool. Every action is part of us working together to drive change in the sector, to deliver long-term benefits for Kiwi consumers.

This \$25 billion sector continues to quite rightly be in the public and media spotlight in New Zealand and also across the Tasman. As you will be aware, the state of competition in Australia's supermarket sector is under the microscope with the current Senate enquiry – which is similar to the Grocery market study done by Commerce Commission in New Zealand and which we reported back on in early 2022. Our upcoming Annual Review, due to be published mid-year, will be looking back at this market study as well as reporting on the current state of competition in the sector including key competition measures and the opportunities in front of us to level the playing field and deliver benefits for consumers.

We've been following developments in Australia closely and regularly engage with our counterparts more widely – including providing insights and learnings from our market study.

When looking at the coverage around the Senate inquiry, it highlights to me how far ahead we are with our regime in New Zealand – and a large part of this is down to the engagement from you in the sector around the new rules and tools being put in place.

An example of where we are leading the way is the new Grocery Supply Code which, compared to Australia's voluntary regime, is mandatory in New Zealand. Our Code also has significant pecuniary penalties if supermarkets do not comply. Contraventions of the code include pecuniary penalties up to \$200,000 for an individual and for a supermarket the greater of \$3m PLUS the greater of the amount of commercial gain or 3% of turnover of the RGR and its interconnected bodies corporate.

More widely, we're seeing many of the same issues in the grocery sector here as we are overseas. While it's encouraging that measures are being put in place to address these issues in New Zealand, I do recognise there's still a lot of work to be done to drive competition and level the playing field – it's early days in the regime and this is a long game.

In this newsletter we have provided a summary of the Open Letter shared last month, and an update on our work around the Grocery Supply Code, Unit Pricing, and the proposed Foodstuffs merger. I encourage you all as key stakeholders in the sector, to read these updates, share them more widely and please reach out to us with any questions or if you would like to bring information forward.

We're all part of an industry that touches everyone in New Zealand, and for many of you it is your livelihood. Nurturing competition is much more than an ambition, it is necessary for the long-term health and sustainability of this sector – and what we all want to see in creating new business opportunities, and important outcomes for consumers such as better prices, quality, innovation, availability and choice.

Tēnā koutou katoa
Pierre van Heerden
Grocery Commissioner

If you wish to get in touch with the grocery team or subscribe to the newsletter, please contact grocery.regulation@comcom.govt.nz.

Grocery Supply Code

The six-month grace period for the Grocery Supply Code came to an end on 28 March 2024. This means that regulated grocery retailers (“RGRs”), including Woolworths New Zealand, Foodstuffs North Island and Foodstuffs South Island, must have offered suppliers variations to their supply agreements to ensure existing agreements are consistent with the Code. Under the Code, all grocery agreements must now be in writing.

As a supplier, there is no requirement for you to have signed a new agreement during the grace period. Suppliers are also not required to agree to contract out of any protections that apply unless they consider it in their interest. Take your time to consider agreements, do not opt-out of provisions of the Code unless it is of benefit to you, and consider seeking independent legal advice. We have highlighted these provisions in our [recently launched checklist for grocery suppliers](#) to provide you with support when assessing grocery supply agreements, and show which areas are able to be negotiated. Once you have reviewed and negotiated your agreement, and are happy with it, please remember to sign it and return it to the RGR as we are keeping a close eye to ensure that all agreements are in writing and signed.

We would also like to remind you that the Code covers not only what should be included in a grocery supply agreement, but how the RGR’s continues to deal with you on an ongoing basis. The Grocery Supply Code factsheet summarises behaviours required of the RGR, conduct that is prohibited, and conduct that can only occur if it is provided for in your grocery supply agreement and is reasonable in the circumstances. This could include when retailers ask you for certain payments which you may not agree to.

As the regulator, we will continue to monitor the RGRs and their compliance with the Code. We encourage suppliers to come forward to the Commerce Commission if you have concerns with the conduct of RGRs. Information we receive from suppliers and the sector supports the Commission to assess the effectiveness of the grocery sector.

You can contact us directly at grocery.regulation@comcom.govt.nz. If you are concerned about revealing your identity, our **Anonymous Reporting Tool** provides a secure channel for people to remain anonymous when coming forward to the Commission about concerning or inappropriate behaviour. Find out more about our anonymous reporting tool on our website <https://comcom.govt.nz/make-a-complaint>.

Open Letter to the Grocery Sector

On 16 April 2024 the Commission published its third open letter to the Grocery sector highlighting its focus for the upcoming year.

This letter builds on the Grocery Commissioner's previous communications with the sector, and provides an update on key aspects of the Commission's work to date, including:

- the Grocery Supply Code;
- the first annual report into the state of competition in the grocery sector;
- assessing the effectiveness of the wholesale regime; and
- implementing Unit Pricing Regulations.

The open letter can be accessed [here](#).

Further information about grocery regulation can be found on our website at <https://comcom.govt.nz/regulated-industries/grocery>

If you have any questions or comments in response to this open letter please email grocery.regulation@comcom.govt.nz.

As noted in our previous newsletter, we are currently talking to suppliers and retailers about the wholesale offerings of the three RGRs. If you would like to share your perspective, please also get in touch through the above email address.

Unit Pricing Guidelines now available

The Commerce Commission wrote to stakeholders on 20 November 2023 seeking feedback on the draft guidelines for the new [Unit Pricing regulations](#). We have worked through the comments received and would like to thank those who provided feedback.

We are pleased to announce that the final Unit Pricing Guidelines are now available for grocery retailers. These guidelines aim to help grocery retailers understand the obligations under the new regulation.

The Unit Pricing Guidelines are available [here](#) and are being hosted on our [website](#).

A reminder that physical stores must comply by 31 August 2024 and online stores must comply by 31 August 2025 at the latest. The Grocery Commissioner has encouraged all RGR's to implement their online compliance earlier if at all possible. The Regulations apply to any grocery retailer who has an internal floor space of over 1,000sqm and sells all the following product categories, as well as to any online retailer that sells these product categories:

- Bread
- Dairy products
- Eggs or egg products
- Fruit
- Vegetables
- Meat
- Fish
- Rice
- Sugar
- Manufacturer-packaged food.

We encourage you to seek legal advice on the regulations if it is required.

Foodstuffs merger update

As noted in the February newsletter, the Commission is currently considering an application from Foodstuffs North Island and Foodstuffs South Island seeking clearance to merge. Our role is to assess whether the merger is likely to substantially lessen competition in any market in New Zealand. More information about our role can be found [here](#).

On 4 April 2024, we published a Statement of Issues. You can read it on our case register [here](#). The Statement of Issues sets out the possible competition issues we have identified following our initial investigation, and invites submissions from Foodstuffs North Island, Foodstuffs South Island and other interested parties. As set out in detail in the Statement of Issues, we are not yet satisfied that the proposed merger would not substantially lessen competition in upstream market(s) for the acquisition of groceries and/or downstream market(s) for the retail supply of groceries.

Submissions on the Statement of Issues closed on 18 April 2024. However, if you wish to make a cross-submission on the submissions we received, you can do so until 30 April 2024. Alternatively, if you missed the opportunity to submit and would like to arrange a time to

Speak directly with the team that is investigating the application, please email registrar@comcom.govt.nz.

We are currently due to make a decision on the proposed merger by 31 May 2024. However, this date may be extended as our investigation progresses.

Please feel free to share this with colleagues and any other contacts who you think might benefit from these updates, which the Grocery Commissioner will also be promoting through LinkedIn. Anyone who wants to subscribe can email our engagement team at grocery.regulation@comcom.govt.nz.



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