

13 July 2023

Tēnā koutou,

## **Open letter to the grocery sector – commencement of the Grocery Industry Competition Act 2023**

1. The Grocery Industry Competition Act (the Act) came into force on 10 July 2023, giving the Commerce Commission new powers to monitor and regulate the grocery sector.<sup>1</sup>
2. We want New Zealanders to benefit from more competitive prices and more choice when they buy their groceries.
3. As the incoming Grocery Commissioner, I welcome the opportunity to lead the Commission's work in driving the grocery sector to be more competitive for the benefit of all New Zealanders.
4. This letter briefly sets out what the Act means for our role as a regulator, what the Act means for the sector and to signal some of our priorities in these early days of the regime.
5. The grocery sector is large and has many other market participants in addition to the grocery retailers that are regulated by the Act. The regulated grocery retailers (RGRs) are Foodstuffs North Island, Foodstuffs South Island, and Woolworths New Zealand.
6. The sector is also diverse, including the likes of small growers and craft food producers, convenience retailers, online retailers, large retailers, iwi-owned suppliers, and large multinationals.
7. If you participate in the grocery sector, the Act may positively impact you. In particular, it creates rights or benefits for some participants, because it is designed to:
  - 7.1 Address the unequal bargaining power between RGRs and suppliers;
  - 7.2 Enable better access to reliable, cost-effective wholesale supply;

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<sup>1</sup> A copy of the Act is available at:  
<https://www.legislation.govt.nz/act/public/2023/0031/latest/LMS743553.html?src=qs>.

- 7.3 Make it easier to enter and expand in the grocery retail market; and
- 7.4 Provide consumers with more competitive prices, better range, quality, innovation, and diversity of choice.

### **What the Act means for our role as a regulator**

- 8. The Commission is New Zealand's primary competition, consumer, and economic regulatory agency. Our vision is that New Zealanders are better off because markets work well, and consumers and businesses are confident market participants.
- 9. The Act has given us new responsibilities for monitoring and regulating the grocery sector. These new responsibilities are in addition to the existing work we do in the grocery sector under the Commerce Act 1986 and the Fair Trading Act 1986.
- 10. We are leveraging our regulatory expertise in sectors we already regulate such as Energy, Telecommunications, Dairy, and Fuel to take on the powers, duties and functions conferred upon us by the Act.

### **What the Act means for the grocery sector**

- 11. The Act is designed to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand. We expect retailers will face more pressure to compete on price, quality, and range to satisfy diverse consumer preferences.
- 12. The Act contains a set of measures to improve competition including:
  - 12.1 It establishes a new wholesale supply regime that creates obligations on RGRs to set up systems to facilitate wholesale supply to other grocery retailers. This is intended to make it easier for businesses to enter the retail market and support the growth of existing retailers.
  - 12.2 It allows for the creation of a Grocery Supply Code that sets out the rules of engagement between suppliers and RGRs. The Ministry for Business, Innovation and Employment (MBIE) has recently finished consulting on the Grocery Supply Code.
  - 12.3 It empowers the Commission to regularly monitor and report on competition and efficiency in the grocery sector, including producing an annual report on the state of competition. Our monitoring and regular reports should help promote transparency and increase confidence in the sector for participants and all New Zealanders.
  - 12.4 It creates the framework for a new dispute resolution body to deal with disputes between RGRs and their suppliers or wholesale customers.

- 12.5 It extends the Fair Trading Act's protections against unfair contract terms to larger contracts between grocery suppliers and retailers, and allows private parties to take enforcement action.
  - 12.6 It provides for regulations to be made to enable collective bargaining by suppliers.
  - 12.7 It creates the role of the Grocery Commissioner at the Commission, whose role is to oversee the changes to the sector promoted by the Act and to manage the regulatory framework created by the Act.
- 13. The Act also provides the Commission with a wide and flexible range of information gathering and enforcement powers to use as needed, to support regulation of the sector. This includes the obligation to monitor and report on competition, and to carry out inquiries, reviews, and studies in connection with the grocery sector.
  - 14. The new regulatory regime will take time to increase competition in the sector. However, we also expect that the changes being introduced will be long-lasting and sustainable.
  - 15. The Act places duties on the RGRs, specifically Foodstuffs North Island, Foodstuffs South Island, and Woolworths New Zealand. The Act also extends to related parties of RGRs in some circumstances. Other grocery retailers can also be designated as RGRs through secondary legislation.
  - 16. We are working directly with the RGRs, with a focus on the obligations they now have under the Act, as well as the broader objectives of the Act.
  - 17. The Act gives an opportunity to the RGRs to address supply and wholesale issues themselves commercially in the first instance. The Commission's role is to monitor this and to step in if the RGRs fail to deliver.
  - 18. The Commission's website will be progressively updated to provide resources on understanding the Act and how it impacts on the sector.

### **Our initial priorities in the early days of the regime**

#### *Wholesale supply access regime*

- 19. From 10 July 2023, each of the RGRs must consider requests for wholesale supply in good faith. From our meetings with RGRs, we understand that they are receiving and processing requests for wholesale supply.
- 20. The Act has a set of requirements and considerations that, if not met, have the potential to trigger stricter regulation to further enable wholesale supply. These requirements come into force at different times over the first year of the regime.

21. We will be monitoring the RGRs closely to ensure that they meet these requirements and make meaningful progress towards providing a reliable, cost-effective wholesale offering.
22. Organisations can also raise directly with the Commission any concerns they have about whether any of the RGRs are meeting their obligations around wholesale supply under the Act. Information about how to contact the Commission is provided at the end of this letter.

### *Monitoring*

23. The Act requires us to monitor and report on competition and efficiency in the grocery sector on an annual basis.
24. These reports will play an important role in improving transparency and understanding of competition in the grocery sector for participants and the New Zealand public. We intend to publish our first report on the state of competition in the sector as early as June 2024.
25. We look forward to engaging with various participants in the sector to collate the data and information we need to assess how competition in the sector is evolving over time.

### *Compliance and enforcement*

26. We have started engaging with RGRs about their obligations and how they plan to comply with them.
27. We hope to build a strong regulatory relationship across the sector and will be seeking feedback from a wide range of stakeholders about compliance issues with any of the Acts we are responsible for, including the new Grocery Industry Competition Act.
28. We want to ensure that the New Zealand public and all stakeholders across the sector are confident that RGRs will follow their obligations under the Grocery Competition Act and will face consequences if they do not.

### *The Grocery Supply Code*

29. MBIE is developing the first version of the Grocery Supply Code. A draft Code has currently been consulted on and we understand that the Government expects to put the Code in place before the end of the year. After the commencement date of the Code, there will be a six-month grace period to allow both RGRs and suppliers time to review and update their existing agreements.
30. We plan to provide more information for the sector on the Grocery Supply Code after it has been finalised.

31. We will also have an ongoing responsibility for reviewing the Code and updating it so that it achieves its purpose. We will engage and work with the sector to understand what is working well with the Code and what might need adjustment in future versions.
32. MBIE is setting up, and will oversee, the dispute resolution scheme.

## **How to get in touch with us**

### *Complaints*

33. Anyone can make a complaint to the Commission about a party in the grocery sector at any time. This could be about a breach of the new rules introduced by the Act or the Fair Trading or Commerce Acts.
34. You can make a complaint through our website at <https://comcom.govt.nz/make-a-complaint>. Alternatively, you can call us on 0800 943 600 or email [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz).

### *Staying up to date and contacting the Grocery team*

35. More information will be available on our work on the grocery sector at <https://comcom.govt.nz/regulated-industries/grocery> and updates will be published through our social channels. Links to our social channels can be found on the website.
36. You can also email us. If you would like to make a general enquiry, or get in touch with the Grocery team at the Commission, email [market.regulation@comcom.govt.nz](mailto:market.regulation@comcom.govt.nz).
37. If you would like to receive emails from us when we update our website or have other grocery regulation news to share, email us with the subject line 'Subscribe Grocery' to join our distribution list.

Ngā mihi nui

**Pierre van Heerden**  
Grocery Commissioner