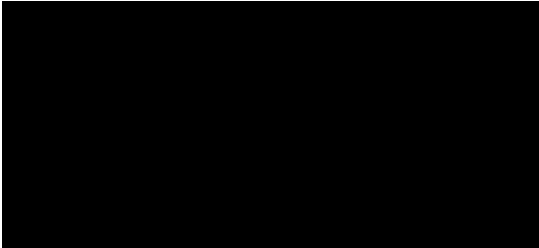


10 November 2023



Official Information Act #23.088 – Consumer Pricing in the Groceries Industry

1. We refer to your request received on 24 October 2023 for information about consumer pricing in the grocery sector.
2. Specifically you requested the following information:
 - 2.1 An outline of the existing measures and regulations that are meant to prevent excessive margin grabs and the mechanisms intended to ensure that reduced costs are passed on to consumers?
 - 2.2 The steps the Commerce Commission (**Commission**) is taking to monitor retailer's pricing strategies and ensure compliance with fair pricing practices?
 - 2.3 Are there specific mechanisms in place to address instances of excessive margin grabs?
 - 2.4 Has the Commission faced any challenges in regulating the pricing strategies of grocery retailers and are any legislative or resource constraints hindering the Commission's ability to enforce fair pricing?
 - 2.5 What initiatives or plans does the Commission have to address these issues in the future?
 - 2.6 Are there any upcoming policies or regulations aimed at curbing excessive margin grabs and ensuring fair pricing for consumers?
3. We have treated this as a request for information under the Official Information Act 1982 (**OIA**).

Our response

4. We have decided to grant your request.

Current Measures in Place

5. While businesses are free to set their own prices and increasing prices above levels charged previously isn't illegal in New Zealand, the Fair Trading Act 1986 (**FTA**) prohibits misleading and deceptive conduct, and false representations. This means that if a business gives a reason for a price increase it must be true and not misleading. There is no legislation to ensure reduced costs are passed onto consumers however we expect that recent grocery specific regulatory changes will increase transparency of investment buying by regulated grocery retailers, improve the ability of consumers to make informed purchasing decisions and will increase competition in the grocery industry.
6. These regulatory changes include:
 - 6.1 The introduction of the Grocery Supply Code 2023. The Code includes provisions to increase transparency of investment buying by regulated grocery retailers. This will help to ensure regulated grocery retailers cannot stockpile goods they have purchased at a low price for increased margins at a later date without the supplier's agreement.
 - 6.2 The introduction of unit pricing regulations (i.e, displaying the price for a product with reference to standard units of measure such as per litre or per kg). The regulations require certain grocery retailers to display the unit price for goods clearly and legibly, at no less than 25% the size of the marked price. Grocery retailers covered by the regulations have until 31 August 2024 for in store goods to comply with this standard, and 31 August 2025 for products sold online. We consider that consistent use of unit pricing would assist consumers to make informed decisions which in turn can help promote both inter-brand and inter-retailer competition.
 - 6.3 The implementation of a new regulatory regime for the grocery industry. Among other things, the Grocery Industry Competition Act 2023 (**GICA**) is designed to enable other grocery retailers better access to reliable, cost-effective wholesale supply and make it easier to enter and expand in the grocery retail market. More competition in the grocery industry should put stronger pressures on grocery retailers to deliver more competitive grocery prices (such as by passing on cost reductions), better quality, and a better range of grocery products to consumers.

Monitoring and Enforcement

7. The GICA requires the Commission to monitor and report on competition and efficiency in the grocery sector on an annual basis. These reports will play an

important role in improving transparency and understanding of competition in the grocery sector for stakeholders (including the government) and the general public.

8. The Commission intends to publish the first report on the state of competition in the sector as early as June 2024. To inform our first report we intend to collect information from the regulated grocery retailers on (among other things) their margins and promotional practices.
9. The Commission's Fair Trading branch can investigate potential breaches of the FTA (misleading and deceptive conduct, and false representations).
10. There is no specific mechanism to set or regulate retail prices offered by regulated grocery retailers.

Challenges Faced

11. As a new regulatory regime, the Commission's Grocery Team are currently working with the regulated grocery retailers to collect the information required for our first monitoring report. If required, we have information gathering powers to compel parties to provide the Commission with necessary information.
12. We also have specific investigation and information gathering powers in the GICA to examine margins.

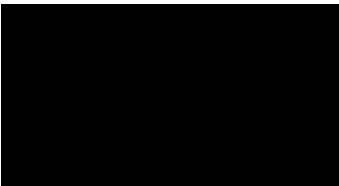
Future Plans

13. As noted above, unit pricing regulations are currently being transitioned in over the next two years and the Commission's grocery monitoring regime is currently being set up and will publish annual reports from 2024 onwards.

Concluding remarks

14. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
15. Please do not hesitate to contact us at oa@comcom.govt.nz [mailto:](mailto:oa@comcom.govt.nz) if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

27 November 2023



Official Information Act #23.113 – Grocery sector queries

1. We refer to your request received on 19 November 2023 for information about the Commerce Commission's (**the Commission**) oversight of the grocery sector. This request was a follow up to the Commission's response of 10 November to request OIA 23.088.
2. We have identified the following questions.
 - 2.1 What steps is your office taking or intending to take to monitor the regulated grocery retailer's pricing strategies to ensure compliance with the Grocery Supply Code?
 - 2.2 Does the Commission intend undertaking an audit of the following:
 - 2.2.1 selecting say 5 products from "each aisle of the supermarket" and requiring production of all documentation from both the supplier and retailers in relation to the supply of those products. This would or should disclose any margin grabs by the retailer and determine compliance with the Grocery Supply Code; and
 - 2.2.2 Requiring disclosure of suppliers or products delisted by the regulated grocery retailers since the 28th September 2023 and an audit of those suppliers or products to determine compliance with the Grocery Supply Code.
 - 2.3 If the Commission does not intend undertaking such audits (at [2.2]) then why not?
 - 2.4 If the Commission is undertaking such audits (at [2.2]) then when will they be undertaken and what is the timeframe for investigation and report and will this information be publicly available?

3. We also address the concern raised regarding potential practises in contravention of the Grocery Supply Code.
4. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

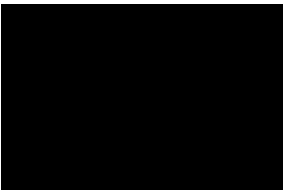
5. We have decided to grant your request.
6. As noted in our 10 November response, multiple regulatory changes have been made this year that are intended to work together to promote competition and efficiency in the grocery industry.
7. More competition in the grocery industry should put stronger pressures on Regulated Grocery Retailers to deliver more competitive grocery prices (such as by passing on cost reductions), better quality, and a better range of grocery products to consumers.
8. The annual monitoring reports discussed in our 10 November response will monitor competition and efficiency over time and this will involve collection of information about retailer's margins.
9. Your follow-up questions focus on assessing compliance with the [Grocery Supply Code](#) (the Code). The Code sets out new rules that Regulated Grocery Retailers must follow when they deal with suppliers.
10. The Code is intended to improve the trading environment and contribute to the broader outcomes of competition and efficiency in the grocery industry. The Code introduces rules and procedures that Regulated Grocery Retailers must follow for the areas that you have mentioned (requesting payments from suppliers and delisting) and for investment buying as we noted in our previous response, among other things. However, please note that the Code does not direct the setting of prices or the size of retailer margins. It should also be noted that the Code includes a grace period (until 28 March 2024) for Regulated Grocery Retailers to offer variations to existing agreements to comply with the Code.
11. The Grocery Commissioner has set out his expectations that Regulated Grocery Retailers should be actively demonstrating that they are complying with the Code in this [open letter](#). The Commission will also be undertaking activities to assess compliance, including encouraging suppliers to provide information about potential breaches of the Code. We will be launching an anonymous reporting tool to support this soon. Information can also be provided to us through <https://comcom.govt.nz/make-a-complaint>, by emailing contact@comcom.govt.nz and by phoning 0800 943 600. If you are aware of specific conduct that may be in breach of the Code then you can report this through these channels.

12. Your suggestions of focusing on a subset of products and products that have been de-listed since the Code has been in force have been noted. As part of our ongoing monitoring activities we are collecting information on the suppliers used and the range offered by the Regulated Grocery Retailers that will help us identify suppliers and products that may have been delisted.
13. We don't plan to publish details of all planned compliance activities at this stage but will be providing information about compliance as our work progresses.

Concluding remarks

14. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
15. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator