

7 March 2024

The Grocery Team
Commerce Commission
PO Box 2351
Wellington 6140

Attention: Alice Hume

BY EMAIL: [REDACTED]

Dear Alice

Grocery Supply Agreements – Compliance monitoring

We refer to your letter of 28 February 2024 and the concerns you have raised, and we respond as follows (using your headings):

Lack of Transparency and certainty of terms

1. As set out in clause 1.3 of the Master Supplier Terms and Conditions (“Master Terms”) the existing agreements referred to are those that are not directly related to supply of groceries and therefore to avoid doubt we have made it clear the Master Terms will not apply to those agreements.
2. As the Master Terms only relate to the supply of groceries, we do not propose to incorporate them into any other type of agreement we may have with a supplier e.g. a transport agreement, as they will simply not be relevant and we believe will only create confusion. As such we will continue to have standalone non-grocery supply related agreements.
3. We would also record that we have been clear in our communications with suppliers when sending out the Master Terms and Commercial Terms Agreements (CTA), which record the existing arrangements, and that they should contact Foodstuffs South island (FSSI) if they have any issues and only sign if they are comfortable with the agreements.

Transport

4. With respect to transport, clause 10.3 says the supplier will deliver the grocery products to FSSI and there is no constraint on how they choose to do that. We believe this is consistent with the code.

Funded Promotions/Excess Promotional Stock

5. As you note what happens to the remaining stock must be agreed with the supplier. The statement "All Products supplied to us at a promotional price which remain unsold at the end of the applicable promotional period may be sold by us through to Foodstuffs Affiliates or otherwise dealt with by us in our sole discretion." was added to the CTA as a starting point to ensure the issue was drawn to the attention of the supplier and could then be negotiated accordingly. The provision for investment stock (as this is referred to in the industry) is very common and was discussed with MBIE officials during the consultation phase of the Code. This clause reflects that position.

Intellectual Property

6. Although described as "perpetual" in the Master Terms Intellectual Property clause (clause 24), the clause goes on to say that the licence is only "...in connection with the use, marketing and sale of the Grocery Products." Therefore, it will end once FSSI stops selling the products. The licence is not described as "irrevocable".
7. This licence allows FSSI to market the products on a supplier's behalf and therefore to their benefit. With regard to FSSI intellectual property, the Master Terms does not rule out the use by a supplier of FSSI's Intellectual property. Rather it states that FSSI prior approval is required to be obtained prior to a supplier using it. We do not consider this is unreasonable as FSSI should be entitled to know how its intellectual property is proposed to be used by a supplier, (just as the Master Terms makes this clear to the supplier with regard to the use of their intellectual property). Any use could then be negotiated in good faith.

Confidentiality

8. We will add a clause to the confidentiality clause in the Master Terms (clause 27) which makes it clear the supplier can contact the Commission.

Product ranging, shelf space allocation and range reviews

9. We propose to amend clause 20 of the Master Terms which covers range reviews, by adding clauses referencing the product ranging and shelf allocation principles on the FSSI website and the non-discrimination provision in the Code.

If you have any questions or further comments, please do not hesitate to contact us.

Yours faithfully

Foodstuffs South Island Limited



Mary Devine

Chief Executive Officer