

FOOD FOR THOUGHT

COMMERCE COMMISSION “DISRUPTING POWER STRUCTURES”?

On 5 June 2025, the Commission published its Review of the Grocery Supply Code Draft Report and the Wholesale Supply Inquiry Preliminary Findings Paper for consultation.

THE GROCERY SUPPLY CODE DRAFT REPORT

Suppliers would be explicitly protected from retaliation

- The effectiveness of the Code is underpinned by the ability for suppliers to maintain their rights under the Code. However, the Commission noted that suppliers currently have a limited ability to push back on the regulated grocery retailers’ (RGRs) demands and behaviours in fear of damaging on going relationships or retaliation (eg by deranging or delisting).
- The Commission is proposing to introduce a new clause which would expressly prohibit RGRs from engaging in retaliation in response to a supplier exercising their rights under the Code.

Contracting out of the Code would be limited and would require detailed record keeping and reporting

- Feedback suggests that the flexibility to contract out of Code protections may have resulted in contracting out becoming the default. The RGRs’ are contracting out in their standard form contracts which leaves suppliers (especially those that are in the most need for protection) may have ended up agreeing to whatever was asked for (ie just signing supply agreements ‘as is’).
- The Commission considers the obligations on RGRs to provide written explanations why contracting out of certain Code protections is reasonable in the circumstances is not currently effective and does not think that the requirement is “*well known to suppliers or is operating as well as intended*”.
- RGR information provided to the Commission indicates that “*the total annual value of rebates, discounts or payments received from suppliers across all three RGRs to be more than \$5 billion.*”

To address issues with contracting out by default, the Commission is proposing to:

- **Ban payments for merchandising and other business activities:** RGRs would not be allowed to pass on merchandising costs and other business activity costs. This has been a significant issue for many suppliers - with specific feedback stating “*dissatisfaction with payments made for merchandising*”.
- **Ban wastage payments when groceries are delivered:** This would disallow RGRs from charging for wastage if groceries have been delivered and are no longer under a supplier’s control.
- **Ensure funded promotions are fair and prevent investment buying:** RGRs would be required to (1) keep records (for at least 7 years) for each instance of a funded promotion and why it is reasonable in the circumstances; and (2) require RGRs to pay suppliers the difference for any unsold promotional stock sold to consumers above the promotional price (addressing concerns of RGRs buying excess stock at promotional prices to raise margins).
- **Require record keeping and reporting for payments and set-offs:** RGRs would have to keep records (for at least 7 years) and provide suppliers (when requested) an itemised summary of payments and set-offs for the financial quarter. “*Less than a quarter of grocery supplier survey respondents indicated they were satisfied with the value they receive for the payments, rebates and discounts they provide.*” Documentation is expected to provide clarity on what suppliers are being charged for and empower push back where payments are unreasonable.

Supplier experiences between each RGR has differed

- The Grocery Supplier Survey suggests suppliers have faced different experiences between RGRs with Woolworths and Foodstuffs South Island receiving more positive feedback than negative:

“Woolworths New Zealand (WWNZ) and Foodstuffs South Island (FSSI) both received more positive than negative ratings. Foodstuffs North Island (FSNI) has the lowest experience ratings, with negative ratings outweighing positive across all these measures.”



THE WHOLESALE SUPPLY INQUIRY PRELIMINARY FINDINGS PAPER

The Commission's wholesale supply inquiry continues with the Commission planning to observe wholesale supply interactions for a further 12 months before completing a final report. However, the Commission has expressed clear changes are needed from both RGRs and suppliers to encourage meaningful progress.

The Commission has recommended RGRs:

- Develop systems to pass on promotional funding in its wholesale offers to other retailers (including assuring suppliers that any funding is passed on to retail consumers).
- Expand their product ranges offered as part of their wholesale offer to include frequently purchased key products and low-price products (eg private label).

The Commission has recommended suppliers:

- Share more of their promotional funding to smaller retailers (either directly or passed through from promotional funding offered to RGRs).
- Reduce spend on promotional funding and prioritise reducing and stabilising average price of products leading to less price discrimination (for smaller retailers vs RGRs).

Potential impacts for suppliers:

- **Pressure to support market entry and expansion:** The regime is designed to enable new and smaller grocery retailers to access wholesale supply on fair terms. This could mean:
 - **More fragmented demand:** Suppliers may need to service a broader base of smaller customers.
 - **Standardised terms:** The Commission is asking suppliers to allocate more of their promotional funding to smaller retailers, and to offer them similar terms to those offered to the RGRs ensure fairness and comparability.
 - Greater participation from suppliers in the wholesale supply regime.
- **Compliance and reporting obligations:** Suppliers may be affected by the compliance obligations placed on RGRs, particularly if they are asked to provide data or participate in audits.
- **Potential for regulatory intervention:** The Commission has signalled that if voluntary compliance or market-led improvements are insufficient, it may recommend regulations, including regulations applying to suppliers.

SUBMISSIONS ARE OPEN

The Commission is currently welcoming submissions on both:

- [The Grocery Supply Code Draft Report](#); and
- [The Wholesale Supply Inquiry Preliminary Findings Paper](#)

by 5pm (NZT) 18 July 2025

If you want to make a submission and would like our help get in touch [here](#).