

Emailed to: competition.policy@mbie.govt.nz "Grocery Code of Conduct Consultation 2022"

Submission by Mars New Zealand ('Mars') to The Ministry of Business, Innovation and Employment (MBIE) in respect of the New Zealand Grocery Code of Conduct Consultation 2022

Mars supplies pet care, confectionery and food products to New Zealand retail and wholesale customers, including those in the retail grocery sector. Mars thanks MBIE for undertaking this consultation on options for content of a Grocery Code of Conduct. Mars supports the introduction of a Code to which grocery retailers operating in the New Zealand grocery sector would be signatories.

Mars is part of Mars Inc - a global company with direct experience in over 80 countries around the world, some of which have retail environments similar to that of New Zealand. Mars is proud of the partnerships we have built with retailers in the New Zealand FMCG industry and believe a Grocery Code of Conduct would further benefit and enhance the New Zealand grocery sector, suppliers, and consumers, as it has in Australia, the United Kingdom, and many other markets.

Mars NZ makes the following comments with regards to the consultation:

3.3 The method of designating grocery retailers

Mars strongly supports the mandatory signing of all grocery retailers to the Code, based on a realistic retailer revenue threshold ie. Option A. In addition, we note that *"the Commission did not recommend that other grocery retailers or other retailers that provide some grocery items...should be required to comply with a Code at this time"* and *"that the Code should apply to other grocery retailers at the time they develop substantial bargaining power over their suppliers."* We note that the codes in other geographies go beyond grocery retailers (e.g. UK with 14 retailers) and ask for consideration to be given to the mandatory inclusion of retailers with significant revenue (to be determined) and scale.

3.4 How should the major grocery retailers be regulated by the Code?

Mars supports the principle that general conduct obligations on major grocery retailers of either fair dealing or good faith should apply at all times and in all interactions. Mars is therefore of the view that all trading relationships between suppliers and the major grocery retailers – whether centralised 'head office' or retail store - are covered by the Code. This would drive consistency in behaviour and compliance regardless of store size. Mars therefore supports Option A: Obligations on head office and some direct obligations on stores.

6.5 Other obligations

(Confidential information, intellectual property, business disruption and freedom of association)

The protection of a supplier's intellectual property, confidential information and other proprietary knowledge is essential to their competitive viability, long term sustainability and ability to invest and innovate. Mars acknowledges concerns that designated retailers may share confidential information and intellectual property with their private label brands. This could reduce the incentives for suppliers to invest and innovate.

Mars recognises the Code needs to have strong provisions to protect supplier's confidential and proprietary information. This includes (but is not limited to), product and brand plans and other information, details of supply chain agreements, and detailed information to support justification of price increases.

Option 1 addresses this issue through the "Protection of supplier's confidential information, and intellectual property by requiring the designated retailer to hold any information provided by the supplier in confidence and for the purpose it was provided". Mars supports the further provisions outlined in Options 2 and 3.

The specific relevance of the confidentiality elements of clause '6.5 Other Obligations' to other clauses such as '7.3 Responses to price increases' and '6.2 Changes in supply chain processes and logistics services' is therefore important to acknowledge.

When considering all other clauses, as a general principle Mars is most supportive of those presented in Option 2; a Prescriptive Code a code using the Australian Code as a starting point and using provisions from the UK Code when there is good reason to do so, or Option 3; an Alternative Code as above with removal of some components that may not be necessary for New Zealand.

Mars would be pleased to provide further information or participate in further development of the Code.

Mars New Zealand
10 August 2022