

11 March 2008

Grocery prices inquiry – Submissions
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Samuel

Please find attached the Produce and Grocery Industry Code Administration Committee's submission to the Australian Competition and Consumer Commission (ACCC) inquiry into the competitiveness of retail prices for standard groceries.

The Produce and Grocery Industry Code Administration Committee (the Committee) administers and monitors the Produce and Grocery Industry Code of Conduct (the PGI code). The submission highlights the nature and extent of the PGI code, its coverage and objects within industry, which are important for the inquiry to understand because of their impact on matters that the Government has asked the ACCC to consider in the inquiry.

The objectives of the PGI code are to promote fair and equitable trading practices within the produce and grocery industry supply chain. Fair and equitable trading practices enhance the competitiveness and efficiency of the supply chain and the PGI code's guidelines set a standard for all participants in the industry.

The Committee which covers an extremely broad base of industry participants values its ability to bring together industry representatives to foster collaboration, communication and understanding of issues affecting this industry. The Committee is not aware of any other Committee that has effectively brought together supply chain participants and representatives in a cooperative and facilitative environment for the benefit of this industry.

The PGI code aims to minimise trade disputes by improving industry participant's knowledge and understanding of fair and equitable trading practices, such as the use of contracts and clear terms of trade. Fewer disputes ultimately result in lower costs for the industry that would otherwise be passed on to the consumer or suppliers. The PGI code and its Produce and Grocery Industry Ombudsman mediation service is a cost-effective mechanism to resolve disputes and the use of both shows industry's commitment to a better and fairer market place.

Yours sincerely



IAN DAVIS
Chairman

Produce and Grocery Industry Code Administration Committee

Public Submission to ACCC Grocery Inquiry by the Produce and Grocery Industry Code Administration Committee on 11/3/2008

The Produce and Grocery Industry Code Administration Committee¹ (the Committee) administers and monitors the Produce and Grocery Industry Code of Conduct (the PGI code). The PGI code is voluntary and promotes fair trading practices and good commercial relationships in the produce and grocery industry. The PGI code covers all supply chain participants (except consumers) in the industry, including growers, processors, wholesalers, distributors and retailers.

The objectives of the PGI code are to:

- promote fair and equitable trading practices among industry participants;
- encourage fair play and open communication between industry participants as a means of avoiding disputes; and
- provide a simple, accessible and non-legalistic dispute resolution mechanism in the event of a dispute.

History of the PGICC

The Federal Parliament established the Joint Select Committee on the Retailing Sector on 10 December 1998. The Joint Select Committee's terms of reference were to inquire into and report on the impact of market concentration in the retail sector and recommend possible revenue neutral courses of action for the Australian government.

The Joint Select Committee presented its report, *Fair Market or Market Failure?*, on 30 August 1999, with the government releasing its response to the report on 17 December 1999. The government responded to the Joint Select Committee's recommendations by implementing a voluntary industry code of conduct and a government funded industry ombudsman to assist to resolve industry disputes.

The Retail Grocery Industry Code of Conduct Committee (RGICCC) was established on 13 February 2000 as an industry-funded committee comprising of a cross-section of industry representatives.

The RGICCC was established with the following terms of reference:

- address the issue of an ombudsman scheme as part of the code and how it will be structured with its jurisdiction, powers, review and reporting requirements defined and delineated;
- improving transparency in 'vulnerable' supply markets – where growers have to deal with a range of market characteristics, including perishability, market volatility and a high degree of risk exposure;
- raising product labelling and packaging standards;
- reducing contractual uncertainty, in particular, the passing of ownership of produce and the circumstances under which produce can be returned;
- branding, particularly where businesses, which are subsidiaries of, or are substantially owned by, a listed public company or major retailer, note that association on shop front signage, in advertising, on stationary etc; and

¹ The Committee consists of an independent Chairman and a cross section of members from the produce and grocery industry, with representatives from Coles Group, Woolworths Ltd, the National Association of Retail Grocers of Australia, the National Farmers' Federation, Horticulture Australia Council, Australian Food and Grocery Council, Australian Chamber of Fruit and Vegetable Industries, the Australian Retailers Association, Australian Dairy Farmers and the Victorian Farmers Federation.

- consideration of notification issues of retail grocery store acquisitions and of the acquisitions of grocery wholesalers by retailers and vice-versa.

The RGICCC developed the Retail Grocery Industry Code of Conduct, which was launched on 13 September 2000.

On 11 February 2005, the RGICCC agreed to rename the Retail and Grocery Industry Code of Conduct to better reflect its coverage within the industry. The code was renamed the Produce and Grocery Industry Code of Conduct with the RGICCC becoming the Produce and Grocery Industry Code Administration Committee.

On 20 November 2006, the responsibility for administering the code was transferred from the Office of Small Business of the Australian Government Department of Industry, Tourism and Resources to the Australian Government Department of Agriculture, Fisheries and Forestry.

Structure of the PGI code

The PGI code is a voluntary set of guidelines promoting fair trading practices in the produce and grocery industry and provides a simple dispute resolution mechanism. The best practice principles promoted by the PGI code encourage fair, equitable and open relationships between industry participants to strengthen relationships and minimise disputes

The PGI code covers vertical transactions within the produce and grocery industry supply chain and guides the conduct of businesses within the industry. The PGI code is intended to cover all participants (except consumers) in the Australian produce and grocery industry, including growers, processors, wholesalers, distributors and retailers.

The objectives of the PGI code are to:

- promote fair and equitable trading practices amongst industry participants;
- encourage fair play and open communication between industry participants as a means of avoiding disputes; and
- provide a simple, accessible and non-legalistic dispute resolution mechanism for industry participants in the event of a dispute.

The PGI code addresses four important issues:

- Produce standards and specifications - All industry participants support an efficient and competitive produce and grocery industry which accords equal respect to:
 - the right of retailers to buy the best produce at the best price; and
 - the right of suppliers to have their produce fairly evaluated for purchase against clear and objective standards and specifications.

All industry participants recognise that produce standards and specifications must allow for seasonal variations in produce;

- Contracts - All industry participants support the right of suppliers and retailers to freely negotiate the terms and conditions of any supply contracts;
- Product labelling, packaging and preparation - All industry participants accept the right of retailers to determine labelling, packaging and preparation requirements, subject to the standards imposed or promoted by the relevant regulating authorities or industry associations, including any voluntary codes of conduct or practice; and

- Notification of acquisitions - All industry participants acknowledge that:
 - the *Trade Practices Act 1974* prohibits acquisitions or mergers which would have the effect or likely effect of substantially lessening competition in a market (s.50);
 - there is no statutory notification requirement of acquisitions to the ACCC imposed on industry participants; and
 - voluntary notification of acquisitions to the ACCC is an existing, corporate practice for many industry participants.

Endorsement of the PGI code

The following organisations and businesses have committed to promoting the PGI code and their own internal dispute resolution procedures:

- Aldi Stores
- Australian Chamber of Fruit and Vegetable Industries Limited
- Australian Dairy Farmers
- Australian Chicken Growers Council
- Australian Egg Corporation Limited
- Australian Food and Grocery Council
- Australian Retailers Association
- Coles Group Limited
- Murray Valley Winegrape Growers
- National Association of Retail Grocers of Australia
- National Farmers Federation
- National Retail Association
- Horticulture Australia Council
- Queensland Retail Traders and Shopkeepers Association; and
- Woolworths Limited.

Other organisations are welcome to endorse the PGI code and do so by advising the secretariat in writing of an intention to endorse the PGI code and making a public statement of their endorsement.

Dispute resolution

The PGI code provides for a two-stage dispute resolution scheme that:

1. Encourages applicants to raise disputes with the respondent; and
2. Encourages unresolved disputes to be raised with the Produce and Grocery Industry Ombudsman (PGIO).

As outlined in the PGI code, the PGIO provides a confidential mediation service, which is subsidised by the government. The PGIO manages and oversees a panel of qualified mediators who deliver the mediation services. The PGIO service mediates disputes in accordance with the PGI code.

In 2006, the government instituted a new model of delivery of the PGIO service. The PGIO service had been delivered by a single provider who conducted mediations. Following the changes, the PGIO administers a panel of mediators who conduct the mediations. Previously, the PGIO also had a promotional role, a role that the new PGIO service no longer has. The new service provider also works to resolve disputes before they escalate to requiring mediation. This focus on early dispute resolution has resulted in a significant drop in the number of inquiries that become disputes requiring mediation given the very large number of transactions that occur each day in the produce and grocery industry. Attachment A outlines usage of the PGIO since 2001.

The use of the dispute resolution procedure has been relatively small and has decreased in recent times. The Committee cannot determine if this is because the PGI code has genuinely improved relationships, or industry participants are becoming more proficient and comfortable with internal and other dispute resolution procedures.

Achievements of the Committee and the PGI code

The Committee values its ability to bring together industry representatives to foster collaboration, communication and understanding of issues affecting the industry. The Committee is not aware of any other Committee that has effectively brought together supply chain participants and representatives in a cooperative and facilitative environment for the benefit of the industry.

The PGI code and its mediation service have helped the industry to resolve and minimise the occurrence of trade disputes. The Committee highly values the PGIO's mediation service as an important tool in managing disputes, improving trading practices and maintaining better business relationships. The effectiveness of the PGIO's settlement of disputes prior to initiating a formal mediation process is indication of the PGI code's success.

The Committee has made various amendments and improvements to the PGI code over the last three years, including the development of a Terms of Trade Checklist (Attachment B), broadening of the Committee's membership base and the regular publication of the Committee's statements of outcomes from meetings. The checklist promotes the PGI code's principles and was developed to assist industry participants consider what terms and conditions should be included in contracts to help minimise disputes and promote best practice. This work is an example of the Committee assisting the industry to independently manage trading practices.

Horticulture Code of Conduct

The Committee notes that the inquiry is to consider the effectiveness of the Horticulture Code of Conduct including whether the inclusion of major buyers such as retailers would improve the effectiveness of the PGI code. The Horticulture Code of Conduct has only been in existence since 14 May 2007 and was introduced following heated and acrimonious debate within the horticulture sector.

The PGI code covers all participants within the industry while the Horticulture Code of Conduct only covers growers and wholesale traders. The PGI code sets out principles to guide behaviour while the Horticulture Code of Conduct prescribes a trading relationship and sets rules regarding the relationship. Both codes have a mediation dispute resolution mechanism that is provided by the same provider. The major difference between the two mediation schemes is that mediation under the Horticulture Code of Conduct is compulsory should either party request it. The Committee considers the Horticulture Code of Conduct to overlap the PGI code and prescribes rules in areas where both codes apply.

The Committee recognises that the Horticulture Code of Conduct has been subject to criticism for not including major buyers such as retailers, processors and exporters.

The Committee suggests that any evaluation of the Horticulture Code of Conduct would need to be aware that it is difficult at this early stage to assess the full impact of the Horticulture Code of Conduct. Any recommendations about continuing, expanding or amending the Horticulture Code of Conduct would need to fully consider the impact on industry relations and successful examples of industry self-regulation such as the PGI code as outlined in this submission.

ATTACHMENT A: Produce and Grocery Industry Ombudsman statistics

Number of disputes enquiries by State Territory	16/7/01 to 30/6/03	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008 (partial)	Total
ACT	8	2	3	0	0	0	13
Queensland	55	25	30	40	34	5	189
New South Wales	34	23	30	32	4	1	124
Northern Territory	18	4	6	2	3	0	33
South Australia	6	4	10	11	0	1	32
Tasmania	10	1	1	6	0	0	18
Victoria	33	23	58	32	17	5	168
Western Australia	6	1	2	1	0	0	10
Total	170	83	140	124	58	12	587

Number of mediation applications by State Territory	16/7/01 to 30/6/03	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008 (partial)	Total
ACT	0	0	0	0	0	0	0
Queensland	41	13	14	21	6	0	95
New South Wales	10	8	24	23	2	0	67
Northern Territory	11	2	3	0	1	0	17
South Australia	2	1	2	3	0	0	8
Tasmania	1	0	0	1	0	0	2
Victoria	9	6	15	17	3	0	50
Western Australia	0	1	0	0	0	0	1
Total	74	31	58	65	12	0	240

Number of mediations by State Territory	16/7/01 to 30/6/03	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008 (partial)	Total
ACT	0	0	0	0	0	0	0
Queensland	17	9	9	23	3	1	62
New South Wales	11	7	23	8	2	0	51
Northern Territory	11	1	4	0	0	0	16
South Australia	0	1	1	2	0	0	4
Tasmania	1	0	0	1	0	0	2
Victoria	4	4	13	13	1	0	35
Western Australia	0	0	0	0	0	0	0
Total	44	22	50	47	6	1	170

Number of mediations resulting in a signed agreement by State Territory	16/7/01 to 30/6/03	2003/2004	2004/2005	2005/2006	2006/2007	2007/2008 (partial)	Total
ACT	0	0	0	0	0	0	0
Queensland	15	7	7	22	3	1	54
New South Wales	9	5	23	7	1	0	45
Northern Territory	9	1	3	0	0	0	13
South Australia	0	1	1	2	0	0	4
Tasmania	1	0	0	0	0	0	1
Victoria	4	4	12	13	1	0	34
Western Australia	0	0	0	0	0	0	0
Total	38	18	46	54	5	1	151

Hits on PGIO website

Month	Hits per Month	Daily Hits Average
September 2006	263	13
October 2006	529	17
November 2006	692	23
December 2006	2386	76
January 2007	1363	43
February 2007	1205	43
March 2007	1645	53
April 2007	1391	46
May 2007	1648	53
June 2007	1629	54
July 2007	1740	56
August 2007	1779	57
September 2007	1758	58
October 2007	1575	50
November 2007	1967	65
December 2007	1548	49
January 2008	1754	56

ATTACHMENT B TERMS OF TRADE CHECKLIST

(Suggested Checklist Headings)

1. Business Name and ABN

(Supplier, and other parties (if any) name/s and ABN/s could be included on a separate schedule where this is the business's standard terms and conditions, otherwise include suppliers and other parties details here)

2. General Terms

(Includes method of doing business, e.g. outright purchase or other arrangement)

3. Transfer of Title and Risk

(Point at which responsibility changes, including location, date or action where relevant)

4. Supplier Obligations

(Includes reference to product/service description, specifications and quality)

5. Price Determination, Variation and Notification

(How price is determined and notified)

6. Business Obligations, Charges and Payments

(Method and timing of payments, deductions, charges and GST where applicable)

7. Complying and Non Complying Products/Services

(Procedures for rejections or returns)

8. Dispute Resolution

(Includes the effect of *force majeure*, reference to internal procedures and the PGIO)

(Note: By way of explanation; intention of *force majeure*. Neither party will be liable for any non-performance of its obligation under the Contract in the event such non-performance is caused or substantially contributed by riot, fire, flood, war, terrorist acts, Acts of God, labour dispute, government regulations and/or other force majeure events.)