

16 December 2025

Woolworths New Zealand Ltd  
80 Favona Road  
Mangere  
Manukau 2024

Attention: [ ]

By email: [ ]

Dear [ ],

**Warning from the Commerce Commission for non-compliance with the process requirements relating to delisting as required by the Grocery Supply Code**

1. The Commerce Commission (**Commission**) has completed its investigation into Woolworths New Zealand Limited's (**WWNZ**) potential non-compliance with the process requirements relating to delisting under the Grocery Supply Code (**Code**).
2. During the investigation, the Commission collected and analysed information from WWNZ. Following the Commission's consideration of that information, we have reached a view that WWNZ has likely breached section 19 of the Grocery Industry Competition Act 2023 (the **Act**) via non-compliance with clause 19 (1)(b) of the Code.
3. The Commission's view is that the appropriate enforcement response in this matter is to issue WWNZ with a warning, rather than issuing legal proceedings.
4. We have set out our reasons for these views below. We note that only a Court can determine whether there has been a contravention of the Act.
5. The purpose of this Warning is to inform you of the Commission's views on why there has been a likely breach of the Act and to encourage future compliance. Legal action remains available to the Commission in future if the conduct is repeated.

## Details of the Commission's investigation

6. The Commission investigated whether WWNZ had followed the prescribed process requirements relating to delisting.
7. During the investigation, the Commission obtained and analysed information supplied by WWNZ. This included:
  - 7.1 A spreadsheet which identified all products (including alcohol) which had been delisted [ ]
  - 7.2 Example copies of the various template versions of:
    - 7.2.1 Notice of Upcoming Category Review,
    - 7.2.2 Notice of Distribution Change,
    - 7.2.3 Notice of Probable Delisting; and
    - 7.2.4 Notice of Final Delisting.
  - 7.3 Information about WWNZ's Vendor Trade Terms (**VTT**).
  - 7.4 Training materials used by WWNZ setting out the obligations under clause 19; and
  - 7.5 Explanations by WWNZ in response to its view of the process requirements.

## Details of the relevant law

### Purpose of the Grocery Supply Code<sup>1</sup>

8. The purpose of the Code is to promote the purpose of the Act by:
  - 8.1 promoting fair conduct, and prohibiting unfair conduct, between Regulated Grocery Retailers (**RGRs**) and suppliers; and
  - 8.2 promoting transparency and certainty about the terms of agreements between regulated grocery retailers, the related parties referred to in section 18, and suppliers; and
  - 8.3 contributing to a trading environment in the grocery industry that includes a diverse range of suppliers in which businesses compete effectively; and
  - 8.4 contributing to a grocery sector that consumers and businesses participate in confidently.

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<sup>1</sup> [Section 16 Purpose of Grocery Supply Code.](#)

## **Clause 19 – Process requirements relating to delisting <sup>2</sup>**

9. Before delisting a supplier's grocery product, the retailer must provide reasonable written notice to the supplier of the retailer's decision to delist the product. The notice must:

- 9.1 include the genuine commercial reasons for delisting the product; and

- 9.2 inform the supplier of the supplier's right to have the decision to delist the product reviewed by the retailer.

## **Non-compliance with the Code is a contravention under the Act**

10. Section 19 of the Act requires WWNZ, as an RGR, to comply with the Code. A failure to comply with the Code makes WWNZ potentially liable for a civil liability remedy under the Act (including an order to pay a pecuniary penalty or compensation).<sup>3 4</sup>

## **The Commission's view**

11. The Commission's view is that there is sufficient evidence to establish that WWNZ has likely breached section 19 of the Act via non-compliance with clause 19(1)(b) of the Code.
12. The likely breach was that WWNZ failed to inform suppliers of their right to request the retailer to review a decision to delist between 28 March and 18 September 2024.
13. The reasons for the Commission's view are set out below.

## **Key Facts established**

### *Notice of Final Delisting*

14. From 2 April 2024, version 2 of the 'Notice of Final Delisting' (**version 2 notice**) issued by WWNZ included the following sentence:

Please let us know within two weeks of receipt of this letter if you would like to discuss the outcomes of the Category Review with us further (including the basis for our final decision).

15. It is our view that WWNZ providing suppliers with an opportunity to discuss the outcome of the category review is likely compliant with clause 26(4) of the Code.<sup>5</sup>
16. However, the version 2 notice did not inform suppliers of their right to request WWNZ to review their decision to delist a product as required by clause 19(1)(b).
17. WWNZ confirmed that the version 2 notice sent to suppliers prior to 18 September 2024 did not inform suppliers of their right to have the delisting decision reviewed.

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<sup>2</sup> [Clause 19 Process requirements relating to delisting.](#)

<sup>3</sup> [Section 19 Obligation to comply with Grocery Supply Code.](#)

<sup>4</sup> [Section 124 Civil liability remedies available under this subpart.](#)

<sup>5</sup> [Clause 26 Product ranging, shelf space allocation, and range reviews.](#)

18. [ ] From 18 September 2024, WWNZ updated their 'Notice of Final Delisting' template and inserted the sentence below:

You can also ask us in writing to review a delisting decision - if you wish to do so, please email me to request a review within four working days of the date of this letter.

19. Version 3 of the 'Notice of Final Delisting' (**version 3 notice**) reflects the intention by WWNZ to comply with clause 19(1)(b). [[ ]]. ]

*Vendor Trading Terms and compliance with clause 19(1)(b)*

20. WWNZ directed the Commission to their VTT to demonstrate their compliance. Within these terms it is stated that:

If we decide to delist a supplier's goods, we will follow the process required by the Code and the supplier will have the right to have that decision reviewed by us.

21. In our view, WWNZ's communication of the supplier's review right in the VTT is helpful for suppliers, but merely indicating an intention to comply does not satisfy the specific requirements of clause 19(1)(b) of the Code.
22. It is our view that clause 19(1)(b) requires the retailer to inform suppliers of that right at the time the supplier is informed of a decision to delist.

*The Notice of Probable Delisting and compliance with subclause 19(1)(b)*

23. WWNZ directed the Commission to the version 2 notice:

This was addressed in early April 2024, when WWNZ added the following wording to its template "Notice of Probable Delisting" letter to make this clearer to suppliers:

"Please note that at any time you can ask us in writing to review a decision to delist a product (including at the point you receive any final notice of delisting) - please do this by emailing me."

24. It is our view that the version 2 notice did not satisfy the specific requirements of clause 19(1)(b) of the Code, as a final decision to delist the suppliers' product(s) has not been made at this point.

*Products delisted without suppliers being informed of their right (at the time of being informed of the decision to delist)*

25. WWNZ provided a spreadsheet detailing all instances where a supplier had one or more products (including alcohol), delisted [ ].
26. The analysis found that there were [ ] instances where suppliers had one or more grocery products delisted without WWNZ informing suppliers of their right to request a review.
27. The Commission considers these instances likely to be non-compliant with clause 19(1)(b), given the failure to inform suppliers of their right to request a review at the time suppliers were informed of the decision to delist.

## **WWNZ's response[                      ]**

28. WWNZ does not consider their conduct warrants escalation beyond a Compliance Advice Letter to a Warning. In its response to the Commission's Opportunity to Comment letter, WWNZ stated:

The combined effect of its various documents prior to 18 September 2024 was that suppliers were notified that that they could seek review of delisting decisions, including through:

WWNZ's 'Notice of Probable Delisting', which provided an additional notification (not required by the Code) that would have been provided to all suppliers which were ultimately delisted, and which expressly advised them that "at any time you can ask us in writing to review a decision to delist a product";

WWNZ's VTT, which were sent to active suppliers, and advised them that if WWNZ decided to delist a supplier's goods "the supplier will have the right to have that decision reviewed by us"; and

WWNZ's 'Notice of Final Delisting', which invited suppliers to "discuss the outcomes of the Category Review with us further".

29. WWNZ pointed to its submissions when the Code was first proposed, where it submitted that the grace periods were inadequate for an entirely new regime. WWNZ noted that:

WWNZ made best efforts during that very short time period to ensure compliance, but it is unsurprising that either there were initial oversights or that the Commission's interpretation of what were novel and previously untested obligations (with little guidance) has differed in certain areas.

30. WWNZ submitted that the likely breach was remedied over a year ago, so no behaviour change needs to be encouraged by issuing a warning;
31. WWNZ submitted its commitment to ensuring future compliance with the Code (citing the significant efforts it has already taken towards Code compliance and commitment to further enhance its template communications); and
32. Citing the Commission's Enforcement Guidelines, WWNZ submitted that in their view there is no need to educate the industry or public to assist them to comply with the law as the law only applies to WWNZ, Foodstuffs North Island Ltd and Foodstuffs South Island Ltd.

## **Outcome of the Commission's findings**

33. Given the conduct outlined, the Commission considers that WWNZ was likely non-compliant with clause 19(1)(b) of the Code and therefore, likely in breach of section 19 of the Act. WWNZ failed to inform suppliers of their right to request a review at the time it communicated the decision to delist.
34. We reiterate that the Commission's view is based on the evidence collected during the investigation, and that only a Court can determine whether there has been a breach of the Act.

35. The Commission views the conduct of failing to action a clear and specific obligation required by the Code as serious. WWNZ appear to have consistently overlooked a requirement of the Code for a period of nearly 12 months.
36. WWNZ appears to have placed importance on all the other ways it communicated the supplier's right to a review and insufficient importance on complying with the actual requirement, an oversight of its obligation to inform suppliers at the critical time required under the Code (i.e. when the decision to delist is communicated).

### **Enforcement action for breaching the Act**

37. After considering our Enforcement Response Guidelines and all the available information obtained under the investigation, the Commission has decided to issue a Warning to WWNZ rather than issuing legal proceedings.
38. In deciding on the appropriate enforcement response in this case, the Commission has considered its Enforcement Criteria, namely, the extent of the harm, the seriousness of the conduct, and the public interest.<sup>6</sup>
39. Should we identify further instances of non-compliance with the Code by WWNZ, we may take further action in relation to this matter, including seeking the imposition of a pecuniary penalty through civil proceedings if appropriate.
40. A court can impose penalties where it finds the law has been broken. Under the Code and Act, non-compliance with clause 19(1)(b) of the Code is subject to the tier 2 maximum penalty under the Act.<sup>7</sup>
41. For an individual, the maximum penalty is \$200,000. In any other case, the penalty is the greater of \$3 million, the value of any commercial gain from the contravention, or 3% of the company's turnover if the gain cannot be readily determined.<sup>8</sup>

### **Consequences of this Warning**

42. This Warning represents the Commission's view that the conduct in which WWNZ engaged is likely to have breached the Act and that legal action remains available to the Commission in future if the conduct is repeated.
43. The Commission may draw this Warning to the attention of a court in any subsequent proceedings brought by the Commission against WWNZ.
44. The Commission may also take this Warning into account in the event of continued or repeated similar conduct by WWNZ.

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<sup>6</sup> <https://www.comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

<sup>7</sup> [Clause 9 of the Grocery Industry Competition Regulations 2023](#) and [section 127 of the Act](#).

<sup>8</sup> [Tier 2 penalties apply to certain contraventions of code](#).

## **Publication**

45. This warning is public information and will be published on the case register on the Commission website.
46. The Commission intends to redact some details from the published version of this letter, including personal and commercially sensitive information such as reference to the [ ]Category review and the specific number of grocery products and suppliers as well as the number of category reviews.
47. The Commission may make public comments about our investigation and conclusions, including issuing a media release, making comment to media or otherwise publicising the outcome (such as on our social media forums).

## **Further information**

48. The Commission encourages WWNZ to regularly review its compliance procedures and policies and seek legal advice about the application of the Act and Code to its business.
49. The Commission has published a series of fact sheets and other resources to help businesses comply with the legislation we enforce. These are available on the Commission website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage WWNZ to visit the Commission website to better understand its obligations and the Commission's role in enforcing the Act.
50. The Act and other legislation can be viewed at [www.legislation.co.nz](http://www.legislation.co.nz).

## **Review of our decision**

51. You are entitled to request a review of our decision to issue this warning only if you identify relevant material that was not considered as part of our decision. You must request a review within one month of this warning being issued. Any review will be handled in accordance with the Commission's complaints process. Please submit any review request by email to [ ].

Yours sincerely,

Pierre van Heerden  
Grocery Commissioner