



Coles Supermarkets

Submission to the ACCC on the Horticulture Code of Conduct

June 2007

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Coles is in favour of an industry Code aimed at ensuring transparency and clarity of transactions and providing a fair and equitable dispute resolution procedure. Coles believes this already exists in the form of the *Produce and Grocery Code* (PAGI Code).

Coles does not support the duplication of Codes or the inclusion of retailers in the *Horticulture Code of Conduct* (HCC) because of the additional compliance costs and, more importantly, because Coles does not conduct *first stage* transactions with *growers* at the central wholesale produce markets, the main reason for the introduction of the 'transparency' requirements in the HCC.

Having duplicate Codes would be the least efficient, costly and potentially the most confusing outcome for produce growers, merchants and retailers. In addition the HCC in its present form is, according to evidence provided to the ACCC's Grocery Inquiry, costly and ineffective.

Importantly, Coles' dealings with growers are already transparent, as recognised by the ACCC in its Issues Paper.

In relation to the matters raised in the *Issues Paper* Coles makes the following comments:

Enforcement of the Code

While the HCC has only been operative for a year, the exemptions of pre-existing contracts, the number of formal complaints relative to the number of transactions and complaints about the Code itself, suggests the Code will continue to have enforcement problems.

Extension of the Code to cover retailers and their agents

The vast majority of supermarket retailers are already covered by a Code of Practice in the form of the *Produce and Grocery Industry Code of Conduct* (PAGI Code). It's also worth noting that the HCC does not include wholesalers/merchants who also trade as retailers.

The PAGI Code has the objective of improving trading behavior in the produce and grocery sector and provides an alternative dispute resolution scheme (with an independent Ombudsman) to help guide good business practices. It's a broad inclusive Code supported by supermarket operators including Aldi, Coles, Woolworths, NARGA (representing independent chains) and industry representatives from retail, agricultural and manufacturing associations in the supply chain.

The PAGI Code includes commercial relationships between suppliers and purchasers of goods or services in different stages of production or distribution in the retail grocery industry supply chain. Consequently the PAGI Code plays a significant role within the supermarket sector due to its broad industry coverage.

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The commitment by industry representatives to promote the PAGI Code and their own internal dispute resolution procedures indicates the level of support industry has for the Code in its voluntary form. As a voluntary code it is flexible and easily adapted to meeting changing industry needs.

A particular strength of the PAGI Code is the independent dispute resolution mechanism. This is open to all participants of the industry regardless of whether they have a written agreement. In contrast, access to a similar scheme under the Horticulture Code is available only to horticulture growers who have a written agreement in place with a wholesaler of horticulture produce.

The PAGI Code's broad coverage, inclusiveness, member discussion, and low cost mediation provide a valuable tool for improving the transparency and effectiveness of the vertical supply chain in the produce and grocery sector.

The Horticultural Code transitional arrangements

Refer to Coles answer on *Enforcement of the Code*.

Definition of Delivery

Coles supports the ACCC reviewing the definition of "*Delivery*" given the uncertainty and interpretation problems associated with the term in the HCC.

Service agreements

Generally Coles believes it is beneficial for growers, and efficient for the fresh produce supply chain, to have such service agreements. Merchants and other fresh produce traders should not be denied the opportunity to provide such services as long as the fee for service is transparent to the grower.

Agents

Coles uses wholesalers/agents and does not trade directly with any growers when purchasing produce at wholesale markets. These transactions are invoiced and GST paid by Coles where applicable. We are generally aware that some traders avoid formally acting as agents for tax purposes.

Packing houses and cooperatives

Coles support the ACCC reviewing how pack houses and cooperatives fit in "*first stage*" transactions given the uncertainty surrounding their role with third parties.

Pooling of produce and price averaging.

Coles is aware and sees a role for these practices among merchants and aggregators given the sourcing of produce from many growers. It would probably assist growers if these practices were better communicated to them and had more transparency. At a retail level Coles will typically source produce from multiple sources paying different

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prices to different growers, agents or aggregators - yet sell the produce to consumers at a regular retail price (other than when meeting local competition) on a weekly basis.

The Horticulture Code of Conduct

The Horticulture Code is a Code with similar, albeit narrower, objectives to the PAGI Code. It attempts to improve transparency and clarity of transactions between growers and traders in horticulture produce, and provides a similar dispute resolution scheme with the same independent ombudsman.

Arguably, that is where the similarity ends. The HCC appears flawed in a number of ways. It is more a Code about trading terms than behaviors. It has been roundly criticised in the current Grocery Inquiry in relation to its application and introduction to the horticulture sector. The HCC also has substantial compliance costs that are ultimately borne by the consumer in the form of higher food prices. Even if supermarkets were included in the HCC it would not improve the effectiveness of the Code as it would impose the same unnecessary compliance costs and still exclude a significant number of growers, aggregators, agents and traders.

A way forward

Given the principles, aims and objectives of both Codes are similar, it is clear that the PAGI Code is still the most relevant to the fresh produce procurement methods used by supermarkets (including independents) as well as having wider produce and grocery industry coverage from all suppliers to most supermarkets.

Furthermore, as Coles does not conduct *first stage* transactions with *growers* at the central wholesale produce markets, (clearly the main reason for the introduction of the 'transparency' requirements in the HCC), then there is no obvious reason to include supermarkets in a Code.

Additionally, a review by Coles fresh produce management of the present HCC requirements, produce agreements and compliance procedures which, inter alia, require confirmation in writing all produce transactions, would constrain Coles present operations, be cumbersome, slow and add costs, ultimately borne by the consumer.

Given these costs and constraints, it is not surprising that a large proportion of horticulture transactions occur outside the HCC. While some of these are based on agreements entered into prior to the implementation of the Code, the reluctance of traders/wholesalers to accept produce from new growers is also an indicator of poor acceptance. With the substantial compliance costs incurred conducting business under the HCC and so many parties exempt or operating outside the Code, including sole traders and partnerships, the Codes acceptance and effectiveness is already under an independent review process to test its acceptance, use and effectiveness.

This is not to say the objectives of the HCC are redundant. Clearly, transparent trading terms and access to cheap dispute resolution remains important between growers and

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the first party they enter transactions with. If the ACCC Review finds the HCC has insufficient coverage, has poor acceptance and is ineffective in addressing these issues, it is possible - and preferable in Coles view - that these objectives be specifically addressed in a revised PAGI Code with the input of relevant industry representatives once the ACCC's review is complete.

A simple extension of the HCC to cover retailers would still leave large parts of the produce and grocery industry uncovered by a Code of Practice and could remove the incentive for horticulture growers, wholesalers and retailers to remain committed to the PAGI Code. If the PAGI Code is undermined by an extension of the HCC to retailers then small businesses in other areas of the produce and grocery supply chain could be left without access to a low cost independent dispute resolution mechanism.

Such an outcome would be detrimental to the broader produce and grocery industry, as it would effectively undermine an effective Code that has contributed to an improvement in business practices across the entire produce and grocery industry.

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