

Grocery prices inquiry – Horticulture code submission
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Samuel

Following my letter of 7 March 2008, I am writing as Chairman of the Horticulture Code of Conduct Committee (the Committee) to inform you of the work undertaken and findings of the Committee.

The Committee has now met three times. Following our first meeting the Committee requested that industry provide input on the impact and effectiveness of the code.

The Committee received a total of 15 submissions from packers, grower associations, industry councils, cooperatives, marketing companies and produce wholesalers. At the Committee's second meeting we considered a range of issues that were raised in the submissions and identified a number of priority issues to be discussed at the third meeting.

During the third meeting the Committee discussed the issues raised by industry. The Committee has identified the following as areas where there is scope for the code to operate more effectively.

The meaning of the term 'delivery'

There has been confusion amongst growers and wholesalers on the meaning of 'delivery' in the code. This confusion has arisen over whether the code is referring to *legal* or *physical* delivery. The Committee believe the code could be made clearer if 'delivery' was better defined. Therefore we recommend amending the code to clarify the meaning of 'delivery'.

Clarification of when produce is accepted or rejected

Under the code transfer of ownership occurs when produce is accepted. However the code is not clear when rejection and acceptance can occur and this lack of clarity has resulted in discussions between the ACCC and wholesale traders about the meaning of acceptance in the code. The code could also be amended to clarify that if a merchant *rejects* certain produce in accordance with the Horticulture Produce Agreement (HPA), the merchant is taken to *accept* the rest of the produce in the same delivery (i.e. all produce that is not rejected).

Calculating the price of produce

The code requires that in a merchant transaction arrangement, the price be set before or immediately upon delivery. Some grower representative groups argue that price should be set at farm gate and other groups argue that price should be set by reference to a method based on the final sale price. We discussed merchant pricing and agreed that in some cases settling

the price at farm gate may be in the best interest of the grower, however in others settling a price at farm gate is impractical in the wholesale market situation and not in a grower's best interests. We also agreed that the current requirement that the price be set before or immediately upon delivery is overly restrictive and reduces flexibility to the detriment of the industry.

The Committee considers that it may be appropriate to allow a method based on the merchant sale price to be used to calculate price in a merchant transaction, with appropriate and additional reporting requirements. This may provide growers with appropriate levels of transparency and provide wholesalers, inside and out of the central markets, with the flexibility to obtain returns for growers.

Price Averaging

Currently the code prevents agents from pooling produce and returning to growers an average price for produce. This provides growers with improved information regarding the price paid for their produce but also makes it difficult for packhouses and other traders to sell a line of produce over a marketing season.

The Committee discussed a range of issues and ramifications around this issue and believe that the code needs to provide the capacity to pool and price average while maintaining, however transparency and clarity of trade standards need to be maintained.

Agent transactions

Some grower submissions expressed disappointment at how few traders are willing to work as agents. The Committee discussed whether this is a business decision or if the code makes it impractical for traders to work as agents. The Committee recognises that there are issues with agency and the reporting requirements that make agency less attractive for some traders to operate as agents. However we believe that while it is a business decision whether or not a trader works as an agent there needs to be better information for growers and traders about agent transactions.

Under the code a grower may nominate a representative to inspect an agent's books. That could be a competitor or someone unacceptable to the trader. The Committee considers that this provision should be modified to provide agents with a reasonable right to deny access to a grower's representative.

Impact of the code on growers trading at the central markets

Growers trading their own produce in growers' areas of central markets are required to have HPAs when trading with other growers and traders, but not when trading with consumers, restaurateurs, retailers or processors. These transactions are carried out with the produce on site, face to face and on a cash basis; they are of low value but high frequency. Submissions to the Committee argue that the personal nature and small scale of these transactions provide a high degree of transparency and clarity and therefore there is no need for the Code to require documentation. The nature of these transactions also means that growers trading here face a greater cost of compliance with the Code. The Committee will be conducting further research into the issue.

The above issues were not the only issues raised through submissions. Further issues have been raised for the Committee to conduct further research on, including the impact of the

code on grower owned cooperatives. The Committee intends working through this and other issues at future meetings.

Yours sincerely

A handwritten signature in black ink that reads "Hamish Bain". The signature is written in a cursive style with a long horizontal stroke at the end.

Hamish Bain
Chairman
Horticulture Code Committee

June 2008