

10 June 2008

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

Dear Mr Samuel

I am writing in response to the 20 May 2008 ACCC issues paper regarding the Horticulture Code of Conduct (horticulture code).

The issues paper states that the horticulture code applies to trade in horticulture produce and only to a segment of that trade. The paper also states that the ACCC is considering whether to recommend that retailers be covered by the code.

The voluntary Produce and Grocery Industry Code of Conduct (the voluntary code) is written to improve trading behaviour in the produce and grocery sector and serves as a guide to good business practice. It is inclusive and is supported by Coles, Woolworths and the representative organisations of participants along the supply chain.

When the voluntary code was written many participants in the supply chain had very poor commercial relationships. Through working together to write and administer the code the Committee members have established constructive working relationship to the benefit of the industry. These relationships need to be maintained and nurtured. The Committee now provides a valuable forum for industry to work through issues and a forum to maintain relationships that otherwise may not exist.

The voluntary code plays a significant role within industry due to its overall coverage of the supply chain. The 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 (excluding consumers).

The broad coverage of the voluntary code and the commitment by industry representatives to promote it and their own internal dispute resolution procedures indicates the level of support industry has for the code in its voluntary form. As the voluntary code is managed by representatives of the produce and grocery industry itself the industry is involved in driving the code and proactively developing the code to meet its needs. As a voluntary code it is flexible and easily adapted to meeting changing industry needs.

Any extension to the horticulture code to cover retailers would still leave large parts of the produce and grocery industry not covered by a mandatory code and could, at the same time, remove the incentive for horticulture growers, wholesalers and retailers to remain committed to the voluntary code. Such an outcome would be detrimental to broader produce and grocery industry as it could effectively destroy an effective code that has contributed to an improvement in business practices

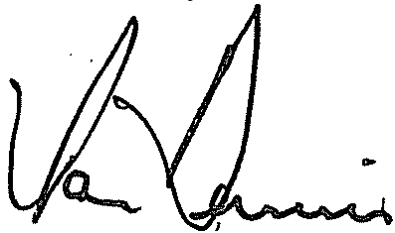
across the entire produce and grocery industry. In your consideration of extending the horticulture code to include retailers I suggest that the ACCC take into account that there is already a successful code with a broad membership that promotes good business practices for the entire produce and grocery industry.

A particular strength of the voluntary 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. Again, any recommendation to change the horticulture code would need to consider the impact of such a change on the voluntary code.

If the voluntary code is significantly weakened 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.

The voluntary 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.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Davis', written in a cursive style.

IAN DAVIS
Chairman
Produce and Grocery Industry Code Administration Committee