

# DELISTING

## A FOOD AND GROCERY CODE OF CONDUCT GUIDE

### BACKGROUND

In the past, retailers have delisted products with little prior warning, without providing a rationale for doing so, without due consideration to existing agreements, and in some cases it has been used as threat or a negotiating tactic.

It can be one of the most contentious issues between a retailer and a supplier.

Retailers own the supermarket shelf, suppliers typically require access to consumers via the shelf, yet both are working towards the same end – to satisfy consumer demand. Still, product delisting has become a tactic used by retailers to extract additional value from a supplier.

### INTENT

The intent of this section is to increase the transparency of the decision making process and to reduce the use of delisting as a negotiation tactic.

The FGCC doesn't reduce the right of the retailer to choose what they will and won't sell, nor does it provide the supplier with an inherent right to a continuous listing.

REMBMBER TO  
KEEP YOUR  
FGCC TRAINING  
UP TO DATE.

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INFORMATION.

### RELEVANT FGCC PROVISIONS

Division 4: Other conduct  
19 Delisting Products

A retailer may only delist a supplier's grocery product (that is, remove a product from the retailer's product range) for genuine commercial reasons and in accordance with the GSA.

Genuine commercial reasons are not exhaustively defined in FGCC but could include a failure by the supplier to:

- » meet the quality or quantity requirements
- » meet the retailer's commercial targets per the GSA
- » meet the delivery requirements per the GSA.

Genuine commercial reasons do not include punishment for a complaint, concern or dispute raised by a supplier.

The FGCC states that a retailer must provide reasonable notice to the supplier of a decision to delist, including reasons for delisting a product. Factors to be considered in determining reasonable notice generally include:

- » Characteristics of the product supplied and external factors affecting production (for example, the product manufacturing lead time).
- » Relevant joint planning activity including forecasting, promotions, investment etc.
- » Whether and when the supplier has been forewarned of possible delisting activities.

Reasonable notice is not required where 'time is of the essence' (eg for product recall or withdrawal) or where there are persistent supply, safety or quality issues from the supplier.

Delisting is also subject to the broad obligations of good faith set out in section 28 of the FGCC.

## WHAT SHOULD HAPPEN

- » Prior to delisting the retailer is required to provide reasonable written notice.
- » Retailers must include reasons for delisting (genuine commercial reasons). The reasons provided should include details specific to the supplier and not be general in nature.
- » Retailers must inform the supplier of their right to have the decision reviewed.

## COMING SOON

Following the 2018 review of the Code, the Government has agreed to amend the delisting provisions to give suppliers the right to request additional information and details on the reasons for a delisting. The Code will also be amended to impose similar delisting notice and procedural requirements for significant reductions in distribution (regrading).

## SUPPLIER CONSIDERATIONS

- » A supplier should consider whether a category based approach to their relationship with a signatory would be beneficial for their company, brand or product. A long-term category based relationship may place a supplier in a stronger position to understand a signatory's intent and plans heading into a range reviews and be prepared for any potential delistings.
- » A supplier has no 'right' to be stocked in a retailer, but once they are stocked, there are protections regarding how they should be treated.
- » Specify and properly document in your GSA or other relevant documentation any requirements such as volume or quality parameters. Ensure you and your teams are aware of the expected volumes or quality standards, in order to be able have meaningful dialogue with a retailer about whether or not they have been met at any time.
- » The action of delisting the product should be a reasonable and proportionate response by the retailer to the issue. Normally a supplier should be given a reasonable opportunity to regain the volume under threat or resolve the quality issue (unless there is a safety issue) within a reasonable period of time.
- » Consider including in your GSA or other relevant documentation specific detail on reasonable notice requirements. For example information on ingredient supply chains, import time lines etc.
- » Be very clear in the GSA whether your sales, margin and/or profit projections are intended to be binding or not, or specify binding vs. non-binding elements in the projections.
- » Get everything in writing. Even phone conversations should be followed up with an email that indicates who said what and when.



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