



Groceries Code
Adjudicator

GCA interpretive guidance on De-listing practice:

**Supplementary De-listing guidance for the fresh
produce sector**

August 2016

GCA interpretative guidance on De-listing practice

Supplementary De-listing guidance for the fresh produce sector

1. In November 2014 the GCA issued interpretative guidance on De-listing practice by retailers regulated by the Groceries Supply Code of Practice (the Code).
2. It has become clear that additional clarification would be of benefit to the fresh produce sector, in particular. The GCA has accordingly decided to supplement her existing De-listing guidance.
3. This supplementary guidance may be used in planning De-listings and will be used by the GCA to inform her approach in any relevant arbitration or other regulatory activity.

Genuine commercial reasons for De-listing

4. Any requirements to be relied upon by a retailer in citing volume or quality issues as genuine commercial reasons for De-listing a supplier should have been properly documented in the relevant Supply Agreement. A supplier must be made aware of the expected volumes or quality standards, in order to be able to have meaningful dialogue with a retailer about whether or not they have been met at any time.
5. If the reason for the De-listing is quality, then to be a genuine commercial reason the quality issue must be real and De-listing the product should be a reasonable and proportionate response by the retailer to it. Normally a supplier would be expected to be given the opportunity to regain the volume under threat within a reasonable period of time if the quality issue is satisfactorily resolved.
6. It is common in the fresh produce sector for suppliers and retailers to work towards a production and supply “programme” or “framework agreement”. This is often used as a joint business planning tool. Whether or not it is incorporated into the relevant Supply Agreement should be made clear to the supplier by the retailer.

Reasonable notice of De-listing

7. In short-term seasonal, fixed-term or rolling contracts, which are common in the fresh produce sector, the Supply Agreement should set out any key decision points about the next season’s supply. In the fresh produce sector, it is common for the growing cycle of any particular product to be longer than the short-term seasonal or fixed-term contracts on offer from retailers, or than the time between break points in rolling contracts. Some of this risk of supply properly rests with the supplier, and is just part of the business of growing and supplying fresh produce. The GCA will, however, consider what a reasonable period of notice should be in any case based on the clarity of the Supply Agreement as to key decision points, to ensure that suppliers have reasonable certainty as to the risks and costs of trading, particularly in relation

to production, delivery and payment issues. This is the contribution of paragraph 2 of the Code, the overarching principle of fair dealing, to the reasonable notice requirement of the De-listing provisions.

8. If a De-listing decision is likely to be taken based on or caused by a significant reduction in the volume a particular supplier is to be asked to supply in future, including where in future supply to a retailer is to be allocated between two or more suppliers, the retailer should ensure that it communicates effectively to each supplier what its planning volume, depot or percentage range might be, to enable each supplier to continue to manage its production and supply risks independently and effectively.
9. If payment is to be made in lieu of reasonable notice, this would normally be derived from a supplier's sunk costs of production and supply, not from the expected income a supplier might have received had supply continued. Retailers are not expected to underwrite a supplier's hope to remain in business or to achieve or maintain a particular level of income. Suppliers will always be expected to mitigate any loss, e.g. by finding an alternative market for the produce, whether at the same or a lower grade.

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