

Recommendation for Good Practice in applying the SCI principles of fair dealing, information, confidentiality, and justifiable request

As part of the Supply Chain Initiative, registered businesses commit to the principles of good practice in vertical relationships in the food supply chain. This paper puts forward recommendations for good practice in relation to the respect of the principles of fair dealing, information, confidentiality and justifiable request in the context of a new branded product introduction, launch or renovation¹.

Every year, manufacturers and retailers introduce a vast amount of innovation into the market. Innovation is pro-competitive, and ultimately aims to serve continuously changing consumer demand and expectations in terms of products and services. Innovation can take many forms and covers products, services and processes. Product innovation can be defined as the “introduction of a good or service that is new or significantly improved with respect to its characteristics or intended uses”².

The Supply Chain Initiative helps address, in a consensual way, potential issues that could arise in vertical relationships between operators in the food supply chain. When signing up to the Supply Chain Initiative, operators commit to applying the following principles of FAIR DEALING, INFORMATION, CONFIDENTIALITY, and JUSTIFIABLE REQUEST³:

FAIR DEALING: Contracting parties should deal with each other responsibly, in good faith and with professional diligence.

INFORMATION: Where information is exchanged, this shall be done in strict compliance with competition and other applicable laws, and the parties should take reasonable care to ensure that the information supplied is correct and not misleading.

CONFIDENTIALITY: Confidentiality of information must be respected unless the information is already public or has been independently obtained by the receiving party lawfully and in good faith. Confidential information shall be used by the recipient party only for the purpose for which it was communicated.

JUSTIFIABLE REQUEST: A contracting party shall not apply threats in order to obtain an unjustified advantage or to transfer an unjustified cost.

1. Addressing information exchange

Brand manufacturers and retailers, through their own retailer brands, independently develop new products and innovation. In the context of a new branded product introduction, launch or

¹ It is accepted that this paper shall not affect the execution or further enhancement of the transmission of product information in accordance with the data exchange standards as established - with the involvement of manufacturers and retailers - by standardization organisations at the national or international level.

² Oslo manual OECD (2005)

³ Principles of good practice in vertical relationships in the food supply chain

renovation, they have a legitimate interest in sharing different types of information about a new product as well as the conditions for its successful introduction and related processes.

The needs for and types of information can be manifold, for example:

- to comply with regulatory requirements (e.g. labelling);
- to meet specific retailer requirements for instance reflecting consumer interest (e.g. origin and methods of production, sustainability criteria, etc.);
- or for the products' practical introduction and related processes (e.g. nature of the innovation, listing of the product in IT systems, size, packaging, storage conditions, product launch, assortment building).

In all cases, the request to share information needs a reasonable basis and may not be arbitrary.

Manufacturers and retailers recognise the following approaches as examples of good practice.

Example 1: A retailer sells, on the basis of its corporate policy on health and/or sustainability, no products that contain a specific ingredient. The supplier will have to respect that the retailer verifies this in the context of a listing negotiation.

Example 2: A retailer asks for detailed information about a new product. Without a reasonable basis for the request, the supplier should be free to decline to provide such information in the context of a listing negotiation.

Good practice

- Parties are encouraged to share information, to the extent allowed, that is helpful for the commercial transaction and related processes or is in the interest of consumers; they are encouraged not to disclose or request confidential information that may not be necessary for the transaction and related processes;
- Parties should not withhold information that is necessary to handle the process for a successful product introduction and related processes or to meet their regulatory obligations.

2. Timing of information exchange

To ensure the smooth introduction and launch of a new or renovated branded product, taking into account related internal processes, certain types of information about the product need to be exchanged between retailers and manufacturers in a timely fashion.

Good practice

- Parties recognise the importance of relationships that offer flexibility to adapt to market dynamics and circumstances. In this context, parties are encouraged to ensure that information is exchanged at the appropriate time and in the case of confidential information not earlier than necessary before offering the product for sale to consumers.
- The retailer takes care that the timing of an information request is in line with its needs for the purpose of a mutually beneficial transaction. The retailer will not threaten a supplier which declines to supply information earlier than agreed upon between the parties for the smooth launch of a new or renovated branded product.
- A statement by a retailer that it will be unable to offer the product for sale to consumers on a given date because the manufacturer has not provided relevant information on time should not be used or interpreted as a threat if there is a reasonable basis for the statement.

3. Addressing confidentiality

Respecting confidentiality is an important part of building trust among operators in the supply chain.

Good practice

- Parties recognise the importance of effective confidentiality agreements to protect confidential information, as part of general terms and conditions, or, where appropriate, as part of a separate agreement.
- Parties negotiate freely the content of such clauses.

4. Communication and Training

Communication and training support the application of the principles and compliance by registered businesses.

Good practice

- Businesses registered with the Supply Chain Initiative ensure internal communication and training of the relevant functions on the above good practices regarding the application of the confidentiality principle.

5. Dispute resolution

Parties can address specific issues using the SCI dispute resolution mechanisms put in place to that effect.