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Tēnā koe,

## **Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages (Call for Submissions)**

Thank you for the opportunity to comment on this Call for Submissions on Proposal P1049. We provide the following comments for consideration:

### *Key points*

- NZFS supports Option 3 to remove the permission in the Code to make nutrition content claims about carbohydrate (including sugars) on food that contains more than 1.15% ABV.
- NZFS does not support the proposal to provide permission to allow nutrition content claims about carbohydrate and sugars on alcoholic beverages. This does not address the concerns expressed by Food Ministers, specifically that “% sugar free claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake.”
- NZFS agrees that this Call for Submissions addresses the lack of clarity which exists currently that has been preventing jurisdictions from enforcing this part of the Food Standards Code, however we consider there is more work required before this content is ready to be presented to Ministers for their decision.
- NZFS considers the evidence presented supports the potential for nutrition content claims on carbohydrate and sugars to mislead consumers, despite being factual.
- NZFS encourages FSANZ to consider all Dietary Guideline recommendations: notably the recommendation to limit consumption of alcoholic beverages, rather than just the recommendation to limit intake of added sugars. This approach would inform this work more holistically.
- Allowing claims such as low carbohydrate and low sugar on alcohol may decrease the impact of the work of P1059 energy labelling on alcohol and the mandated pregnancy warning label information.
- NZFS does not consider it logical to allow claims on total sugars but not allow claims on specific sugars or other types of carbohydrate. It would be less confusing to not allow any claims on carbohydrates or sugars.

- NZFS does not agree that allowing carbohydrate and sugar claims on alcoholic beverages “provides the greatest net benefit to the community”, Specifically:
  - No evidence is presented to support the statement that such claims “enable consumers to make informed choices”. NZFS considers this information could mislead rather than inform consumers
  - The potential for carbohydrate and sugar claims to mislead consumers into consuming alcohol and causing social harm is not considered
  - Costs to industry should be discounted to account for label changes already required should P1059 be agreed
  - In New Zealand companies who have adopted sugar claims while P1049 has been in progress, have made a business decision to do so knowing that regulations could change and therefore the cost of removal of these claims should not be included.

*Detailed comments:*

### Scope

NZFS notes the original concerns leading to P1049 related to whether sugar nutrition content claims such as “99% sugar free” were permitted or not. This was because NZFS interpreted the Code as allowing carbohydrate claims but not specifically sugar claims. We note that when interpretation of the current drafting is referred to in the latest Call for Submissions it really was the interpretation of industry not the interpretation of all, as is implied.

FSANZ do not seem to have considered an option to include carbohydrate claims but not specifically allow sugar claims. If there is no historical precedent for sugar claims (as there is for carbohydrate claims), what is the justification to introduce specific permissions for these now?

Regarding interplay with P1059, have FSANZ considered the option of allowing carbohydrate and sugar claims only with prescribed wording that also indicates such claims do not mean the beverage is lower in energy from alcohol, or a low energy beverage?

### FSANZ preferred approach

NZFS does not agree with the proposal to provide permission to allow nutrition content claims about carbohydrate and sugars on alcoholic beverages. This is because while regulatory clarity has been provided, the Call for Submissions has not addressed the initial concerns expressed by Food Ministers in 2017. Specifically that “% sugar free claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake.” Allowing such claims is also inconsistent with the Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices and support healthy dietary patterns recommended in the Dietary Guidelines.

### Implications for Fair Trading Act (1986).

FSANZ states that “nutrition content claims would continue to be subject to consumer and fair trading laws that require labels do not misinform consumers through false, misleading or deceptive representations.

In preparing this submission, NZFS contacted the Commerce Commission in New Zealand for guidance on whether carbohydrate and sugar claims on alcoholic beverages could potentially be misleading. We received advice from Commerce Commission staff that claims can be literally true but still be considered misleading. What needs to be assessed is the overall impression that is provided to the audience – for example, the accurate amount of sugar or carbohydrate could be

stated on a label (and be able to be substantiated) but this could create an overall misleading impression in all the circumstances.

This is exactly what concerned Food Ministers when they requested FSANZ look whether claims such as “99% sugar free” were permitted or not. Specifically that “% sugar free claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake.” NZFS considers this has not been adequately addressed by this Call for Submissions. Further, NZFS considers the limited consumer evidence presented to date clearly illustrates that some consumers believe such factually correct claims infer a more healthful alcoholic beverage than an alcoholic beverage that doesn’t contain such claims. In our view, considering dietary guidance to limit consumption of alcohol, such claims achieve a misleading impression. As such, these claims may be viewed as misleading under the Fair Trading Act (1968) in New Zealand.

The call for Submissions document states that carbohydrate and sugar claims on alcohol provide factual information to allow informed choice. NZFS argues that if people are misled by these claims that would not be considered an ‘informed choice’.

### Interpretation of existing research

NZFS interprets the results of the consumer evidence presented differently to the interpretation presented in the Call for Submissions. In our view none of the consumer evidence described in section 3.4 provides supporting evidence to allow carbohydrate and/or sugar claims on alcoholic beverages.

FSANZ appear to have focussed on the limited evidence that the presence of claims may not increase the amount of beverage consumed, while overlooking “limited evidence (that) indicates that these claims may cause consumers to make inaccurate assumptions about the alcohol and/or energy content of alcoholic beverages”. As described above, NZFS understands it is this latter perception that Food Ministers are most concerned about. Factors other than labelling are likely to influence actual consumption levels (such as price, taste and environmental conditions)<sup>1</sup>, but increased perceptions of healthfulness is more directly associated with labelling.

NZFS considers the limited evidence the Call for Submissions does present affirms that carbohydrate and sugar claims do affect perceptions of healthfulness of alcoholic beverages, for example:

- “consumers may mistakenly perceive low-carbohydrate beer as healthier than low-alcohol strength beer, with some consumers also perceiving low-carbohydrate beer to be healthy in an absolute sense, and mistakenly believing that they ‘don’t need to worry about their weight’ when drinking low-carbohydrate beer.”
- “sugar claims on ciders and RTDs cause young female adults to mistakenly perceive those beverages as being lower in alcohol. This indicates that sugar claims on ciders and RTDs cause consumers to make inaccurate assumptions about an unrelated drink attribute. It is unclear whether this effect is limited to young female adults.”

There is no evidence to suggest carbohydrate and sugar claims on alcoholic beverages do not affect consumers’ perceptions of how healthy these products are. Therefore, allowing such claims on alcoholic beverages is not justified by current consumer research as presented in the Call for Submissions.

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<sup>1</sup> Köster, E.P. (2009). Diversity in the determinants of food choice: A psychological perspective. *Food Quality and Preference* 20, 70-82

### Need for more consumer research/reconsideration of consumer evidence

NZFS acknowledges the paucity of good quality consumer research that assesses whether carbohydrate and sugar claims on alcoholic products affect consumers' perception of overall 'healthfulness'. We therefore consider there is more work required to answer this question before this material is ready to be presented to Ministers for their decision.

FSANZ state in the Call for Submissions that "Given the interrelationship between P1059 and P1049, these Proposals are being progressed in tandem ... to consider the implication of any label changes on consumers ability to make informed choices". Ideally, we suggest FSANZ undertake such consumer research in the context of the package of proposed changes to labelling of alcoholic beverages (from both P1049 and P1059) to add to the limited evidence currently available.

In the absence of further research, we strongly suggest that the results of the limited evidence available be reconsidered as described in the section above.

### Potential to dilute the impact of other alcohol labelling initiatives

Allowing claims such as low carbohydrate and low sugar on alcohol may devalue the work of P1059 energy labelling on alcohol. If consumers believe that much of the energy in alcoholic beverages is from carbohydrate and sugars, it will be less clear to them that the labelled energy content is from the alcohol itself which could undermine the effect of P1059. Likewise, allowing more information on labels could have the effect of diluting mandated pregnancy warning label information.

### Rationale for permitting sugar claims

The Call for Submissions supports permission for generic claims on sugar content based on the logic that sugars are carbohydrates and claims on carbohydrates are permitted. However this logic is not followed with regards to claims for individual named sugars, as the Call for Submissions also specifically prohibits nutrition content claims about specifically named sugars and other types of carbohydrate such as oligosaccharides and fibre. NZFS considers that any nutrition claims about sugars and other carbohydrates (generic or named) should be prohibited – especially considering the consumer evidence discussed previously.

### Cost benefit analysis

NZFS supports Option 3 as outlined in the Options assessed for costs and benefits. This is to remove the permission in the Code to make nutrition content claims about carbohydrate (including sugars) on food that contains more than 1.15% ABV.

NZFS does not agree with FSANZ's current overall consideration of costs and benefits.

We consider the costs of removing claims are overstated. Significant labelling change costs are going to be required for P1059, and this is the reason why P1049 has been delayed to coincide with P1059. FSANZ state in the Call for Submissions that "Given the interrelationship between P1059 and P1049, these Proposals are being progressed in tandem to minimise the potential impact on industry of having to make multiple label changes" however, this is not taken into account in the cost benefit analysis outlined in this Call for Submissions. In addition, in New Zealand the alcohol industry has known since 2016 that MPI/NZFS have been questioning the clarity of the Code for sugar claims, so they have had many years already to remove affected claims. Indeed, as noted in the Call for Submissions, many already have. The reverse is also true: that any companies who have adopted such claims while P1049 has been in progress, have made a business decision to do so knowing that regulations could change and therefore costs for removing these claims should not be included in the cost benefit analysis.

NZFS does not agree that option 2, allowing carbohydrate and sugar claims on alcoholic beverages “provides the greatest net benefit to the community”, considering their potential to mislead consumers by creating a ‘health halo’ for alcoholic beverages. NZFS also considers the benefit of informed choice for consumers is over-stated. No evidence is presented to support the statement that such claims “enable consumers to make informed choices”. NZFS considers that information about carbohydrate and sugar content on alcoholic beverages is at best meaningless, and at worst misleading, with respect to implying lower energy content, since the energy mainly comes from the alcohol content itself.

For completeness, NZFS considers the cost benefit work should have considered an option to retain carbohydrate claims but clarify that this permission does not allow claims about types of carbohydrates including sugars. This was the NZFS interpretation of the current intent of the Code. This would provide equal regulatory clarity to the Code without the risk of consumers perceiving alcohol with sugar claims as healthy. It would also be less costly to industry because the costs of re-branding “Low carbohydrate” brands would not be required. However, our view is that option 3, removing the permission to make nutrition content claims about carbohydrate (including sugars and other carbohydrates such as oligosaccharides and fibre) on beverages that contain more than 1.15% ABV, would provide the *greatest* net benefit to the community for the other reasons outlined in this submission.

### Trade considerations

NZFS agrees with the Call for Submissions that a notification to the WTO under Australia’s and New Zealand’s obligations under the WTO technical Barriers to Trade Agreement is unnecessary. Such claims are voluntarily used, not mandated, so it is up to businesses to comply with labelling requirements in each country.

### Alignment with implementation of other labelling changes for alcoholic beverages.

NZFS would like more clarity on how the implementation of P1049 will align with the implementation and transition times for P1059 Energy Labelling on Alcoholic Beverages. NZFS does not consider there is a need to progress P1059 before P1049 and recommends these Proposals are worked on concurrently, especially since P1049 has already been significantly delayed to align with P1059. Our preference is that a package of changes to alcohol labelling supported by robust evidence is presented to Ministers at one time.

### Recommended next steps

NZFS considers there is more work required before this work is ready to be presented to Ministers for their decision.

We strongly suggest FSANZ either undertake consumer testing or reconsider the evidence presented to determine whether the presence of carbohydrate and/or sugar claims on alcoholic beverages lead consumers to think that the alcoholic beverages carrying such claims are more healthful than they are. This will address the concerns expressed originally by Food Ministers. NZFS believes that the currently available limited evidence does support the concerns of Ministers and therefore does not justify such claims being permitted.

We also suggest further work is undertaken on the cost benefit analysis to factor in the label changes that will already be required to implement P1059 and to consider an additional option of continuing to permit carbohydrate claims but prohibiting sugar claims.

We look forward to reviewing an updated draft variation with evidence from consumer testing prior to this being provided to the FSANZ board. In the meantime, please contact us if you would like to discuss any points made in this submission.

Nāku noa, nā

