



First Annual Grocery Report

Pūrongo ā-tau
tuatahi mō te kai

Executive Summary

4 SEPTEMBER 2024



The Commerce Commission (the Commission) has a critical role under the Grocery Industry Competition Act 2023 (the Act) to promote competition in this industry. We do this by monitoring compliance and taking enforcement or other actions as appropriate – including, but not limited to, carrying out inquiries, reviews, and studies (including international benchmarking) in connection with the New Zealand grocery industry.

The purpose of the Act is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand.

When firms compete, consumers benefit from more competitive prices, higher quality goods and services, greater variety and more innovation.

Foodstuffs North Island, Foodstuffs South Island and Woolworths New Zealand (the **major grocery retailers**) are subject to the Act including requirements that seek to ensure a greater level of competition in the grocery industry by:

- reducing barriers to entry and expansion, including access to wholesale groceries and suitable sites for supermarket development;
- addressing unequal bargaining power between the major grocery retailers and their suppliers; and
- making it easier for consumers to make informed purchasing decisions.

This is the first of our Annual Grocery Reports under the Act on the state of competition in the grocery industry.

Baseline setting report under new Act and post Market Study

The Commission's [Grocery Market Study final report](#) was released in March 2022, based on data relating to trading prior to the COVID-19 pandemic. The Grocery Industry Competition Act responded to the findings and recommendations in that report.

This first Annual Grocery Report is based on data from the period from 2019 to 2023 and builds on the findings of the Grocery Market Study, setting a new post-pandemic baseline for the state of competition in the industry as a whole and against which the Commission will monitor the impact on the grocery industry from the measures put in place under the Act – and outcomes for New Zealand consumers.



THE MAJOR GROCERY RETAILERS DO NOT FACE STRONG COMPETITION

KĀORE E KAHA TE WHAKATAETAETANGA MĀ NGĀ KAIHOKO KAI MATUA

No meaningful improvement in competition

Our assessment from the analysis of data from 2019 to 2023 is that there has been no meaningful improvement in the state of competition in the grocery industry since the Grocery Market Study final report.

Concerningly, the major grocery retailers' retail margins have increased. This is measured by the difference between the retail prices that consumers pay for groceries and the prices paid by supermarkets to their suppliers for those goods.

We also observe that the major grocery retailers continue to maintain high market shares and high levels of profitability.

Retail margins of major supermarket brands increased

From 2019 to 2023, retail margins under the New World, Pak'nSave, and Woolworths/Countdown brands have increased by 3.1 percentage points on average across all non-fresh product categories.

Margins have also increased on fresh product categories (bakery, fresh meat & poultry, produce, seafood, and service deli) but by a lesser 0.4 percentage point increase.

In a competitive market we would expect retail margin growth to be limited or reduce with price competition. In the information provided to the Commission to date, we have not seen these margins being constrained.

This is a red flag for the state of competition in the grocery industry in New Zealand. The major grocery retailers point to supply cost increases and power imbalances with large suppliers of 'must-stock' products to explain recent price increases. However, our analysis

shows that the retail prices of the major grocery banners have been increasing faster than the prices they pay to their suppliers.

The Commission is concerned about market concentration and power imbalances between different parties in parts of the grocery supply chain – and will introduce a Disclosure Standard to require the major grocery retailers to report on margins. This will improve transparency of the effects of market concentration and power imbalances in the industry, and inform actions to address these, against the baseline we have established in this Report.

Sustained high levels of profitability and market share

In contradiction to the explanation from major grocery retailers (that increased retail margins have been necessary to cover rising operating costs), our analysis shows, that while some operating costs have increased for the major grocery retailers over the period 2019 to 2023, their bottom-line earnings have remained constant, or in some cases have increased.

If you compare an annual return on the supermarket's assets against a normal rate of return for supermarket retailing in the period 2019 to 2023, it shows that the major grocery retailers continue to achieve higher levels of profitability than the Commission would expect in a competitive market.

The major grocery retailers continue to hold an overwhelming portion of the grocery market share, collectively accounting for 83% of the total grocery market revenue in 2019. Our analysis shows that by 2023, this share had dropped only marginally, to 82%.

No significant challenger has emerged

For New Zealand consumers to truly benefit from competition in the grocery industry, we need sufficient entry and expansion right across the country.

Consumers value the convenience of a one-stop grocery shop and competitive prices. This means that changes around the fringe of the grocery industry (such as new retailers offering only some categories of groceries) have limited potential to materially improve competition – serving only as ‘top-up’ or complementary shops, given how Kiwi consumers have a preference for doing their primary shop where they can get the full range of goods they want.

While the Commission has not seen evidence of improving competition at a national level, we have observed increased competition at a regional level and in specific parts of the industry. This includes Costco entering the Auckland grocery market, The Warehouse expanding aspects of its grocery offerings to more stores nationwide, and some retailers entering niche markets.

We have also seen some regional grocery retailers exiting the industry, including Supie, The Honest Grocer, and Huckleberry. Exits from the market demonstrate that the grocery industry is a challenging market in which to enter, grow and survive.

Competition strongest in Auckland

While nationally the industry remains concentrated, competition has increased in parts of Auckland. Auckland has seen a decrease in the major grocery retailers’ market share from 74% in 2022 to 70% in 2023.

Major grocery retailers have faced more competition in Auckland where a wider range of competitors operate, including Farro Fresh, Tai Ping and other specialist supermarkets – even before Costco’s arrival in New Zealand in late 2022, which has led to a further drop in the market share held by the major incumbent supermarkets.

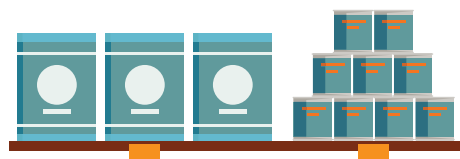
Misleading pricing and incorrect charges at the checkout

The Commission has started investigations under the Fair Trading Act into all three major grocery retailers. These investigations focus on false and misleading pricing claims in supermarkets.

Accurate and clear pricing is a consumer right. However, it can be difficult for consumers to ascertain whether they have been charged correctly at the checkout. The continuing level of pricing errors happening across the major supermarkets is unacceptable, and the Commission believes that not enough is being done to fix these problems – promote refunds policies or record customer complaints, which can be a helpful source of information to identify trends and issues and remedy them.

Consumers need assurance that they are being charged the correct amount and that it reflects the price advertised and on the shelf. Correct pricing enables consumers to shop with confidence. To support this the Commission expects the major groceries retailers to put in place adequate refund policies, and ensure they are well-promoted for customers who are charged the incorrect amount.

The Grocery Commissioner has sought an assurance from the major grocery retailers for action on these concerns, and will be introducing a mandatory Disclosure Standard that would require the major supermarkets to regularly disclose information about customer complaints and their resolution, including around pricing and promotional issues.



BARRIERS REMAIN FOR NEW ENTRANTS

ARĀ TONU NGĀ TAUĀRAI KI NGĀ
KAIHOKO KIA WHAKAWHĀNUI KIA
URU HOKI KI TE AHUMAHĪ

The New Zealand grocery industry remains a challenging industry in which to enter and expand. Legislative and regulatory changes have been put in place to improve access to groceries at genuine wholesale prices, as well as access to suitable sites for the development of new retail grocery store. Despite these changes, there remains a mix of difficult structural conditions.

Structural conditions make profitable entry difficult

A feature of the New Zealand grocery industry is that the established major grocery retailers have significant scale advantages over their rivals – in the acquisition and distribution of groceries, and at a retail level. Smaller retailers entering the industry face cost disadvantages compared with the major grocery retailers.

New Zealand's small market size and geographically spread population make nationwide or retail entry-at-scale challenging.

There are limited locations and limited areas of concentrated consumer demand where a new entrant can profitably operate. The strong recognition of the existing players' main and sub-brands is also a challenge for new entrants to overcome, with several of the major supermarket brands featuring among the highest in corporate reputation rankings in New Zealand.

New wholesale regime has had limited impact

Under the Act, the major grocery retailers are required to establish competitive wholesale offers and to consider in good faith all requests for wholesale supply from other retailers.

The Commission's assessment is that, to date, these new wholesale requirements are having limited impact, as reflected by the very low volume of trade.

The aim of the Grocery Industry Competition Act in this regard was to give wholesale customers reasonable access to the scale and efficiency of the major grocery retailers through a competitive wholesale offer.

Wholesale customers should get access to a wider selection of wholesale products at competitive prices. Larger grocery retailers (perhaps a national or regional chain) should get access to a suitable wholesale supply channel that enables them to enter the market and/or grow their business while building their own supplier relationships. We believe that the range and price of goods included in major grocery retailer's wholesale offerings observed to date are not consistent with a competitive wholesale market. This is a significant impediment to the regulatory regime working effectively.

Regarding pricing, the major grocery retailers have the benefit of their suppliers providing rebates, discounts and payment arrangements (including funding promotions). But these benefits are not being passed on in full, or at all, to wholesale customers.

The range of wholesale products is constrained by the decisions of some suppliers to opt-out of being part of major grocery retailers' wholesale offerings. Most of the major grocery retailer's private label products are also not available through the wholesale offerings.

Access to land has improved through removal of restrictive covenants

Historically, major grocery retailers have lodged covenants on land and leases. These have restricted the availability of sites for rival retailers. In some cases, this amounted to anti-competitive conduct undertaken to block competitors. The Commission has recently successfully prosecuted Foodstuffs North Island for its historic use of covenants to block competitors – with the court saying this was a deliberate effort to hinder rivals from opening new supermarkets or developing existing ones at three locations in the Lower North Island – Newtown and Petone in Wellington and Tamatea in South Napier.

Access to land has improved due to legislative change to the Commerce Act in 2022 that banned the major grocery retailers from enforcing land and lease covenants that inhibit retail grocery store development.¹ Covenants are no longer enforceable because of the law change. Grocery retailers have also taken steps to remove historic covenants. By August 2023, the major grocery retailers had removed a total of 93 land covenants and 26 lease covenants.

Regulatory hurdles and actions by incumbents still reduce site availability

Despite the progress being made to remove restrictive covenants, the Commission is concerned about the scale of land held by the major grocery retailers who currently hold more than 100 properties not being used for retail stores.

‘Land-banking’ could be a significant and material factor reducing the number of sites available to retailers looking to enter or expand in the market, and the Commission will be further investigating the potential impact of underutilised site on competition in the grocery industry.

Other significant regulatory hurdles to entry and expansion remain.

To develop a supermarket in New Zealand, a retailer must comply with planning regulations, such as zoning requirements within the local council’s District Plan, and in some cases the resource consent process.

Planning regulations can slow the development of new stores if there are additional costs or delays in the consenting process. The Overseas Investment Act 2005 can also create additional costs, delays and uncertainty in relation to site acquisition by overseas entities looking to enter or expand in the New Zealand grocery industry.



¹ Sections 28A to 28B of the Commerce Act 1986.

FURTHER ACTION NEEDED TO DRIVE COMPETITION AND BETTER CONSUMER OUTCOMES

ME WHAI TIKANGA MAHI ANŌ HEI
KŌKIRI I TE WHAKATAETAETANGA
ME NGĀ HUA PAI AKE MŌ NGĀ
KIRITAKI

Improving wholesale supply of groceries

The current wholesale regime is not gaining sufficient uptake to improve competition and efficiency in the New Zealand grocery industry or benefitting New Zealand consumers. The Commission considers a significant improvement is unlikely under current settings.

The Act provides a range of regulatory backstops if the wholesale offerings provided by the major grocery retailers are not consistent with the wholesale offerings provided in a competitive wholesale market.

We will introduce a Wholesale Code and conduct an inquiry under Section 55 of the Act to unlock stronger regulatory tools if needed to address issues that we are seeing, including the range and price of wholesale offers, supplier opt out and the inclusion of private label products.

Improving conduct – addressing power imbalance

The major grocery retailers are a key market entry channel for many suppliers into the market. These retailers have strong bargaining power over many of their suppliers.

Despite the introduction of a mandatory Grocery Supply Code (**Code**) in 2023, many suppliers are fearful of the retailers and we continue to hear of bullying behaviour. To address this, the Commission is adopting strong and timely enforcement responses aimed at detecting, prosecuting and deterring illegal conduct, and giving suppliers more confidence to report such conduct to us.

The Commission has also brought forward its first review of the Code and is currently seeking stakeholder feedback on the Code, including issues and opportunities for improvements to the Code.

Improving market structure

Under current regulatory settings a meaningful improvement in retail competition in the grocery market is many years away.

Even if a significant challenger were to emerge tomorrow, it would take some time for them to establish themselves and grow market share. Major third entrants to grocery markets in Australia and Finland took over a decade to reach 10% market share.

The Commission believes three major national supermarket networks would be significantly more competitive than two, and that this is achievable in New Zealand. We will be engaging with potential new entrants and investors to better understand their view on how we can remove remaining barriers to enable this to happen.



Phone: 0800 943 600

Write: Enquiries Team, PO Box 2351, Wellington 6140

Email: market.regulation@comcom.govt.nz

<http://www.comcom.govt.nz>