

APPENDIX 2: ANALYSIS OF SALAD DRESSINGS, VINEGAR, PICKLES AND RELISHES CATEGORY

- 1 This appendix sets out:
 - 1.1 background information about the salad dressings, vinegar, and pickles and relishes category (refer to the table below), and
 - 1.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 3 to 8 below).
- 2 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Shelf stable salad dressings, such as mayonnaise, aioli, plant-based dressings and pourable salad dressings • Vinegars • Pickles and relishes, such as gherkins, olives and chutneys
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • There are different need states in this category based [REDACTED]. • [REDACTED]. • [REDACTED] are “must have” products. • [REDACTED]. • Consumer tastes within the salad dressing segment are [REDACTED]. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • Innovation in the flavoured mayonnaise segment is [REDACTED]. • [REDACTED]. • The vinegar segment experiences [REDACTED]. • The pickles and relishes segment experiences [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • In relation to salad dressing: <ul style="list-style-type: none"> ◦ [REDACTED]. ◦ [REDACTED]. • In relation to vinegar: <ul style="list-style-type: none"> ◦ [REDACTED]. ◦ [REDACTED]. • In relation to pickles / relishes: <ul style="list-style-type: none"> ◦ [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED]. • Pickles, olives and gherkins are imported lines and therefore subject to overseas supply constraints.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • [REDACTED] • There are over [REDACTED] total suppliers in this category, [REDACTED]. • [REDACTED].
FSNI’s engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> • [REDACTED]. <ul style="list-style-type: none"> ◦ [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Woolworths • The Warehouse • Costco • Dairies • Organised convenience channels (e.g., service stations) • Farmers' markets (which procure mainly from smaller suppliers)
Role of exports	<ul style="list-style-type: none"> • [REDACTED]. FSNI is aware of [REDACTED].
Role of imports	<ul style="list-style-type: none"> • Imports generally come from Australasian manufacturers. • Some suppliers import into the Australia market and maintain a New Zealand warehouse, allowing them to supply the New Zealand market more efficiently. • [REDACTED] products are imported.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Products in this category can be sold through various channels and non-retail outlets, including to food service and meal kit providers. • Wholesalers, such as Bidfood and Service Foods.

There will not be a substantial lessening of competition in relation to the acquisition of salad dressings, vinegar, and pickles and relishes.

3 As noted above, each of the three product segments within this category is [REDACTED]. Specifically:

3.1 [REDACTED] **salad dressing** suppliers,

3.2 [REDACTED] **vinegar** supplier, and

3.3 [REDACTED] of **pickles and relishes**.

4 The chart below shows that the [REDACTED].

Figure 1: FSNI sales of salad dressings, vinegar, and pickles and relishes by supplier (across a 13-week period to 30 June 2024)

[REDACTED]

- 5 [REDACTED]. Following the Proposed Transaction, the Parties expect that these suppliers would simply negotiate with one Foodstuffs entity, rather than individually with FSNI and FSSI. It is unlikely then that there will be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately.
- 6 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to suppliers of products in this category. In particular:
- 6.1 several of the key suppliers in this category, [REDACTED], are global suppliers that import products into New Zealand from overseas markets. They consequently [REDACTED],
 - 6.2 domestic suppliers such as [REDACTED] already face competition from imports and should not be expected to be materially affected by the Proposed Transaction,
 - 6.3 the category also features several strong branded products [REDACTED] removing popular brands could lead to customer dissatisfaction and lost sales,
 - 6.4 suppliers in this category have access to various sales channels beyond the major supermarkets, including organised convenience channels and food service. This diversity of sales channels provides suppliers with alternatives if a major retailer attempts to negotiate unfavourable terms,
 - 6.5 suppliers such as [REDACTED] utilise specialised distributors. This arrangement is likely to provide an additional buffer against any retailer pressure in negotiations, and
 - 6.6 some products in the category, particularly [REDACTED], are characterised by ongoing innovation. Suppliers drive this innovation based on overseas flavour trends. Retailers rely on this supplier-led innovation to keep their offerings fresh and attractive to consumers, [REDACTED].
- 7 Further, it is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e., retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category.
- 8 Accordingly, it cannot be correct to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to the salad dressings, vinegar, and pickles and relishes product category. Further, it is clear the Commission can be satisfied the Proposed Transaction would not be likely to give rise to a substantial lessening of competition in any market in this category.

APPENDIX 3: ANALYSIS OF COOKING SAUCES, STOCKS AND MARINADES CATEGORY

- 9 This appendix sets out:
- 9.1 background information about the cooking sauces, stocks and marinades category (refer to the table below), and
- 9.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 11 to 17 below).
- 10 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Cooking sauces, e.g., simmer sauce, pasta sauce, soy sauce, Asian/Indian sauce, packet sauce, and tomato paste/puree • Marinades • Stock and gravies, including ready-to-serve, dry, packet, wet and concentrate • Note: this category does not include 'table sauces' (such as tomato or BBQ sauce)
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • Need states in this category include: <ul style="list-style-type: none"> ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED] [REDACTED] [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED]. • [REDACTED] are 'must have' products for FSSI.
Role of innovation	<ul style="list-style-type: none"> • FSNI notes that there is [REDACTED]. • FSSI notes that [REDACTED]. • Category-wide NPD is considered at specified periods during the year.
Market dynamics	<ul style="list-style-type: none"> • This category is dominated by [REDACTED], for example: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • For FSNI, the top 10 (out of [REDACTED]) suppliers account for [REDACTED]% of sales.

Topic	Detail
	<ul style="list-style-type: none"> • Some global suppliers have local manufacturing facilities, such as: <ul style="list-style-type: none"> ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] – although [REDACTED]. • [REDACTED]. • FSSI has over [REDACTED] suppliers in this category.
FSNI’s engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
FSSI’s engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED], and ○ [REDACTED]. • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED], and ○ [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Woolworths • The Warehouse • Costco • Dairies • Asian grocers • SuperValue
Role of exports	<ul style="list-style-type: none"> • [REDACTED].
Role of imports	<ul style="list-style-type: none"> • [REDACTED]. • Examples of imported brands include: <ul style="list-style-type: none"> ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED] ○ [REDACTED]

Topic	Detail
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Other buyers include food service, hospitality and hotels, as well as wholesalers. • Many of the products in this category serve as staple recipe bases.

There will not be a substantial lessening of competition in relation to the acquisition of cooking sauces, stocks and marinades products

- 11 Product types within the cooking sauces, stocks and marinades category are dominated by [REDACTED]. In particular, FSNI's top 10 suppliers of these products comprise almost [REDACTED]% of FSNI's sales. This is shown in the figure below.

Figure 2: FSNI sales of cooking sauces, stocks and marinades by supplier (across a 13-week period to 30 June 2024)

[REDACTED]

- 12 The leading suppliers in this product category are many times larger than the Parties, face limited competition, and offer products that are considered culinary staples. [REDACTED], which would severely compromise the competitiveness of the Parties' offering.
- 13 While there are approximately [REDACTED] suppliers across all subcategories, the dominance of [REDACTED].
- 14 Further, [REDACTED].
- 15 The Proposed Transaction is unlikely to materially increase the Parties' buyer power in relation to suppliers of cooking sauces, stocks and marinades products. In particular:
- 15.1 Global suppliers such as [REDACTED] have numerous alternatives to the Parties, often supply imported products [REDACTED], and could credibly threaten to stop supplying them altogether. There is unlikely to be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately,
- 15.2 there are a large number of other buyers of cooking sauces, stocks and marinades products in addition to major grocery retailers, including other retailers (e.g., The Warehouse, Costco), dairies, Asian grocers, and the food service sector (e.g., hospitality, hotels). Accordingly, the Proposed Transaction cannot be characterised as a "three to two" merger of buyers in relation to these products.
- 16 Further, it is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e. retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category.
- 17 In conclusion, given the strong presence of multi-national suppliers and the availability of alternative retail channels, the Proposed Transaction is unlikely to lead

to a substantial lessening of competition in relation to the acquisition of cooking sauces, stocks and marinades products.

APPENDIX 4: ANALYSIS OF MEXICAN CATEGORY

18 This appendix sets out:

18.1 background information about the Mexican category (refer to the table below), and

18.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 20 to 22 below).

19 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Shelf stable Mexican meal kits • Tortillas • Sauces • Spice mixes
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • FSNI observes that for its customers: <ul style="list-style-type: none"> ◦ [REDACTED], ◦ [REDACTED], and ◦ [REDACTED]. • FSSI observes that for its customers: <ul style="list-style-type: none"> ◦ [REDACTED], and ◦ [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • The following suppliers have entered the Mexican category in recent years [REDACTED] • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • Excluding private label, FSNI has [REDACTED] suppliers in this category: <ul style="list-style-type: none"> ◦ [REDACTED] hold [REDACTED]% of the market share and appeal to mainstream customers. ◦ [REDACTED] is a premium authentic brand. ◦ [REDACTED] in a bid to increase its competitiveness in the ingredients space. ◦ [REDACTED] is currently participating in Foodstuffs Emerge. • [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED].

Topic	Detail
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Woolworths • Fresh Choice • Super Value • Local retailers • The Warehouse
Role of exports	<ul style="list-style-type: none"> • Local brands do not generally export their products.
Role of imports	<ul style="list-style-type: none"> • Imports play a significant role in this category. In particular: <ul style="list-style-type: none"> ◦ [REDACTED] are imported, and ◦ [REDACTED] are imported.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Wholesalers. • Suppliers also work with food manufacturers.

There will not be a substantial lessening of competition in relation to the acquisition of Mexican products

- 20 The acquisition market for Mexican food items consists of [REDACTED] account for approximately [REDACTED]% of total sales. Accordingly, these [REDACTED] over grocery retailers. FSNI notes that [REDACTED].
- 21 Moreover, FSNI and FSSI [REDACTED] in this product category. There are few alternatives for the Parties due to [REDACTED]. It follows that:
- 21.1 the Parties are highly unlikely to exercise bargaining power over suppliers in this category, and
- 21.2 the Proposed Transaction is unlikely to impose any material changes on the nature of the market. In other words, there is unlikely to be a structural difference between supplying to the Merged Entity, compared to supplying to FSNI and FSSI separately.
- 22 In addition, imports play a significant role in this category. In particular, [REDACTED]. Suppliers that import products to New Zealand, such as [REDACTED], have the option to supply their products to various international buyers (in addition to local retailers and wholesalers). This not only affords these suppliers with [REDACTED], but also suggests that the Proposed Transaction cannot be characterised as a “three to two” merger. Given the significant countervailing power

of the suppliers, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category.

APPENDIX 5: ANALYSIS OF BREAKFAST CATEGORY

23 This appendix sets out:

23.1 background information about the breakfast category (refer to the table below), and

23.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 25 to 32 below).

24 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Cereals • Hot cereals (e.g., rolled oats) • Muesli • Convenience (e.g., Up & Go)
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • There are a number of different need states across this category [REDACTED]. • [REDACTED]. • Time of year is relevant to customers' buying behaviour. [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • Innovation is [REDACTED]. • [REDACTED]. • [REDACTED]. [REDACTED]. • [REDACTED] [REDACTED]. Similarly, [REDACTED]. [REDACTED] [REDACTED] and [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. Sanitarium has also announced that it will edit the adult segment and some muesli and granola segments due to changing consumer trends.¹ • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED] [REDACTED]. • [REDACTED]. [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • A number of segments in this category require specialised equipment and manufacturing capabilities to produce relevant products such [REDACTED]. • Conversely, granola and muesli are relatively low cost to produce, which, [REDACTED]. • Due to their bulky nature, breakfast products tend not to be exported or imported beyond the Asia Pacific region in light of the costs that would be associated with exporting further afield.
B. Information about the specific suppliers of the relevant product(s) in this category	

¹ <https://www.stuff.co.nz/business/350228492/sanitarium-proposes-end-some-cereal-brands>

Topic	Detail
Makeup of suppliers	<ul style="list-style-type: none"> This category is dominated by [REDACTED], who together account for over [REDACTED]% of FSNI's category sales, depending on the banner, and over [REDACTED]% of FSSI's category sales. [REDACTED]. [REDACTED]. [REDACTED]. There are also a range of smaller, local suppliers. [REDACTED]. [REDACTED]. [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. There may be some smaller local suppliers which only supply a group of stores in either Island.
Role of non-direct channels	<ul style="list-style-type: none"> There is some involvement from agencies in this category. [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<p>Other retailers are significant purchasers of breakfast products. These retailers include:</p> <ul style="list-style-type: none"> other grocery retailers (e.g., Woolworths, Costco, Farro, etc.), other retailers such as The Warehouse and convenience stores (e.g., dairies, retail fuel channels, Night 'n Day).
Role of exports	<ul style="list-style-type: none"> [REDACTED] export their products to the Pacific Islands, Australia, and likely some Asian countries]. [REDACTED] exports its products to Australia, Singapore and China. [REDACTED] exports its products to Australia. [REDACTED] exports to Australia and Singapore, as well as selected retailers in Thailand, Tahiti and New Caledonia.
Role of imports	<ul style="list-style-type: none"> As noted above, the largest suppliers of breakfast products are trans-Tasman with [REDACTED] importing all of its products and [REDACTED] importing some of its products in conjunction with domestic manufacturing. [REDACTED] also imports its products to New Zealand.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Food service including hospitality, hotels, rest homes, hospitals. Wholesalers e.g., BidFoods.

There will not be a substantial lessening of competition in relation to the acquisition of breakfast products

- 25 The two largest suppliers in this category, [REDACTED], are trans-Tasman suppliers which exercise considerable countervailing power in breakfast product acquisition markets. This countervailing power stems from the strong performance of their products (including some 'must have' products) across a number of segments (including in segments where there are limited products that compete with their own or they supply must have products) and given they supply a range of products across the breakfast category, [REDACTED].
- 26 The absence of products that compete with [REDACTED] products in some segments is, at least in part, the result of the material investment (particularly in manufacturing technologies) required to produce certain types of products such as [REDACTED] which is a "must have" product.
- 27 The Proposed Transaction is highly unlikely to materially increase the Parties' buyer power in relation to these multi-national suppliers given the numerous alternative buyers of their products (in New Zealand, Australia and other export markets in the Asia Pacific), their supply of a number of key brands [REDACTED] – refer in particular to [REDACTED]) and that they could credibly threaten to stop supplying the Parties.
- 28 Larger and medium sized national suppliers currently supplying both co-operatives, such as [REDACTED]. These suppliers:
- 28.1 face significant competition from the imported products of multi-national suppliers and should not be expected to be materially affected by the Proposed Transaction,
- 28.2 supply to a large number of other buyers in addition to major grocery retailers, including other retailers such as The Warehouse, convenience stores and the oil channel as well as foodservice buyers (such as hotels, rest homes and hospitals). It is, therefore, incorrect to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to breakfast products, and
- 28.3 it is clear that a number of domestic suppliers' products are exported overseas. Accordingly, flexing the extent of their exporting is likely to be another material option for domestic suppliers of breakfast products (and indeed, may impact the price for those products in New Zealand).
- 29 Further, the Proposed Transaction would not affect the Parties' incentives to compete in the retail market. Specifically, the Parties' incentives to compete through the sale of products that meet customer demands, as demonstrated through the Parties' existing behaviour e.g., [REDACTED], will not be affected by the merger.
- 30 [REDACTED]² [REDACTED].
- 31 [REDACTED].

² [REDACTED].

32 [REDACTED].³

33 [REDACTED].

³ [REDACTED].

APPENDIX 6: ANALYSIS OF CLEANING PRODUCTS CATEGORY

34 This appendix sets out:

34.1 background information about the cleaning products category (refer to the table below), and

34.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 36 to 40 below).

35 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Disinfectants • Glass cleaners • All-purpose cleaners • Bleach • Cleaning wipes • Drain cleaners • Bathroom cleaner • Oven cleaners • Carpet cleaners • Toilet cleaners (liquid, in the bowl, in the cistern)
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • FSNI notes that [REDACTED]. FSSI notes that [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • The most recent innovation was [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • Multi-national suppliers play a significant role in this category, [REDACTED]. These suppliers include: <ul style="list-style-type: none"> ◦ [REDACTED] • In addition, there are some smaller domestic players in this category including [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED].

Topic	Detail
Role of non-direct channels	<ul style="list-style-type: none"> There are some local agents that represent international brands [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]: <ul style="list-style-type: none"> [REDACTED], [REDACTED], and [REDACTED]. [REDACTED]: <ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]: <ul style="list-style-type: none"> [REDACTED], [REDACTED], [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> Other grocery retailers Bunnings / Mitre10 Chemist Warehouse The Warehouse
Role of exports	<ul style="list-style-type: none"> FSNI is not aware of any domestic suppliers that export their products.
Role of imports	<ul style="list-style-type: none"> Importing plays a significant role in this category given the category is [REDACTED] by multi-nationals that manufacture their products offshore.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Other buyers are unlikely to be significant purchasers of cleaning products.

There would not be a substantial lessening of competition in relation to the acquisition of cleaning products

- 36 As set out in the table above, all key suppliers in this category are multi-nationals, with almost all products being manufactured offshore and imported into New Zealand. In particular, [REDACTED]. These businesses command an international presence and are many times the size of the Parties. The suppliers have access to buyers across the globe and can credibly threaten to stop supplying must-have products to FSNI and FSSI.
- 37 Given the significant countervailing power of the suppliers in this category, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category.
- 38 Further, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to *smaller* suppliers of cleaning products. In particular:
- 38.1 [REDACTED], and they address particular need states that larger suppliers' products do not address (i.e., eco products and concentrates), and
- 38.2 smaller suppliers already face significant competition from imports and should not be expected to be materially affected by the Proposed Transaction.

- 39 [REDACTED]. Following the Proposed Transaction, the Parties expect that these suppliers would negotiate with one Foodstuffs entity rather than individually with FSNI and FSSI. It follows that there cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation).
- 40 Finally, there are several other domestic buyers of cleaning products in addition to major grocery retailers, including hardware stores such as Bunnings / Mitre10 and non-food stores such as Chemist Warehouse and The Warehouse. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a “three to two” merger of buyers in relation to cleaning products.

APPENDIX 7: ANALYSIS OF SPREADS CATEGORY

- 41 This appendix sets out:
- 41.1 background information about the spreads category (refer to the table below), and
- 41.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 43 to 50 below).
- 42 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Honey • Jams and marmalades • Nut butters • Yeast spreads • Sweet spreads
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • Raw material costs for jams and peanut butter have increased significantly over the last year due to weather. Honey pricing can fluctuate significantly. • The cost of freight can be a challenge for small, local honey suppliers.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • In relation to honey: <ul style="list-style-type: none"> ○ There are a large number of suppliers of honey. ○ FSNI's largest suppliers of honey are [REDACTED]. FSSI's largest suppliers of honey are [REDACTED]. ○ In addition, there are a large number of smaller, local honey suppliers. For example, there are approximately [REDACTED] small honey suppliers that supply directly to FSNI stores. ○ [REDACTED]. • In relation to jams / marmalades: <ul style="list-style-type: none"> ○ This product is dominated by two suppliers: [REDACTED]. • In relation to peanut butter: <ul style="list-style-type: none"> ○ [REDACTED] dominate the premium peanut butter segments. ○ [REDACTED]. • In relation to yeast spreads: <ul style="list-style-type: none"> ○ There are just two major players, being [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> In relation to sweet spreads: <ul style="list-style-type: none"> This segment is dominated by [REDACTED]. [REDACTED]. [REDACTED]. FSNI expects that [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED]. There may be some small local suppliers (e.g., honey suppliers) that supply only one co-operative (or a handful of stores) if they are constrained by capacity to supply both co-operatives.
Role of non-direct channels	<ul style="list-style-type: none"> [REDACTED] is represented by James Crisp (an importer / distributor), [REDACTED] are represented by Goodfood group (an importer / distributor), and [REDACTED] is represented by Twin Agencies (a New Zealand-based sales agency that represents domestic suppliers).
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> There are a number of other retailers that also purchase and sell spreads, including: <ul style="list-style-type: none"> other grocery retailers (e.g., Woolworths, Fresh Choice, Super Value, Costco, Farro, The Warehouse etc.), health shops (in relation to honey specifically), and dairies, retail fuel channel / service stations,
Role of exports	<ul style="list-style-type: none"> Exports play a significant role in this category, particularly in relation to honey (with the majority of honey produced in New Zealand exported). Other spreads such as peanut butter and jam that are manufactured in New Zealand are also exported.
Role of imports	<ul style="list-style-type: none"> Many products in this category (e.g., [REDACTED]) are imported, with the exception of honey (which cannot be imported for biosecurity reasons).
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Foodservice and food manufacturers (such as those who use spreads as an ingredient in products, e.g., honey in muesli bars, cereals, snacks, and jam in cakes and biscuits) are also significant buyers of spreads.

There will not be a substantial lessening of competition in relation to the acquisition of spreads

Honey

- 43 As noted in the table above, a very large proportion (i.e., well over 50%) of honey is exported to international markets. In the market study final report, the Commission noted that suppliers who export a significant proportion of their products are less dependent on New Zealand grocery retailers, which may improve their negotiating

position.⁴ To the extent that suppliers of honey spreads supply domestically, the opportunity to export the relevant product forms a substantial part of those suppliers' outside options, and so their willingness to accept prices from grocery retailers in New Zealand.

44 The Proposed Transaction will not materially increase the Parties' buyer power in relation to suppliers of honey spreads. In particular, suppliers' outside option of exporting would remain the key factor in their willingness to accept particular terms when negotiating with the Merged Entity. It is very unlikely that the Merged Entity (or any other buyer) would have the ability to exercise buyer power by forcing output and prices in these input markets below the competitive level. Accordingly, the Proposed Transaction cannot result in a lessening of competition in relation to these products.

45 For small local suppliers of honey, which supply only at the level of one or several stores, the dynamics associated with their bargaining would be unchanged by the Proposed Transaction (because the Proposed Transaction would not alter store ownership or local market incentives). In addition, FSNI considers that the Proposed Transaction could [REDACTED].

46 [REDACTED]

46.1 [REDACTED],⁵

46.2 [REDACTED]⁶, and

46.3 [REDACTED],⁷

[REDACTED].⁸

47 [REDACTED]:

47.1 [REDACTED],

47.2 [REDACTED], and

47.3 [REDACTED].

Yeast spreads

48 As noted above, this segment is dominated by two major brands: [REDACTED] which exercise material countervailing power in this segment, stemming from the strong performance of their products (which are the duopoly suppliers of yeast spreads, and which are, [REDACTED]).⁹

⁴ Commerce Commission, *Market study into the retail grocery sector: Final report* (8 March 2022), at [8.58.1].

⁵ SOUI at [REDACTED].

⁶ SOUI at [REDACTED].

⁷ SOUI at [REDACTED].

⁸ SOUI at [REDACTED].

⁹ See for example: <https://www.nzherald.co.nz/nz/marmageddon-sends-nz-into-a-spin/DAE6NUTSH2X7AP6TB7VHQYUKWU/>

49 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to these multi-national suppliers in relation to [REDACTED] given the numerous alternative buyers of their products (in New Zealand, Australia and other export markets in the Asia Pacific), [REDACTED], and that they could credibly threaten to stop supplying the Parties.

Jams, marmalades, peanut butter and sweet spreads

50 As noted above, there is a mix of multi-national and domestic suppliers of jams, marmalades, peanut butter and sweet spreads. The Proposed Transaction cannot materially increase the Parties' buyer power in relation to suppliers of these products. In particular:

50.1 many products in these segments are imported into New Zealand from overseas markets, including [REDACTED]. These global suppliers / brands consequently hold a high degree of countervailing power in the bargaining process and have many customers around the world to which they can re-direct their products,

50.2 in relation to domestic suppliers specifically:

- (a) several domestic suppliers, including [REDACTED] supply "must have" products and enjoy considerable customer loyalty. This brand strength limits retailers' ability to exert pressure on suppliers, since removing popular brands could lead to customer dissatisfaction and lost sales,
- (b) further, domestic suppliers already face competition from imports and should not be expected to be materially affected by the Proposed Transaction, and
- (c) spreads such as peanut butter and jam that are manufactured in New Zealand are also exported. Accordingly, flexing the extent of their exporting is likely to be another material option for domestic suppliers of these products, and

50.3 suppliers in this segment also have access to various sales channels beyond the major supermarkets, including dairies, service stations, foodservice and food manufacturers. This diversity of sales channels provides suppliers with alternatives if a major retailer attempts to negotiate unfavourable terms.

APPENDIX 8: ANALYSIS OF FROZEN FISH CATEGORY

51 This appendix sets out:

51.1 background information about the frozen fish category (refer to the table below), and

51.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 53 to 57 below).

52 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> Frozen fish fillets Frozen fish fingers Frozen fish – other (including frozen fish bites, etc.)
Key considerations for customers and customer trends	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
Role of innovation	<ul style="list-style-type: none"> FSNI considers there to be [REDACTED] FSSI says [REDACTED].
Market dynamics	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> Fishing quotas limit the growth potential of suppliers. Operational costs and logistical issues relating to fishing and frozen transportation make supply difficult.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> The major suppliers of frozen fish are [REDACTED]. FSSI reports that [REDACTED]. [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
D. Other buyers for the products in this category	

Topic	Detail
Other key retailers	<ul style="list-style-type: none"> • Woolworths • Costco • Independent retailers
Role of exports	<ul style="list-style-type: none"> • The export market plays a significant role in this category, with a large percentage of products being exported to other markets. • FSNI understands that [REDACTED]. [REDACTED].
Role of imports	<ul style="list-style-type: none"> • [REDACTED] products are generally imported from Australia.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Dairies • Wholesalers

There will not be a substantial lessening of competition in relation to the acquisition of frozen fish products

- 53 Given the [REDACTED] operating in this category, there is likely to be countervailing power on the part of those suppliers – for example, FSSI noted that [REDACTED]. A merged Foodstuffs entity would therefore have limited ability to demand more favourable terms from those suppliers.
- 54 Fishing quotas and high costs of entry mean that the supply of frozen fish products are [REDACTED] the Merged Entity would be unable to reduce its stock in these products without risking a substantial loss of revenue.
- 55 The availability and significance of exports for frozen fish products also means that suppliers of frozen fish products have access to a large pool of prospective buyers across the globe. [REDACTED]. It follows that:
- 55.1 the Proposed Transaction cannot reasonably be characterised as a ‘three to two merger’,
- 55.2 the opportunity to export frozen fish forms a substantial part of these suppliers’ outside options, and so their willingness to accept prices from grocery retailers in New Zealand. Suppliers’ outside option of exporting would remain the key factor in their willingness to accept particular terms when negotiating with the Merged Entity. It is very unlikely that the Merged Entity (or any other buyer) would have the ability to exercise buyer power by forcing output and prices in these input markets below the competitive level, and
- 55.3 a merged Foodstuffs entity is very unlikely to secure an elevated level of bargaining power as a result of the Proposed Transaction.
- 56 [REDACTED].¹⁰ [REDACTED].
- 57 Accordingly, the Proposed Transaction cannot result in a lessening of competition in relation to these products.

¹⁰ [REDACTED].

APPENDIX 9: ANALYSIS OF CHILLED FRESH SAUCES CATEGORY

58 This appendix sets out:

58.1 background information about the chilled fresh sauces category (refer to the table below), and

58.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 60 to 63 below).

59 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Pasta sauces • Asian sauces [REDACTED] • Chilled soups [REDACTED]
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED] are important to chilled sauce customers. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • Products in this category are manufactured locally due to short shelf life.
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • [REDACTED], some suppliers utilise agents and/or merchandising companies.
C. FSNI and FSSI category reviews completed for this category	

Topic	Detail
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED] [REDACTED].
<i>D. Other buyers for the products in this category</i>	
Other key retailers	<ul style="list-style-type: none"> Asian stores Woolworths Farro
Role of exports	<ul style="list-style-type: none"> Generally not exported.
Role of imports	<ul style="list-style-type: none"> Generally not imported due to shelf life.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Wholesalers Dairies Food services Meal kit providers Hospitality

There will not be a substantial lessening of competition in relation to the acquisition of chilled fresh sauce products

- 60 The chilled fresh sauce product category is [REDACTED]. Notably, [REDACTED] is the dominant player, [REDACTED] and [REDACTED]. The Parties' [REDACTED] suggests that those suppliers possess a considerable degree of countervailing power. This would not change if the Proposed Transaction proceeds. Given the significant countervailing power of the suppliers, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category.
- 61 [REDACTED]. It follows that negotiations between suppliers and two independent parties is structurally analogous to negotiations between suppliers and a single Merged Entity. In other words, the Proposed Transaction should not affect bargaining outcomes between Foodstuffs and suppliers of chilled fresh sauces.
- 62 Finally, the relatively small number of fresh chilled sauce suppliers face a relatively large assortment of prospective buyers. These buyers are not limited to traditional grocery retailers such as Woolworths. Farro and Asian convenience stores also purchase products in this category, as do non-retail buyers such as wholesalers, dairies and food services.
- 63 In summary, due to the high concentration of suppliers and the large number of potential buyers, the Proposed Transaction is not expected to substantially lessen competition in the acquisition market for fresh chilled sauces.

APPENDIX 10: ANALYSIS OF FROZEN BERRIES CATEGORY

64 This appendix sets out:

64.1 background information about the frozen berries category (refer to the table below), and

64.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 66 to 68 below).

65 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> Frozen berries, e.g., blueberries, raspberries, mixed berries Frozen mango
Key considerations for customers and customer trends	<ul style="list-style-type: none"> [REDACTED] are key considerations in this product category. [REDACTED]. [REDACTED].
Role of innovation	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Market dynamics	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> Pams (private label) mixed berries and raspberries were recalled in 2022 due to a possible link to Hepatitis A. [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> The leading suppliers in this category are [REDACTED]. FSSI notes that the supply of frozen berries is dominated by [REDACTED], which accounts for [REDACTED]% of FSSI's sales of frozen berries. In addition, there are some small local producers that only sell in specific regions, [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED]. FSNI expects that the Merged Entity would likely [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> Some suppliers rely on agencies to assist with negotiations.
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED].

Topic	Detail
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
<i>D. Other buyers for the products in this category</i>	
Other key retailers	<ul style="list-style-type: none"> • Woolworths • Independent and specialty stores
Role of exports	<ul style="list-style-type: none"> • The Parties understand that some products in this category are exported.
Role of imports	<ul style="list-style-type: none"> • Imports play an important role in this category. • [REDACTED]. • Domestic suppliers have increasingly sought to transition to a single source of supply overseas.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Food services • Hospitality • Dairies • Wholesalers

There will not be a substantial lessening of competition in relation to the acquisition of frozen berries

- 66 As set out in the table above, [REDACTED]. Accordingly, as a result of the Proposed Transaction, the Parties expect that these suppliers would negotiate with a single Foodstuffs entity, rather than individually with FSNI and FSSI.
- 67 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to these national suppliers because:
- 67.1 there are a number of retail and non-retail buyers to whom suppliers can sell frozen berries, including other retailers and buyers in the food services and hospitality industries,
- 67.2 suppliers have access to an export market for frozen berries (whereby frozen berries are internationally sold and sourced from a variety of countries), further increasing the range of potential available buyers, and
- 67.3 suppliers can and do engage with agencies to enhance their negotiation and bargaining strength.
- 68 Further, it is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e., retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category.

APPENDIX 11: ANALYSIS OF ICE CREAM CATEGORY

69 This appendix sets out:

69.1 background information about the ice cream category (refer to the table below), and

69.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 71 to 76 below).

70 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Tub ice cream • Multipack ice creams • Novelty ice creams (single serves) • Family pack ice creams / water ices • Frozen ice lollies • Various ice cream products, e.g.: <ul style="list-style-type: none"> ○ Organic ○ Dairy free ○ Gelato ○ Sorbet ○ Plant based
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • Customer segments include: <ul style="list-style-type: none"> ○ Price conscious ○ Health and wellbeing conscious ○ Premium
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • FSNI also notes that [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • Suppliers face: <ul style="list-style-type: none"> ○ rising costs of distribution of frozen products, and ○ rising cost of dairy products (cream). As a result, suppliers are increasingly searching for dairy alternatives.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • This product category is dominated by [REDACTED]. There are also a number of small and medium sized suppliers (primarily of tubs) as well as some very small suppliers (typically premium offerings). • FSSI procures from [REDACTED]. • FSNI procures from [REDACTED]. FSNI notes that: <ul style="list-style-type: none"> ▪ [REDACTED], ▪ [REDACTED], ▪ [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> • FSNI notes that [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. [REDACTED]. • [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • Some small suppliers in this category are represented by distributors. • Unilever novelty ice cream is serviced by a third party, [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED]: <ul style="list-style-type: none"> ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. ○ [REDACTED]. • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Other grocery retailers • Service stations • Convenience outlets
Role of exports	<ul style="list-style-type: none"> • The Parties note that ice cream products can be exported, but are generally not exported • [REDACTED].
Role of imports	<ul style="list-style-type: none"> • International brands are imported, e.g., [REDACTED] does not manufacture in New Zealand and imports products from Australia.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Dairies • Wholesalers • Food services • Cafés

There will not be a substantial lessening of competition in relation to the acquisition of ice cream products

71 As demonstrated in the graph below, products within the ice cream category are dominated by a small number of suppliers, namely [REDACTED]. These three suppliers account for [REDACTED].

Figure 4: FSSI sales of ice cream products by supplier

[REDACTED]

72 According to FSNI, [REDACTED]. FSSI has had experience with [REDACTED].

73 It follows that the Parties are [REDACTED].

74 In addition, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to *smaller* suppliers of ice cream products. In particular:

74.1 [REDACTED],

74.2 smaller suppliers' products often fulfil the "premium" need state. Premium brands [REDACTED], and

74.3 smaller suppliers already face significant competition from large suppliers such as [REDACTED] and should not be expected to be materially affected by the Proposed Transaction.

75 Further:

75.1 [REDACTED], as well as other grocery retailers, dairies, wholesalers, food services and cafés. The Proposed Transaction is unlikely to materially change bargaining outcomes, since suppliers would simply negotiate with a single Foodstuffs entity instead of separately negotiating with FSNI and FSSI,

75.2 it is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e. retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category, and

75.3 the presence of several non-retail buyers of ice cream products also indicates that the Proposed Transaction cannot be characterised as a "three-to-two" merger of buyers in relation to ice cream products.

76 Overall, the large number of buyers of ice cream products, coupled with the relatively high concentration of suppliers, suggests that there is no reason to think that the Proposed Transaction would substantially lessen competition in the acquisition market for ice cream or that a merged Foodstuffs entity would possess the ability to suppress the trading volume of ice cream products.

Topic	Detail
Role of non-direct channels	<ul style="list-style-type: none"> Non-direct channels (e.g. the use of agents) are not relevant in this category.
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> Other grocery retailers (e.g., Woolworths, Costco). Convenience stores, dairies. Hospitality. Institutions, i.e. schools, caterers.
Role of exports	<ul style="list-style-type: none"> [REDACTED] exports to Australia, Asia and the Middle East.
Role of imports	<ul style="list-style-type: none"> Imports do not play a role in this category as poultry products cannot be imported into New Zealand.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Food service (e.g., fast-food businesses such as KFC and McDonalds), but they only purchase frozen chicken portions i.e., nuggets, burgers, tenders. Butcheries. Meal kit providers. Wholesalers e.g., Bidfood.

There will not be a substantial lessening of competition in relation to the acquisition of frozen poultry products

- 79 As set out above, the frozen poultry category is dominated by two large international suppliers with domestic processing facilities [REDACTED]. Given [REDACTED] face limited competition in acquisition markets they enjoy strong countervailing power in negotiations. The Parties have noted that the fact that there are only two suppliers is a key challenge for buyers of frozen poultry.
- 80 The Parties expect that, following the Proposed Transaction, there would be little change in terms of the output purchased from each supplier, as this is based on location and availability of processing / birds.
- 81 Further, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to poultry processors / suppliers. In particular:
- 81.1 the Commission has previously considered the buyer power of grocery retailers in relation to poultry suppliers as part of the proposed merger between Tegel and Brinks.¹² In that decision the Commission noted that although grocery retailers represented a significant proportion of chicken processors' total sales, retailers' ability to exercise any countervailing power (through the ability to switch volumes between processors) was limited by the need to be able to shift substantial volumes from one supplier to another, and that with few players capable to processing material volumes and long lead times required for processors to increase chicken production, shifting supply

¹² Commerce Commission, *Tegel Foods Limited and Brinks Group of Companies*, Decision No. 658, (22 October 2008).

was difficult and would dampen the extent of any countervailing power.¹³
This dynamic would not change as a result of the Proposed Transaction,

- 81.2 the frozen poultry category is likely to continue to be concentrated given suppliers face barriers to entry due to the operational costs of producing relevant products and product cannot be imported to New Zealand,
 - 81.3 as illustrated in the table above, there are other buyers of frozen poultry in addition to major grocery retailers, such as takeaway outlets (e.g., KFC), butcheries, wholesalers / food service and meal kit providers, and
 - 81.4 it is clear that at least some frozen poultry is exported overseas (e.g., [REDACTED]), particularly to the Pacific. Accordingly, flexing the extent of their exporting is likely to be another material option for suppliers of poultry.
- 82 Given the significant countervailing power of the suppliers, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category.

¹³ Commerce Commission, *Tegel Foods Limited and Brinks Group of Companies*, Decision No. 658, (22 October 2008) at [359] and [367].

APPENDIX 13: ANALYSIS OF PERSONAL WASH CATEGORY

83 This appendix sets out:

83.1 background information about the personal wash category (refer to the table below), and

83.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 85 to 89 below).

84 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Body wash / shower gel • Solid soap • Liquid handwash • Bath products / salts • Skin care • Children’s wash products
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED]. • Following the COVID-19 pandemic, there is a broader desire for efficacy, skin protection and scientific claims. • [REDACTED]. • FSNI notes that [REDACTED]. FSSI notes that [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • FSNI and FSSI have limited space in store to offer the full range of products (as compared to retailers such as Chemist Warehouse that can cater to more need states, such as sensitive skin). • Multi-national suppliers can be slow to adapt to customer trends / needs in this category.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • While there are lots of suppliers in this category, it is dominated by a handful of large multi-national suppliers, including [REDACTED]. • There are also a few large domestic suppliers, [REDACTED]. • Most multi-nationals in this category have a dedicated New Zealand office. Multi-nationals all import, with sales agents only being used by suppliers that do not have a New Zealand office. • [REDACTED]. • [REDACTED].
FSNI’s engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].

Topic	Detail
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. • There may be some small local suppliers that supply only one co-operative (or a handful of stores) if they are constrained by capacity to supply both co-ops.
Role of non-direct channels	<ul style="list-style-type: none"> • Some suppliers in this category (including both multi-national and domestic suppliers) use an agent.
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Other retailers are significant purchasers of personal wash products. These retailers include: <ul style="list-style-type: none"> ○ other grocery retailers (e.g., Woolworths, Costco), ○ large pharmacy chains such as Chemist Warehouse and Bargain Chemist. These chains are likely to have a wider range of products than the Parties, ○ other pharmacies such as Unichem, Life Pharmacy etc, ○ other retailers such as The Warehouse, Kmart, Mitre 10, and ○ various independents and dairies.
Role of exports	<ul style="list-style-type: none"> • As noted above, most significant suppliers of personal wash products are multi-nationals. However, there are several large New Zealand suppliers in this category (including [REDACTED]) that export products overseas. Other domestic suppliers may also export products overseas.
Role of imports	<ul style="list-style-type: none"> • The majority of products in this category are imported into New Zealand.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Potentially some wholesalers (although they may purchase different pack sizes from other retailers).

There will not be a substantial lessening of competition in relation to the acquisition of personal wash products

The suppliers of personal wash products exercise significant countervailing power

85 As set out in the table above, the personal wash category is dominated by a few large multi-national suppliers, including [REDACTED]. This dynamic is illustrated in the graph below, which shows the split of FSNI sales by supplier in the personal wash category for the 13-week period to 30 June 2024.

**Figure 5: FSNI sales of personal wash products by supplier
(across a 13-week period to 30 June 2024)**

[REDACTED]

86 The graph above illustrates that:

- 86.1 while FSNI acquires products from over [REDACTED] suppliers of personal wash products, [REDACTED]% of FSNI's sales in this category are in relation to products acquired from just five suppliers [REDACTED],
- 86.2 [REDACTED] of FSNI's sales of personal wash products are for products from large multi-national suppliers, and
- 86.3 there are a few large domestic suppliers, including [REDACTED] (which together make up approximately [REDACTED]% of FSNI's sales of personal wash products).
- 87 The multi-national suppliers that dominate this category have parent companies many times larger than the Parties and offer "must have" products. As a result, [REDACTED]. Accordingly, [REDACTED] or face an inability to supply their customers with well-known personal wash brands, which would severely compromise the competitiveness of the Parties' offering and therefore is not a realistic option.
- Impact of the Proposed Transaction on suppliers of personal wash products***
- 88 As set out in the table above, there appears to be a high degree of overlap between FSNI and FSSI's suppliers of personal wash products. FSNI notes that [REDACTED]. Accordingly, as a result of the Proposed Transaction the Parties expect that these suppliers would negotiate with one Foodstuffs entity, rather than individually with FSNI and FSSI.
- 89 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to suppliers of personal wash products. In particular:
- 89.1 products are mostly imported, and accordingly suppliers have the option to supply their products to various international buyers (in addition to local retailers. This not only affords these suppliers with [REDACTED], but also suggests that the Proposed Transaction cannot be characterised as a "three to two" merger. Given the significant countervailing power of the suppliers, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category,
- 89.2 global suppliers such as [REDACTED] would have countless alternatives to the Parties, supply "must have" products and could easily credibly threaten to stop supplying them altogether. There cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation). [REDACTED].¹⁴
[REDACTED]:
- (a) [REDACTED], and
- (b) [REDACTED].
- 89.3 in relation to domestic suppliers that currently supply both co-operatives (such as [REDACTED]):

¹⁴ SOUI at [REDACTED].

- (a) global suppliers make up the vast majority of all FSNI sales of personal wash products, and largely import their products, so the majority of personal wash products are imported into New Zealand. Accordingly, domestic suppliers of personal wash products already face significant competition from imports and should not be expected to be materially affected by the Proposed Transaction. [REDACTED].¹⁵ [REDACTED],
- (b) as illustrated in the table above, there are a large number of other buyers of personal wash products in addition to major grocery retailers, including large pharmacy chains such as Chemist Warehouse and Bargain Chemist (which are likely to have a wider range of personal wash products than the Parties), smaller pharmacy chains, and other retailers such as The Warehouse, Kmart and Mitre 10. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a “three to two” merger of buyers in relation to personal wash products, and
- (c) it is clear that at least some domestic suppliers’ personal wash products (e.g., [REDACTED]) are exported overseas. Accordingly, flexing the extent of their exporting is likely to be another material option for domestic suppliers of personal wash products (and indeed, may impact the price for those products in New Zealand), and

89.4 finally, to the extent there are any small / local suppliers of personal wash products that currently only supply one co-operative, this is likely due to capacity constraints. There will be no change for these suppliers, who are likely to continue to negotiate with one or a small number of stores directly.

¹⁵ [REDACTED]

APPENDIX 14: ANALYSIS OF COLD BEVERAGES CATEGORY

90 This appendix sets out:

90.1 background information about the cold beverages category (refer to the table below), and

90.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 92 to 97 below).

91 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Carbonated soft drinks • Energy drinks • Ambient Juice • Water • Sports and lifestyle drinks • Cordials
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. According to FSSI, 'must have' brands include: <ul style="list-style-type: none"> ◦ [REDACTED], ◦ [REDACTED], and ◦ [REDACTED]. • Juices are divided into mainstream and premium segments, where: <ul style="list-style-type: none"> ◦ mainstream juices include fruit drinks, with need states differing by size, flavour, sugar content and pulp, and ◦ premium juices offer some variety in flavour, e.g., pineapple / grapefruit / cranberry. FSSI notes that there is a 'unique need' for [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • FSNI notes that: <ul style="list-style-type: none"> ◦ innovation in this product category is [REDACTED], ◦ [REDACTED], and ◦ [REDACTED]. • According to FSSI, innovation is [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • FSNI notes that [REDACTED]. Customers in these segments are content to rely on cost-effective options due to the simplicity of the products. • FSSI says that [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • There can be an over-reliance from suppliers on some products, with approximately [REDACTED]. • [REDACTED]. • There is an opportunity for smaller suppliers to offer differentiated products.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> FSNI notes that larger suppliers tend to be [REDACTED] while smaller suppliers are [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]: <ul style="list-style-type: none"> [REDACTED], and [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> Twin Agencies manage supply negotiations for [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> Woolworths Fresh Choice Farro Dairies, e.g., On The Spot Tai Ping Service stations Other non-food retailers, including The Warehouse, Kmart, Mitre 10, Bunnings Local retailers / stores Farmers (which typically buys from smaller suppliers)
Role of exports	<ul style="list-style-type: none"> [REDACTED] export to Asia. Cold beverage suppliers export their products, particularly to the Pacific Islands. [REDACTED].
Role of imports	<ul style="list-style-type: none"> Products are heavily imported from the UK, US and Australia, e.g., [REDACTED].
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Wholesalers Food service Hospitality and hotels

There will not be a substantial lessening of competition in relation to the acquisition of beverages

92 As demonstrated in the graph below, while the cold beverages category has many suppliers, it is dominated by large multinational businesses including [REDACTED].

**Figure 6: FSNI sales of cold beverages by supplier
(across a 13-week period to 30 June 2024)**

[REDACTED]

- 93 The graph above illustrates that [REDACTED] is a very significant player, with [REDACTED]% of FSNI's sales in this category being in relation to products acquired from [REDACTED] is also a significant player, with [REDACTED]% of sales being in relation to products acquired from [REDACTED]. Such businesses command an international presence and are many times the size of the Parties. In addition, they supply products that carry strong brand loyalty. It is highly likely then that the Parties are obliged to accept price terms (or cost price increases) from these suppliers or face an inability to supply their customers with well-known beverage brands, which is not sustainable. Dominant suppliers of beverages have access to buyers across the globe and can credibly threaten to stop supplying 'must have' products to FSNI and FSSI.
- 94 Further, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to *smaller* suppliers of beverages. In particular:
- 94.1 [REDACTED], and
- 94.2 smaller suppliers already face significant competition from global suppliers such as [REDACTED] and should not be expected to be materially affected by the Proposed Transaction.
- 95 [REDACTED]. Following the Proposed Transaction, the Parties expect that these suppliers would negotiate with one Foodstuffs entity rather than individually with FSNI and FSSI. It follows that there cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation).
- 96 Given the significant countervailing power of the suppliers in this category, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category.
- 97 Finally, there are several other buyers of beverages in addition to major grocery retailers, including convenience stores, the retail fuel channel, dairies, and non-food retailers. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to beverage products.

APPENDIX 15: ANALYSIS OF CONFECTIONERY CATEGORY

98 This appendix sets out:

98.1 background information about the confectionery category (refer to the table below), and

98.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 100 to 104 below).

99 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Chocolate (blocks and bars) • Sugar / confections • Gum & mints
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • There are a number of different need states across this category (e.g., mainstream, premium, children, sharing vs self-consumption). • [REDACTED]. • [REDACTED]. • [REDACTED]. • There are a number of “must have” products in this category. For example: <ul style="list-style-type: none"> ◦ [REDACTED], and ◦ [REDACTED]. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • A number of product categories are dominated by [REDACTED] large suppliers. For example: <ul style="list-style-type: none"> ◦ [REDACTED] • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • The global cocoa market is currently facing a number of challenges (including crop flooding, disease and political instability) which is driving increases in the cost of cocoa and concerns around medium-term supply. As a result, the price of cocoa is up [REDACTED] over the last 24 months. FSNI understands that [REDACTED]. • This category is highly seasonal, with customer preferences fluctuating and customers constantly seeking the next “flavour of the month”. As a result, [REDACTED]. • [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	

Topic	Detail
Makeup of suppliers	<ul style="list-style-type: none"> This category is dominated by a few multi-national suppliers that offer “must have” products [REDACTED]. This dynamic is illustrated in the graph below. [REDACTED] is the largest domestic supplier. In addition, there are a number of smaller domestic suppliers such as [REDACTED]. There are a few boutique chocolate suppliers such as [REDACTED]. [REDACTED]. [REDACTED].
FSNI’s engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
FSSI’s engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED]. [REDACTED] (although [REDACTED]). [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> There are several agencies and importers who represent global brands locally in this category. For example, [REDACTED]. In addition, [REDACTED] use Twin Agencies as their representative at both the support office and instore. Twin Agencies are an agent who are based locally and represent local brands. They manage the merchandising in store, and perform sales and account management at the support office.
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> Other retailers are significant purchasers of confectionery products. These retailers include: <ul style="list-style-type: none"> other grocery retailers (e.g., Woolworths, Fresh Choice, Costco, Farro, etc.), dairies, retail fuel channel / service stations, other retailers such as The Warehouse and Kmart. These retailers are particularly competitive over seasonal events (e.g., Christmas, Easter), various independents / gift stores – particularly for premium and gifting products, and other channels such as Mitre10 and Bunnings (particularly for impulse / singles). Mitre10 has begun a trial in at least one of its stores to range full confectionery.
Role of exports	<ul style="list-style-type: none"> As noted above, most significant suppliers of confectionery products are multi-nationals. However, the largest New Zealand supplier [REDACTED] also exports products overseas. Other domestic suppliers may also export products overseas.

Topic	Detail
Role of imports	<ul style="list-style-type: none"> The majority of products in this category are imported into New Zealand.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Wholesalers such as Bidfood are also significant buyers for this category.

There will not be a substantial lessening of competition in relation to the acquisition of confectionery products

The suppliers of confectionery products exercise significant countervailing power

100 As set out in the table above, the confectionery category is dominated by a few large multi-national suppliers (including [REDACTED]) in addition to [REDACTED]. This dynamic is illustrated in the graph below, which shows the split of FSNI sales by supplier in the confectionery category for the 13-week period to 30 June 2024.

**Figure 7: FSNI sales of confectionery products by supplier
(across a 13-week period to 30 June 2024)**

[REDACTED]

101 The graph above illustrates that:

101.1 while FSNI acquires products from over [REDACTED] suppliers of confectionery products, [REDACTED]% of FSNI's sales in this category are in relation to products acquired from [REDACTED],

101.2 with the exception of [REDACTED] FSNI's sales of confectionery products are for products from large multi-national suppliers, and

101.3 [REDACTED] is a significant supplier of confectionery products, making up approximately [REDACTED]% of FSNI's sales of confectionery products.

102 The multi-national suppliers that dominate this category have parent companies many times larger than the Parties and offer "must have" products. [REDACTED] or face an inability to supply their customers with well-known confectionery brands, which would severely compromise the competitiveness of the Parties' offering and therefore is not a realistic option.

Impact of the Proposed Transaction on suppliers of confectionery products

103 [REDACTED]. Accordingly, as a result of the Proposed Transaction the Parties expect that these suppliers would negotiate with one Foodstuffs entity, rather than individually with FSNI and FSSI.

104 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to suppliers of confectionery products. In particular:

104.1 global suppliers such as [REDACTED] would have countless alternatives to the Parties, supply "must have" products and could easily credibly threaten to stop supplying them altogether. New Zealand is a very small market for these players, from both a supply and innovation perspective. There cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation),

104.2 import agents such as DKSH NZ and DKSH Services typically represent a portfolio of multi-national suppliers. As noted in the submission and HoustonKemp report, the correct way of characterising the bargaining relationship between Foodstuffs and the supplier / agent is that any outside options or countervailing supplier power (or supplier market power) are best understood as those of the *supplier*, not the agent. For example, the outside options in such a relationship would not be limited to that agent negotiating with New Zealand buyers of that supplier's products, but also by reference to the supplier also having the ability to deploy its resources (and capital) in other markets. In that regard it is worth noting that such agents represent brands with material countervailing power (e.g., [REDACTED]),¹⁶

104.3 in relation to domestic suppliers that currently supply both co-operatives (such as [REDACTED]):

- (a) given global suppliers make up the vast majority of all FSNI sales of confectionery products, it is clear that the majority of confectionery products are imported into New Zealand. Accordingly, domestic suppliers of confectionery products already face significant competition from imports and should not be expected to be materially affected by the Proposed Transaction,
- (b) as illustrated in the table above, there are a large number of other buyers of confectionery products in addition to major grocery retailers, including convenience stores, the oil channel, retailers such as Kmart and the Warehouse, independent / gift stores etc. Accordingly, it cannot be correct to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to confectionery products, and
- (c) it is clear that at least some domestic suppliers' confectionery products (e.g., [REDACTED]) are exported overseas. Accordingly, flexing the extent of their exporting is likely to be another material option for domestic suppliers of confectionery products (and indeed, may impact the price for those products in New Zealand), and

104.4 finally, to the extent there are any small / local suppliers of confectionery products that currently only supply one co-operative, this is likely due to capacity constraints. There will be no change for these suppliers, who are likely to continue to negotiate with one or a small number of stores directly.

¹⁶ In and of themselves these agents operate in a different market (i.e. the market for import agency services, rather than the wholesale supply of a particular product), which cannot be affected by the Proposed Transaction.

APPENDIX 16: ANALYSIS OF NUTS AND SNACKING FOOD CATEGORY

105 This appendix sets out:

105.1 background information about the nuts and snacking food category (refer to the table below), and

105.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 107 to 111 below).

106 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Packaged chips, e.g., potato chips, corn chips, multipack chips • Salty snacks, e.g., popcorn, packaged nuts, jerky
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • [REDACTED] are important to customers. • In the packaged chips space, [REDACTED]. For example, in FSNI's experience [REDACTED]. • FSNI considers that 'must have' products include [REDACTED]. • 'Must have' products for FSSI include [REDACTED]. • Packaged chips can be grouped along several dimensions: <ul style="list-style-type: none"> ○ Salted vs flavoured ○ Texture ○ Mainstream vs premium ○ Corn vs potato ○ Thick vs thin ○ Puffed vs crunchy
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • Potato and corn supply can be volatile throughout the year – potato shortages are felt more keenly through the summer trading period. This affects the price of potato chips. • Nuts are largely imported and can fluctuate in cost.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • As mentioned above, [REDACTED] suppliers dominate packaged chips: <ul style="list-style-type: none"> ○ [REDACTED] • [REDACTED]. • While most suppliers of packaged chips are international, the majority of production is carried out domestically. • [REDACTED]. • There is a mix of domestic and international companies. There is also a small local supplier base.
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].

Topic	Detail
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. • Most suppliers supply the total market. However: <ul style="list-style-type: none"> ◦ [REDACTED]. ◦ [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • Agents and intermediaries are uncommon in this product category.
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Woolworths • Independent retailers • Service stations • Non-food retailers
Role of exports	<ul style="list-style-type: none"> • An export market is available to the supplier base. • Some products are produced domestically but not supplied to the Parties, as they are produced for the export market.
Role of imports	<ul style="list-style-type: none"> • Packaged chip production is mostly domestic in order to use New Zealand grown potatoes (which is more cost effective than importing), and due to the bulky nature of the product making it inefficient to transport as the freight costs would be significant. However, Bluebird imports Cheetos and some flavours of Doritos (the imported flavours being those that New Zealand does not have the ability or capacity to produce). • A number of salty snack products – such as packaged nuts, Biltong and seaweed – are imported.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Wholesalers such as Trents and Gilmours.

There will not be a substantial lessening of competition in relation to the acquisition of nuts and snacking food products

- 107 The nuts and snacking food product category is dominated by several large suppliers, particularly in packaged chips.
- 108 [REDACTED] are the key players in this segment. These suppliers are large multi-national corporations or well-established national brands, suggesting they hold significant bargaining power in negotiations with retailers. [REDACTED].
- 109 While there are a larger number of upstream players in the salty snacks segment, [REDACTED] are identified as the major suppliers. In addition, [REDACTED]. This, coupled with the Parties' reliance on imported products that can also be sold to

overseas buyers, suggests that suppliers have access to more alternative *buyers* than retailers have access to alternative *suppliers*.

- 110 Given the significant countervailing power of the suppliers of these products, as a result of their must-have products, the Merged Entity would have no ability to suppress competition in any acquisition market associated with this category. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category. [REDACTED].
- 111 As with other product categories, [REDACTED]. There is no evidence to suggest that the Proposed Transaction will impose any structural or systematic changes to bargaining outcomes in this category. Suppliers who previously negotiated with FSNI and FSSI separately will simply negotiate with the Merged Entity following the Proposed Transaction, with no material effect on downstream quantity sold. [REDACTED].

APPENDIX 17: ANALYSIS OF MEAT AND SEAFOOD CATEGORY

112 This appendix sets out:

112.1 background information about the meat and seafood category (refer to the table below), and

112.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 114 to 123 below).

113 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • All butchery products, including beef, veal, lamb, mutton, venison, pork, goat and poultry • All seafood products, including fish, crustaceans, processed seafood, squid / octopus
Market dynamics	<ul style="list-style-type: none"> • In relation to red meat: <ul style="list-style-type: none"> ○ The key factor is the role of exports, with approximately 90% of all red meat produced in New Zealand being exported.¹⁷ Specifically, 88% of beef and veal and almost 95% of lamb and mutton is exported.¹⁸ ○ As set out below, there are [REDACTED] major red meat exporters / processors in New Zealand [REDACTED]. ○ Beef and lamb are seasonal, with reduced supply in August to October. As a result, there are certain periods where domestic demand exceeds supply. ○ There is relatively limited imported red meat to New Zealand. When processors have shutdowns and livestock numbers are low, [REDACTED]. • In relation to poultry: <ul style="list-style-type: none"> ○ This product category is dominated by [REDACTED] large international suppliers with domestic processing facilities ([REDACTED]). [REDACTED]. ○ Chicken is not imported to New Zealand. ○ Unlike red meat, comparatively little poultry is exported (in part because domestic demand takes up supply), although [REDACTED]. • In relation to pork: <ul style="list-style-type: none"> ○ Compared with the red meat and poultry sector, New Zealand's pork sector is relatively modest, with 60% of pork consumed in New Zealand being imported. ○ Pork is generally not exported given demand is met by New Zealand consumers, and because the cost of production is high. ○ This product category is dominated by [REDACTED]. ○ In addition, [REDACTED]. ○ It is expected that [REDACTED]. • In relation to seafood:

¹⁷ See: <https://www.meatyourcareer.co.nz/nz-meat-industry>.

¹⁸ See: Beef + Lamb NZ "Economic and social contribution of the New Zealand red meat industry - Overview" (June 2020) at 2, available at: <https://beeflambnz.com/sites/default/files/2023-08/Overview-Economic-and-Social-Contribution.pdf>.

Topic	Detail
	<ul style="list-style-type: none"> ○ Like red meat, a large proportion (at least 90%) of seafood is exported. ○ A large amount of frozen seafood is imported into New Zealand, such as prawns that are farmed commercially.
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • Increased demand for protein globally means suppliers need to meet the price international markets are willing to pay to keep product in New Zealand. This has become more prevalent as the large domestic processors report poor financial results. • Security of supply is a key issue for domestic purchasers of red meat, with demand exceeding supply in certain periods. As a result, [REDACTED]. • Given the majority of red meat and seafood is exported: <ul style="list-style-type: none"> ○ buyers of these products in New Zealand are price takers, with the price set at the export parity price, and ○ suppliers of these products are exposed to a number of export-related challenges such as fluctuations in exchange rate, political instability, production in other countries, global freight costs, consumption growth / consumer demand in other countries, and climate change policies etc. • A new draft welfare code for the pork industry means that pig farmers in New Zealand face uncertainties regarding increased costs, which could result in more challenges competing against imported pork. • Sheep, beef and poultry farmers are experiencing increased input costs, including due to on-farm inflation and increased regulatory costs. • New Zealand's ovine and bovine herds are decreasing as land is converted into pine trees, further increasing competition for supply of beef and lamb. • As with all fresh products, suppliers face shelf-life issues. Suppliers that have invested in freezer capacity, and supply both chilled and frozen products, are able to freeze product to avoid heavily discounting it. • New Zealand sourced seafood is governed by annual quota, and accordingly is quite finite / limited. • The strong offshore demand for New Zealand seafood means that suppliers are competing with export markets to gain supply.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • In relation to red meat: <ul style="list-style-type: none"> ○ There are four major red meat processors in New Zealand: [REDACTED], which together account for approximately [REDACTED]% of the meat industry's revenue. These processors are all export-focused processors.¹⁹ ○ Smaller suppliers include [REDACTED]. • In relation to poultry: <ul style="list-style-type: none"> ○ There are two large suppliers of poultry ([REDACTED]) which make up approximately [REDACTED]% of sales of poultry for FSNI and a few smaller suppliers, including [REDACTED] make up approximately [REDACTED]% of FSSI's poultry sales. • In relation to pork: <ul style="list-style-type: none"> ○ There are three large suppliers: [REDACTED]. In addition, [REDACTED]. ○ There are a shrinking number of pork farmers in New Zealand due to consenting to increase supply of land to

¹⁹ See: <https://www.ibisworld.com/nz/industry/meat-processing/90/#IndustryStatisticsAndTrends>.

Topic	Detail
	<p>raise pork, cost of feed and compliance costs. Imported pork is grown in large commercial indoor farms with significant scale, making it challenging for domestic farmers to compete with.</p> <ul style="list-style-type: none"> ○ The majority of imported pork tends to be used in the manufacturing area for ham, bacon and small goods. [REDACTED]. • In relation to seafood: <ul style="list-style-type: none"> ○ There are several significant seafood suppliers in New Zealand, including [REDACTED]. ○ [REDACTED] are the most significant supplier for farmed salmon. ○ There are also a range of smaller seafood suppliers.
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. [REDACTED]. • FSNI purchases poultry from [REDACTED]. • Fresh seafood tends to be primarily purchased from local markets due to location and access. FSSI primarily purchases seafood from [REDACTED]. [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> • There are some meat brokers that purchase and sell excess meat from some of the larger processors (although these entities tend to be more active in the wholesale market).
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Butchers such as The Mad Butcher, Aussie Butcher, Farro, Prime Range Fresh (which is expanding into retail) and Meat Box. • Several suppliers also retail direct to customers, including Alliance and Neat Meat. • Fishmongers such as Guytons (owned by Talley's).
Role of exports	<ul style="list-style-type: none"> • As set out above, a very large proportion of the output from red meat and seafood suppliers is exported. • Some poultry is exported, particularly to the Pacific where excess poultry is sold to maintain prices in New Zealand. • Pork is not currently exported, due to production being absorbed by domestic demand.
Role of imports	<ul style="list-style-type: none"> • As set out above: <ul style="list-style-type: none"> ○ 60% of pork consumed in New Zealand is imported, ○ poultry is not imported into New Zealand due to regulatory restrictions, ○ red meat is generally not imported into New Zealand due to high domestic production and the preference of New Zealand consumers to purchase locally grown beef and lamb, [REDACTED], and seafood is also imported,

Topic	Detail
	including frozen seafood, including prawns, whole exotic species (pompano), squid and Atlantic salmon.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> Quick service retailers such as McDonalds and KFC are significant purchasers of meat, particularly poultry. KFC contracts underpin a significant volume for poultry. There are other material buyers for meat and seafood outside of the retailers discussed above, including foodservice, wholesalers and meat kit providers. For example, [REDACTED] have a secondary processing plant with a significant amount of supply going to foodservice and wholesalers.

There will not be a substantial lessening of competition in relation to the acquisition of meat and seafood products

Red meat and seafood

114 As noted above, a very large proportion of output from red meat and seafood suppliers is exported to international markets. In the market study final report, the Commission noted that suppliers who export a significant proportion of their products are less dependent on New Zealand grocery retailers, which may improve their negotiating position. The Commission provided red meat as an example, given a large proportion of production from New Zealand suppliers is sold into overseas markets.²⁰

115 To the extent that these producers supply domestically, the opportunity to export the relevant product forms a substantial part of those suppliers' outside options, and so their willingness to accept prices from grocery retailers in New Zealand. The Parties are obliged to accept the export parity price for red meat and seafood or face an inability to supply their customers with these products, which is not a realistic option.

116 The Proposed Transaction will not materially increase the Parties' buyer power in relation to red meat and seafood suppliers. In particular, suppliers' outside option of exporting would remain the key factor in their willingness to accept particular terms when negotiating with the Merged Entity. It is very unlikely that the Merged Entity (or any other buyer) would have the ability to exercise buyer power by forcing output and prices in these input markets below the competitive level. Accordingly, the Proposed Transaction cannot result in a lessening of competition in relation to these products.

Pork

117 As noted above, imports play a key role in the pork sector, with 60% of pork consumed in New Zealand being imported. In addition, there are [REDACTED].

118 [REDACTED]. Accordingly, as a result of the Proposed Transaction the Parties expect that pork processors / suppliers would negotiate with one Foodstuffs entity, rather than individually with FSNI and FSSI. In addition, supply of pork is based on capacity from farms and the location of the suppliers. Accordingly, the Parties expect that [REDACTED].

119 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to pork suppliers / processors. In particular:

²⁰ Commerce Commission, *Market study into the retail grocery sector: Final report* (8 March 2022), at [8.58.1].

- 119.1 international importers of pork such as Farmlands Mathesis (a broker [REDACTED]) would have countless alternatives to the Merged Entity. There cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared to where they bargain separately,
- 119.2 domestic suppliers that currently supply both entities (such as [REDACTED]), already face significant competition from imports and should not be expected to be materially affected by the Proposed Transaction, and
- 119.3 as illustrated in the table above, there are a large number of other buyers of pork in addition to major grocery retailers, such as butcheries, wholesalers / food service and meal kit providers. [REDACTED].²¹ Accordingly, it cannot be correct to characterise the effect of the Proposed Transaction as being a “three to two” merger of buyers in relation to pork.

Poultry

- 120 As set out above, poultry is dominated by two large international suppliers with domestic processing facilities ([REDACTED]). [REDACTED]. FSNI purchases poultry from [REDACTED].
- 121 The Parties expect that, following the Proposed Transaction, there would be [REDACTED], as this is based on location and availability of processing / birds. In particular, the Parties expect that [REDACTED]. Indeed, the Commission has previously identified separate North Island and South Island markets for the wholesale supply of chicken, for reasons including speed and security of supply when transporting product across the Cook Strait, and shelf-life limitations with any extended travel time.²² Accordingly, poultry processors would not experience any reduction in their options as a result of the Proposed Transaction.
- 122 Further, the Proposed Transaction cannot materially increase the Parties’ buyer power in relation to poultry processors / suppliers. In particular:
- 122.1 the Commission has previously considered the buyer power of grocery retailers in relation to poultry processors as part of the proposed merger between Tegel and Brinks.²³ In that decision the Commission noted that although grocery retailers represented a significant proportion of chicken processors’ total sales, retailers’ ability to exercise any countervailing power (through the ability to switch volumes between processors) was limited by the need to be able to shift substantial volumes from one supplier to another, and that with few players capable to processing material volumes and long lead times required for processors to increase chicken production, shifting supply was difficult and would dampen the extent of any countervailing power.²⁴ This dynamic would not change as a result of the Proposed Transaction,

²¹ SOUI at [REDACTED].

²² Commerce Commission, *Tegel Foods Limited and Brinks Group of Companies*, Decision No. 658, (22 October 2008) at [182].

²³ Commerce Commission, *Tegel Foods Limited and Brinks Group of Companies*, Decision No. 658, (22 October 2008).

²⁴ Commerce Commission, *Tegel Foods Limited and Brinks Group of Companies*, Decision No. 658, (22 October 2008) at [359] and [367].

122.2 as illustrated in the table above, there are a large number of other buyers of poultry in addition to major grocery retailers, such as butcheries, wholesalers / food service and meal kit providers, and

122.3 it is clear that at least some poultry is exported overseas (e.g., [REDACTED]), particularly to the Pacific. Accordingly, flexing the extent of their exporting is likely to be another material option for suppliers of poultry.

123 In conclusion, it is clear from the above, that the Parties' acquisition conduct in relation to all of the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e. retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category.

APPENDIX 18: ANALYSIS OF BEER AND CIDER CATEGORY

124 This appendix sets out:

124.1 background information about the beer and cider category (refer to the table below), and

124.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 126 to 130 below).

125 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> • Beer (including beer and cans but not kegs) • Cider
Key considerations for customers and customer trends	<ul style="list-style-type: none"> • There are approximately seven different segments in this category, including: <ul style="list-style-type: none"> ○ Mainstream beer ○ Premium beer ○ Budget beer ○ Low carb beer ○ Zero / low alcohol beer ○ Mainstream cider ○ Craft beer • A small number of products (e.g., [REDACTED]) make up a significant proportion of total sales in this category. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Role of innovation	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Market dynamics	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED] together make up [REDACTED] of sales in the mainstream beer and cider segments, and [REDACTED].
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • FSNI has approximately [REDACTED] suppliers of mainstream beer and cider, with this segment being [REDACTED]. • FSNI has approximately [REDACTED] suppliers of premium / craft beer and cider. • FSSI notes that [REDACTED]. • FSSI has approximately [REDACTED] suppliers in total in this category, [REDACTED]. • In addition, there are [REDACTED]. • Key brands include [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> FSNI expects that [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> Some international companies / brands will use distributors as an intermediary in New Zealand. For example, [REDACTED].
C. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> Other grocery retailers Liquor stores
Role of exports	<ul style="list-style-type: none"> Some craft beer is exported.
Role of imports	<ul style="list-style-type: none"> International brands are imported by the key beer suppliers / distributors. For example, [REDACTED]. Some suppliers have secured rights to brew international beer brands locally.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> There are a large number of other buyers of beer and cider, including wholesalers, hospitality, hotels etc.

There will not be a substantial lessening of competition in relation to the acquisition of beer and cider

126 As demonstrated in the graph below, while the beer and cider category has many suppliers, it is dominated by [REDACTED] large suppliers: [REDACTED].

**Figure 8: FSNI sales of beer and cider by supplier
(across a 13-week period to 30 June 2024)**

[REDACTED]

127 The graph above illustrates that even when all beer and cider segments are considered together, [REDACTED]. In addition, these businesses supply products that [REDACTED].

128 Further, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to *smaller* suppliers of beer and cider. In particular:

128.1 [REDACTED],

128.2 smaller suppliers often fulfil certain need states, e.g., premium / craft products. Premium / craft brands [REDACTED],

128.3 smaller suppliers already face significant competition from suppliers such as [REDACTED] and accordingly cannot be expected to be materially affected by the Proposed Transaction.

129 Further:

129.1 [REDACTED]. The Proposed Transaction is unlikely to materially change bargaining outcomes, since suppliers would simply negotiate with a single Foodstuffs entity instead of separately negotiating with FSNI and FSSI. [REDACTED],

129.2 It is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e., retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category, and

129.3 finally, and importantly, there are many other domestic buyers of beer and cider products in addition to major grocery retailers, including liquor stores, wholesalers, hospitality, hotels etc. [REDACTED]. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to cleaning products.

130 Overall, the large number of buyers of beer and cider, coupled with the relatively high concentration of suppliers, suggests that there cannot be a lessening of competition in relation to the acquisition of beer and cider. There is no evidence to suggest that the Proposed Transaction would substantially lessen competition in the acquisition markets for beer and cider or that a merged Foodstuffs entity would possess the ability to suppress the trading volume of beer and cider.

APPENDIX 19: ANALYSIS OF WINE CATEGORY

131 This appendix sets out:

131.1 background information about the wine category (refer to the table below), and

131.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 133 to 136 below).

132 [REDACTED].

Topic	Detail
A. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> Bottles and casks of wine (all varietals, including sparkling)
Key considerations for customers and customer trends	<ul style="list-style-type: none"> The key segments in this category are cred, white, rose, and cask wine. The key brands in this category are [REDACTED]. [REDACTED]. [REDACTED].
Role of innovation	<ul style="list-style-type: none"> [REDACTED].
Market dynamics	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> Globally liquor is seeing a decline in consumption and a shift in attitudes, particularly in the younger age bracket.
B. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> FSSI has [REDACTED]. FSSI's top five suppliers make up [REDACTED]% of sales. Those suppliers are REDACTED]. FSNI has [REDACTED]. Most suppliers are located in New Zealand but often act as distributors of international brands to strengthen their portfolio. These suppliers may also own or distribute New Zealand brands on behalf of smaller wine producers. [REDACTED].
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> [REDACTED].
Role of non-direct channels	<ul style="list-style-type: none"> [REDACTED].
C. FSNI and FSSI category reviews completed for this category	

Topic	Detail
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
D. Other buyers for the products in this category	
Other key retailers	<ul style="list-style-type: none"> • Other grocery retailers • Liquor stores
Role of exports	<ul style="list-style-type: none"> • Exports play a significant role in this category. A large amount of New Zealand wine is exported, especially to China, Europe and the United States.
Role of imports	<ul style="list-style-type: none"> • Imports play a significant role in this category, with many international brands imported. Approximately [REDACTED]% of FSNI's products in this category are imported.
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • There are a large number of other buyers of wine, including wholesalers, hospitality, hotels etc.

There will not be a substantial lessening of competition in relation to the acquisition of wine

133 As demonstrated in the graph below, while the wine category has many suppliers, it is dominated by [REDACTED] large suppliers: [REDACTED].

Figure 9: FSSI sales of wine by supplier
[REDACTED]

134 [REDACTED].

135 In addition:

135.1 a very large proportion of wine from New Zealand winemakers is exported to international markets. In the market study final report, the Commission noted that suppliers who export a significant proportion of their products are less dependent on New Zealand grocery retailers, which may improve their negotiating position. To the extent that winemakers supply domestically, the opportunity to export forms a substantial part of those suppliers' outside options, and so their willingness to accept prices from grocery retailers in New Zealand. [REDACTED],

135.2 imports also play a key role in this category, with approximately [REDACTED]% of FSNI's products in this category being imported. International suppliers would have countless alternatives to the Merged Entity,

135.3 [REDACTED]. The Proposed Transaction is unlikely to materially change bargaining outcomes, since suppliers would simply negotiate with a single Foodstuffs entity instead of separately negotiating with FSNI and FSSI. [REDACTED],

- 135.4 it is clear from the above, [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand and the Parties' desire to present an attractive offering to customers i.e., retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category, and
- 135.5 finally, and importantly, there are many other domestic buyers of wine in addition to major grocery retailers, including liquor stores, wholesalers, hospitality, hotels etc. [REDACTED]. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to wine.
- 136 Overall, the significant role of exports and imports, large number of buyers of wine, coupled with the relatively high concentration of suppliers, suggests that the Proposed Transaction cannot substantially lessen competition in acquisition markets for wine or that a merged Foodstuffs entity would possess the ability to suppress the trading volume of wine.

APPENDIX 20: ANALYSIS OF FRESH PRODUCE CATEGORY

137 This appendix sets out:

137.1 background information about fresh produce markets (refer to the table below), and

137.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to fresh produce markets (refer to paragraphs 139 to 146 below).

138 [REDACTED].

Topic	Detail
E. Description of category	
Products that fall in this category	<ul style="list-style-type: none"> Fresh vegetables (loose and packaged) including leafy greens Fresh fruit (loose and packaged)
Market dynamics	<ul style="list-style-type: none"> Fresh produce markets are seasonal and strongly influenced by imports and exports. For example, New Zealand: <ul style="list-style-type: none"> exports a range of fresh produce including kiwifruit, apples, onions, buttercup squash, avocados, cherries, potatoes and tomatoes. Produce is graded, with premium product tending to be exported. Exports are also affected by demand. For example, last year there was an oversupply of avocados in Australia meaning much of the export grade product was supplied to New Zealand instead, and imports a range of products including bananas, grapes, pineapples, citrus (such as oranges, mandarins and lemons), mangoes, pears, garlic and beans. [REDACTED]. [REDACTED]. There are more independent fruit and vegetable stores (such as Farro, Tai Ping) in the North Island compared to the South Island. There are a variety of different ways by which fresh produce can be supplied, as broadly demonstrated in the following diagram: <div style="text-align: center; margin: 10px 0;"> <pre> graph TD Supplier[Supplier] --> Export[Export Markets] Supplier --> Foodservice[Foodservice] Supplier --> Wholesaler[Fresh produce wholesaler, e.g. T&G Fresh] Supplier --> RetailerWholesale[Grocery retailer wholesale, e.g. FSNI/FSSI] Supplier --> Manufacturer[Food manufacturer, e.g. Wattie's] Supplier --> MealKit[Meal kit/food box, e.g. Hello Fresh] Supplier --> Specialist[Specialist grocery store, e.g. greengrocers] Supplier --> RetailerRetail[FSNI/FSSI retail stores (as relevant), e.g. New World] Supplier --> OtherRetail[Other grocery retail store, e.g. Woolworths, Tai Ping] Supplier --> Direct[Direct/roadside sales] </pre> </div> As demonstrated in the diagram above, growers can sell their product direct to wholesalers, exporters, retailers, foodservice and consumers as well as a mixture of these different channels. An additional important channel is farmers markets. [REDACTED]. [REDACTED]: <ul style="list-style-type: none"> [REDACTED].²⁵ [REDACTED]. [REDACTED].

²⁵ [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> ○ [REDACTED]. • Different fresh produce markets can attract particular dynamics. For example, [REDACTED]. • Due to the geography of New Zealand, certain products tend to be grown in different parts of the country. For example, avocados and citrus are almost exclusively grown in the North Island while cherries are primarily grown in Otago. • While most produce can be transported across the country effectively, some, such as leafy greens, does not travel well and is therefore supplied in the regions it is grown in. • [REDACTED]. Further information on the role of exporters and importers is provided below (see <i>the role of non-direct channels</i> section). • [REDACTED]. • [REDACTED].
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> • Environmental events such as natural disasters, pests and diseases can damage crops and land on which products are grown. • As with all fresh products, suppliers face shelf-life issues. Cool storage is required for many products and varies depending on the particular produce. The perishable nature of produce means prices drop the older the product gets, so keeping product moving is essential. Examples of particularly vulnerable produce include berry fruit, mushrooms and kumara. Produce prices have declined over the last 8 months due to excess supply, which causes challenges for growers who grow without a certain return. • Suppliers also face costs associated with increased regulation e.g., from the Food Safety Authority and environmental regulation particularly in relation to green vegetables.
F. Information about the specific suppliers of the relevant product(s) in this category	
Makeup of suppliers	<ul style="list-style-type: none"> • National wholesalers: [REDACTED]. • Large growers: including [REDACTED]. • Exporters and importers: including [REDACTED]. • Smaller regional and local suppliers which supply directly to buyers (e.g., retail stores, foodservice) and wholesalers. • The following graph shows the make-up of domestic wholesale supply in New Zealand in 2016: <div style="text-align: center;">[REDACTED]</div> <ul style="list-style-type: none"> • [REDACTED]. <div style="text-align: center;">[REDACTED]</div>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED]. • [REDACTED].
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. • [REDACTED].
Role of non-direct channels	<p><u>Wholesalers</u></p> <ul style="list-style-type: none"> • Wholesalers play an important role in fresh produce markets by enabling growers to sell their produce collectively. • Wholesalers have different arrangements with their growers. [REDACTED]. • [REDACTED].

Topic	Detail
	<ul style="list-style-type: none"> • [REDACTED]. • [REDACTED]. <p><i>Agents</i></p> <ul style="list-style-type: none"> • Agents facilitate trading but do not generally operate market floors. [REDACTED].
G. FSNI and FSSI category reviews completed for this category	
FSNI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
FSSI category review(s)	<ul style="list-style-type: none"> • [REDACTED].
H. Other buyers for the products in this category	
Other key retailers	<p>Other key retailers include:</p> <ul style="list-style-type: none"> • other grocery retailers (e.g., Woolworths, Costco, Farro, etc.), • speciality fruit and vegetable stores (e.g., Fruit World, Tai Ping, Fresho etc.), and • other retailers such as The Warehouse.
Role of exports	<ul style="list-style-type: none"> • Exports play an important role in the market, and for a number of products, set the domestic price of the product. [REDACTED].
Role of imports	<ul style="list-style-type: none"> • Imports provide access to fresh produce that is not easily commercially grown in New Zealand, provides out of season supply of products and is used to supplement domestic shortfalls of fresh produce (e.g., grapes, pineapples and bananas).
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> • Foodservice • Wholesalers (e.g., Bidfood) • Food manufacturers (e.g., Watties) • Meal kit providers • Quick service retail (KFC, McDonalds) • Online produce providers (Wonky Box) • Farmers markets • Produce box specialists • Farm gate shops and sales

There will not be a substantial lessening of competition in relation to the acquisition of fresh produce

139 Fresh produce markets are dynamic and fast moving. Different types of fresh produce form the basis of national, regional and local markets that are broadly characterised by:

139.1 there being a large number of buyers. Buyers include grocery retailers, specialty fruit and vegetable retailers and other retailers, as well as commercial wholesalers, foodservice buyers, food manufacturers and meal kit providers,

139.2 exports playing an important role in shaping market dynamics. In many fresh produce markets, exports:

- (a) determine or otherwise strongly influencing the domestic price of goods in order to keep produce onshore (e.g., apples, cherries, kiwifruit), and
- (b) affect the volumes of goods available, with less product being available where offshore markets for a particular product are strong, and more products being available where the offshore demand for exports is low (e.g., the avocado example above where the Australian avocado

market was oversupplied, resulting in low demand for New Zealand exports),

139.3 imports supplementing the national supply of fresh produce (e.g., citrus, tomatoes) and supplying domestic markets with products not otherwise commercially grown in New Zealand (e.g., bananas),

139.4 the varying degrees of substitutability between different fruits and vegetables, such that the markets for fresh produce are complex and varied with some products being ready substitutes for others and vice versa, and

139.5 ease and/or difficulty in transporting different types of fresh produce. That is, some products are easily transportable nationwide due to their longer shelf lives and sturdiness (e.g., root vegetables). In comparison, other products do not travel well such that their supply tends to be local, regional or island wide at most (e.g., leafy greens). Despite the ability to transport different types of fresh produce nationally, additional costs associated with transporting these products often incentivise more local and regional acquisition where that is possible.

Acquisition of fresh produce in times of short supply

140 The SOUI specifically refers to unforeseen events that lead to short periods of insufficient supply on a regional or nationwide basis to satisfy typical demand for a particular product (although no evidence is shown). This may result in circumstances during which the Parties, along with other buyers, seek to acquire limited product from the same supplier(s), such that the price of the product temporarily increases.

141 The Proposed Transaction would not be likely to give rise to a substantial lessening of competition in these circumstances because, principally:

141.1 the high degree of competition between buyers for fresh produce, affording suppliers a diverse range of alternative customers such as Woolworths, Costco, specialty fruit and vegetable stores, exports, imports, foodservice buyers and, importantly, fresh produce wholesalers as set out in the evidence in the table above and

141.2 the merged entity would continue to compete with those alternative customers to acquire the same amount of produce as the Parties would acquire in the counterfactual i.e. total market demand would be unchanged by the Proposed Transaction.

142 As a result, the evidence suggests competitive outcomes in these circumstances (in terms of both price and quantity) would be similar with and without the Proposed Transaction.

143 Further:

143.1 such scenarios are likely to be infrequent and transient,

143.2 in some circumstances, in the Parties' experience, suppliers of products that are temporarily in short supply will choose to apportion volumes across buyers so as to ensure supply is spread, rather than take advantage of fleeting pricing power (which can be reversed when products are abundant),

143.3 [REDACTED],

143.4 temporary shortages of supply can also in some cases be alleviated in a timely manner through buyers accessing other channels, such as imports (which depending on the category, could be airfreighted with a one-week turnaround (e.g., tomatoes or courgettes from Australia), or could be sea freighted, which would have an approximately 4-to-6-week turnaround depending on the country), and

143.5 where there are events that produce shortages in supply, that does not always result in an immediate shortage. In these circumstances, shortages can be anticipated and managed. For example, if there is a missed shipment on a banana boat from South America (30-day transit), the shortage may be covered by the Philippines (14-day transit).

No substantial lessening of competition

144 The Proposed Transaction cannot give rise to a substantial lessening of competition in relation to fresh produce markets. The Proposed Transaction can have no effect on:

144.1 buyers' incentives to ensure secure, competitive supply, and to keep costs low – which apply equally to the Merged Entity as to FSNI and FSSI, and

144.2 the natural limitations of certain fresh products to be transported, such as leafy greens – for these suppliers, no change can arise from the Proposed Transaction.

145 Given these incentives and inherent market characteristics, retailers (including the Merged Entity) would remain motivated to acquire from a range of suppliers following the Proposed Transaction, and their buyer power would not be materially altered.

146 This conclusion applies equally in the limited instances of short supply, since the intensity of downstream competition, including the competitive constraint from other buyers, would remain (even setting aside the occasional and transient nature of these scenarios).