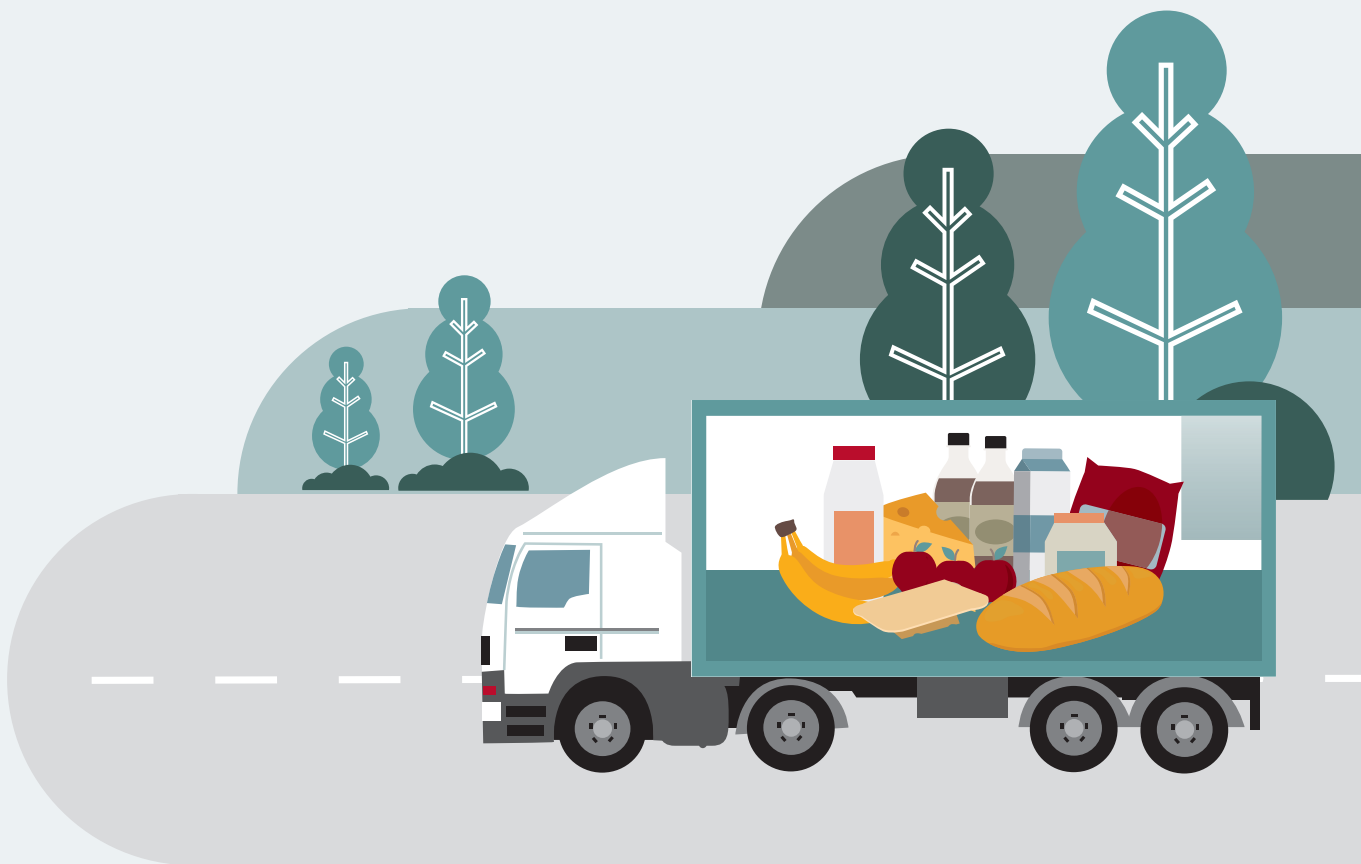




First Annual Grocery Report

Pūrongo ā-tau
tuatahi mō te kai

4 SEPTEMBER 2024



LIST OF DEFINED TERMS

RĀRANGI KUPU

Act	Grocery Industry Competition Act 2023
Amendment Act	Commerce (Grocery Sector Covenants) Amendment Act 2022
Banner	Grocery store brands/names a retailer sells under (eg, New World, Pak'nSave, Woolworths, FreshChoice)
Code	Grocery Supply Code
Commerce Act	Commerce Act 1986
Commission	Commerce Commission
CPI	Consumer Price Index
EDLP	Everyday low pricing
Fair Trading Act	Fair Trading Act 1986
FPI	Food Price Index
Fresh Categories	Refers to products in bakery, butchery, produce, seafood and service deli categories
Gilmours	Gilmours Wholesale Limited
Groceries	Defined in the Act as goods in any of the following categories: fresh produce; meat, seafood, or meat substitutes; dairy products; bakery products; chilled or frozen food; pantry goods or dry goods; manufacturer-packaged food; non-alcoholic drinks; personal care products; household consumables; and pet care products.
FSNI	Foodstuffs North Island Limited
FSSI	Foodstuffs South Island Limited
GSCI	Grocery Supplier Cost Index
HES	Household Economic Survey
HHI	Herfindahl-Hirschman Index
Main shop	A shop typically happening weekly or at another regular interval based on the convenience of using one grocery store to get all necessities in one place.
Market Study	Market study into the retail grocery sector conducted by the Commerce Commission under the Commerce Act 1986. The Market Study final report was published 8 March 2022.
MBIE	Ministry of Business, Innovation and Employment
Minister	Minister of Commerce and Consumer Affairs
NZDRC	New Zealand Dispute Resolution Centre Limited
OECD	Organisation for Economic Co-operation and Development

Overseas Investment Act	Overseas Investment Act 2005
PPI	Producer Price Index
Private Label	Also known as home brands, own brands, store brands or generic products. These are products that are manufactured for sale under a retailer's brand.
Product categories	Groups of products sold by grocery retailers that are of a similar type.
RDP	Supplier rebates, discounts or payments
RGR	Regulated grocery retailer. Currently defined in the Act as Foodstuffs North Island Limited; Foodstuffs South Island Limited; and Woolworths New Zealand. ¹ These retailers are also often referred to as 'major supermarket chains' or 'major grocery retailers'.
RMA	Resource Management Act 1991
ROACE	Return on average capital employed
Sale and Supply of Alcohol Act	Sale and Supply of Alcohol Act 2012
Secondary shop	A visit to one or more store(s), other than the store the main shop is carried out at, to shop for specific products.
Supermarkets	Large grocery retailers selling a wide variety of foods (such as dry groceries, fresh produce), household goods, non-alcoholic beverages, and usually some alcoholic beverages.
Top-up shop	A quick shop for a small number of items that can be conducted for a range of reasons at one of a range of retailers.
Trents	Trents Wholesale Limited
WACC	Weighted average cost of capital
Wholesale customer	Any person that receives the wholesale supply, or wants to obtain the wholesale supply, of groceries from a regulated grocery retailer for the purpose of supplying groceries, directly or indirectly, at retail to consumers.
WWNZ	Woolworths New Zealand Limited

¹ This definition includes all franchises and interconnected bodies corporate of the listed companies.

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FOREWORD

KUPU TAKAMUA

In releasing this first Annual Report on the grocery sector in New Zealand, I am conscious of how many Kiwi consumers are feeling the pinch at the supermarket checkout – and also the opportunities in front of us to make a meaningful and enduring difference in this sector.

This is a \$25 billion sector – roughly the size of New Zealand’s tourism and dairy sales combined – so it’s crucial that we get this market working effectively. This will deliver benefits into every shopping trolley, create new business opportunities up and down the supply-chain, and support more retailers to enter the market to increase competition.

Our country has a world-first in the Grocery Industry Competition Act (GICA), which came into effect in July last year, and from my first day in the job I’ve seen this as a once-in-a-generation opportunity to level the playing field in the grocery sector. I still believe this to be true.

Some of the changes and outcomes will take time, so this 2024 Annual Grocery Report is important as a benchmark of the state of competition – a ‘foundation stone’ to measure our success in how we are promoting stronger competition with the major supermarkets (Regulated Grocery Retailers) and how this is translating to better prices and value, quality, the range and availability of products and convenience for Kiwi consumers.

These reports will also help to prioritise our efforts and focus our work programme under GICA.

We’ve brought this report forward by a year to establish a solid baseline referencing back to changes in the sector since the Commission’s Market Study into the grocery sector, completed in early 2022.

The reality is that competition in the sector is still limited and muted – the reason that legislation was needed in the first place. This report does not sugar-coat the scale of the work ahead and how long it could take to bring the benefits of increased competition to New Zealand consumers. Consumers in our largest cities are seeing some benefits already with stronger competition delivering increased choice and quality and more competitive pricing in the region.

It’s disappointing to note that the new wholesale provisions have had little impact in their first year, with wholesale customers not gaining access to competitive pricing or a full range of goods. I will be taking immediate action to consider and review whether step-up regulation is needed to improve the wholesale offers required from the major supermarkets.

This Report also highlights ongoing concerns in the sector that power imbalances between the supermarkets and suppliers have not been reduced by the new Grocery Supply Code. I have raised concerns with the supermarkets about their approach to agreements under the Code and am now considering whether systemic changes are needed and have brought forward a review of the Code.

It’s heartening to see that progress has been made on removing restrictive covenants in the sector, a major barrier for new entrants. I still have concerns about the amount of land being held but not actively utilised (land banking) by the major supermarkets, and we cannot turn a blind eye to any practices that may be hindering competition, so will be looking at this practice.

This Report is a start to shining a light on issues that have historically been affecting competition, and this scrutiny is one of our most powerful tools together with our powers under GICA, the Fair Trading and Commerce Acts.

Our intense focus on groceries is enabling a new level of understanding and transparency.

I encourage you to read this Report, which reflects the voices of many from across the industry – along with baseline data and trends that point to the issues we see, the dynamics at play, and the opportunities for the future. Our executive summary and chapter 9 provide some views on how our work programme will be guided by our findings.

Nāu te rourou, nāku te rourou, ka ora ai te iwi.

Pierre van Heerden
Grocery Commissioner

INTRODUCTION AND PURPOSE

KUPU WHAKATAKI ME TE KORONGA

Chapter 1 provides an overview of this report and the Commission’s role in, and approach to, monitoring competition and efficiency in the New Zealand grocery industry.



Purpose

The Commerce Commission (the **Commission**) is an independent Crown entity that administers and enforces laws relating to competition, fair trading, consumer credit, and economic regulation.

We have responsibilities for regulating the grocery industry under the Grocery Industry Competition Act 2023 (the **Act**). The Act's purpose is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand.² The Act is complemented by existing and new regulation under the Commerce Act 1986 (**Commerce Act**) and the Fair Trading Act 1986 (**Fair Trading Act**).

One of the Commission's key responsibilities under the Act is to publish annually a report on the state of competition in the grocery industry. This report is the first of our annual grocery reports released under s175 of the Act.

Background and regulatory context

The Commission undertook a market study into the retail grocery industry (**Market Study**) that reported from late 2020 until publication of the final report in March 2022.

The Market Study's final report found that competition in the retail grocery industry is not working well for consumers.³ It noted that if competition was more effective, retailers would face stronger pressures to improve what they are offering on prices, quality and range to satisfy different consumer preferences.

The Market Study made a range of recommendations to enhance competition in the grocery industry.⁴ In response, the Act was developed and came into force in July 2023.

² Section 3 of the Act.

³ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

⁴ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at chapter 9, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

In recent years, worldwide several other competition agencies have undertaken studies into grocery market competition, and some are contemplating further actions to improve competition.⁵ The wholesale access regime provided for under the Act, however, is unique internationally.

Given the competition issues identified in the Market Study and the unique nature of the wholesale access regime, it was intended by Government that our annual grocery reports would:

Enable the Government and public to identify if there are any serious unintended consequences arising from the regulatory regime, or if the benefits of competition are not emerging in reasonable time.⁶

This report and our ongoing monitoring has been developed in a way that enables us to consider whether further intervention may be required, supported by appropriate analysis.

Our framework for monitoring the grocery industry

The Commission's monitoring function under the Act includes:⁷

- **monitoring competition and efficiency** in the grocery industry;
- **carrying out inquiries, reviews, and studies** (including international benchmarking) in connection with the grocery industry;
- **making available information** in connection with the grocery industry, for example, through reports or summaries; and
- **keeping under review** the law and practices that are relevant to our functions under the Act (including overseas law and practices).

The objective of the Commission's monitoring and reporting functions under the Act is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers, including by:⁸

- understanding the current and emerging trends or issues in relation to the grocery industry;
- promoting transparency about the way the grocery industry is being regulated; and
- contributing to a trading environment in which businesses compete effectively and consumers and businesses participate confidently.

Our monitoring role is not limited to the definition of groceries contained in s5 of the Act and may apply to any goods and services supplied by any grocery retailer.⁹

5 For example: Competition Bureau Canada released its retail grocery market study final report in June 2023 (<https://ised-isde.canada.ca/site/competition-bureau-canada/en/retail-grocery-market-study>); the Jersey Competition Regulatory Authority released its grocery market study final report in September 2023 (<https://www.jcra.je/cases/2022/m-007-groceries-market-study/>); the Australian Competition & Consumer Commission is currently undertaking an inquiry into the supermarket sector (<https://www.accc.gov.au/inquiries-and-consultations/supermarkets-inquiry-2024-25>).

6 Ministry of Business, Innovation and Employment "Regulatory Impact Statement: Government response to the Commerce Commission Grocery Sector Market Study – Policy decisions" (6 May 2022) at p. 4, <https://www.mbie.govt.nz/dmsdocument/22638-regulatory-impact-statement-government-response-to-the-commerce-commission-grocery-sector-market-study-policy-decisions-proactiverelase-pdf>.

7 Section 4(1) of the Act.

8 Section 4(2) of the Act.

9 Section 4(3) of the Act.

First annual grocery report

A key output of our monitoring function is our annual grocery reports. The Act requires the Commission to publish a report on the state of competition in the grocery industry every year.¹⁰ The first such report is required to be published as soon as practical after 30 June 2025.¹¹ We have, however, chosen to publish our first report a year early so that we can comment on what we are observing in the early stages of the Act's implementation.

Under the Act, the purpose of annual grocery reports is to:¹²

- report on the state of competition in the grocery industry, including any changes to the level of competition and outcomes for consumers;
- raise awareness of emerging (or likely) trends or issues;
- inform the public and Government about the performance or exercise of the Commission's functions, duties, and powers under this Act;
- demonstrate how any Government direction or statement of economic policy of the Government given to the Commission has been considered.

A further requirement of the first annual grocery report is that it must contain the Commission's assessment of whether there has been a material improvement in the state of competition that exists in the grocery industry since 8 March 2022 (the publication date of the Market Study final report).¹³

Beyond this, the Act does not specify the topics which must be covered in the first or subsequent annual grocery reports, nor is it prescriptive on the specific metrics that must be included.

This report differs from a market study

Our annual grocery reports differ from the Market Study which was undertaken by the Commission under Part 3A of the Commerce Act.

The Market Study sought to establish if there were competition concerns in the supply or acquisition of groceries and whether competition was working well for consumers. In contrast, our annual grocery reports will track over time how competition in the grocery industry is evolving. In addition, our annual grocery reports are a regulatory tool to improve transparency, influence the behaviour of market participants, and promote better outcomes in the grocery industry over time.

This report provides observations and commentary on the state of competition, but unlike the Market Study, no direct policy recommendations are made.¹⁴ As such, there is no 'draft' report or consultation period, ie, this is the report for this year.

10 Sections 175(1) and 176 of the Act.

11 Section 178(3) of the Act.

12 Section 175(2) of the Act.

13 Section 178(2) of the Act.

14 The Commission can make recommendations to improve the regime using other powers under the Act, including following an inquiry under s55 of the Act.

Structure of report

This report is split into the following chapters:

- **Development of competition**, which sets out grocery consumers' shopping preferences and explores what effective competition looks like.
- **Industry characteristics and developments**, which provides an overview of participants in the grocery industry, recent developments that have affected the grocery industry, and retailer changes since the Market Study.
- **Competition at the retail level**, where we report long-run measures of competition, including market shares, margins and profitability.
- **Outcomes for consumers**, which explores retail consumers' experience of the grocery industry, including prices and consumers' ability to understand retailers' pricing and promotional practices.
- **Conditions of entry and expansion**, where we assess whether conditions for grocery retailers to enter or expand their operations have improved since the Market Study.
- **Wholesale access regime**, where we assess regulated grocery retailers' implementation of a wholesale offer as required under the Act.
- **Acquisition of groceries**, where the relationship between retailers and suppliers is explored, including information on recent legislative changes that seek to address the imbalance of power between retailers and suppliers.
- **Looking ahead**, which outlines how we anticipate competition might develop under current settings, and the Commission's upcoming grocery work programme.

Approach to monitoring and reporting

This first annual grocery report sets out the metrics that we will be monitoring on an ongoing basis to track whether competitive conditions are improving. In other words, this report is the baseline to be compared against over time when testing whether the regulatory regime is achieving its objectives, and/or having the intended consequences.

These key metrics will be included on an ongoing basis in our annual grocery reports. Where possible and appropriate we will look to add further granularity in future reports as our monitoring regime matures over time.

Each annual grocery report will also contain deeper dives into select focus areas. These focus areas may change year-to-year reflecting current and emerging trends or issues in the grocery industry.

We have broad information gathering powers

The Act provides the Commission with investigation and information gathering powers for the purpose of performing our functions, duties, and powers under the Act.¹⁵ This includes the ability to issue statutory notices to any relevant person in the grocery industry to supply information to the Commission. Failure to comply with a statutory notice without a reasonable excuse or providing knowingly false or misleading information is an offence and can lead to fines of up to \$300,000.¹⁶

For this first annual grocery report, we have not exercised our statutory information gathering powers as we received sufficient information on a voluntary basis from industry participants. We may use our statutory information gathering powers for future reports.

¹⁵ Section 182 of the Act.

¹⁶ Section 183 of the Act.

We gathered data from a range of sources

This report draws on data from a range of sources. The relevant sources for each figure and statistic are noted in the footnotes throughout the report.

Much of the information used to compile this report was gathered via information requests to Foodstuffs North Island (**FSNI**), Foodstuffs South Island (**FSSI**), and Woolworths New Zealand (**WWNZ**). We also gathered information from Bin Inn, Commonsense, Costco, MetroMart, Night 'n Day, and The Warehouse. Furthermore, we had over 50 wholesale related engagements with retailers and suppliers to inform the wholesale access regime chapter. We thank those who provided the information underlying this report for their assistance.

We have used the most up-to-date information available to us at the time of drafting this report. This has meant that the latest information presented in this report varies between June 2023 to June 2024. As such this report provides a picture of the grocery industry after the Market Study, but in some cases before the implementation of the Act, and otherwise the early stages of the Act's implementation.

We have considered Government direction

One of the purposes of our annual grocery reports is to demonstrate how any Government direction given to the Commission has been considered.¹⁷ We believe that this report aligns with the expectations of the Minister to support greater transparency in the grocery industry, for example, through our analysis of retail margins.¹⁸

WE WELCOME FEEDBACK NAU MAI HE KŌRERO



We welcome feedback on the format and content of this report, what might be missing and where improvements could be made for future reports.

Your feedback will help ensure that we maximise the relevance and usefulness of the report for all stakeholders going forward.

Feedback can be provided to Grocery.Regulation@comcom.govt.nz with the subject line "Annual grocery report feedback".

¹⁷ Section 175(2)(d) of the Act.

¹⁸ Letter from the Minister of Commerce and Consumer Affairs to Commerce Commission Chair "Annual letter of expectations 2024/25" (11 April 2024), https://comcom.govt.nz/data/assets/pdf_file/0026/317906/Ministers-Letter-of-Expectations-2024-25-11-April-2024.pdf.

DEVELOPMENT OF COMPETITION

WHANAKETANGA O TE WHAKATAETAETANGA

Chapter 2 sets out New Zealand consumers' grocery shopping preferences, and what effective competition would need to look like to meet them and exert pressure on the major grocery retailers.



Consumers' shopping preferences

New Zealand consumers are diverse with different wants and needs. The Market Study found convenience and price are key considerations that inform the choice of grocery store for most consumers.¹⁹

Consumers can undertake different types of shopping trips to purchase groceries, including:

- **main shop** – a shop happening weekly, or another regular interval based on the convenience of using one grocery store to get all necessities in one place.
- **secondary shop** – a visit to one or more store(s) other than the store the main shop is carried out at, to shop for specific products.
- **top-up shop** – a quick shop for a small number of items.

Consumer shopping behaviour and factors influencing store choice vary depending on the type of shopping mission. Grocery stores which offer one-stop shopping at convenient locations cater to a wide range of different consumers and shopping missions.

We have observed consumer preferences moving to online shopping in 2020–2022 and then back to in-store purchasing to avoid costs associated with online options. We will further explore this in Chapter 3.

We also plan to further explore the changes in consumer shopping habits and preferences in future reports.



¹⁹ Commerce Commission “Market study into the retail grocery sector, final report” (8 March 2022) at paragraph 2.5, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

What effective competition looks like

The New Zealand retail grocery industry is highly concentrated with significant market share held by FSNI, FSSI, and WWNZ. In this report, we collectively refer to FSNI, FSSI, and WWNZ as the regulated grocery retailers (**RGRs**), regulated under the Act.²⁰

To compete with the RGRs on prices, quality and range, a new or expanding retailer would need to:

- stock a diverse range of goods which appeal to different consumers;
- meet consumers' preference for a one-stop shop; and
- have competitive prices.



For competition to benefit all New Zealanders, new or expanding retailers need presence nationwide, not just in Auckland or the main cities.

In Chapter 3, we document our observations on entry and expansion in the grocery sector since the Market Study. While there are some positive signs, this entry and expansion:

- is geographically constrained – with many changes limited to Auckland; and
- is usually range constrained – does not meet consumers' preference for a one-stop shop.

And as detailed in Chapter 7, the RGRs' wholesale offers are not providing goods at a price that would allow competing retailers to charge competitive retail prices. Nor do competing retailers have access to many top-selling products.

20 During the Market Study they were referred to as the major grocery retailers. Under the Act 'regulated grocery retailer' has the meaning set out in section 8 for the purposes of the grocery supply code, and the meaning set out in section 26 for the purposes of the wholesale supply regime.

INDUSTRY CHARACTERISTICS AND DEVELOPMENTS

Ā TE AHUMAHĪ
ĀHUATANGA,
WHANAKETANGA HOKI

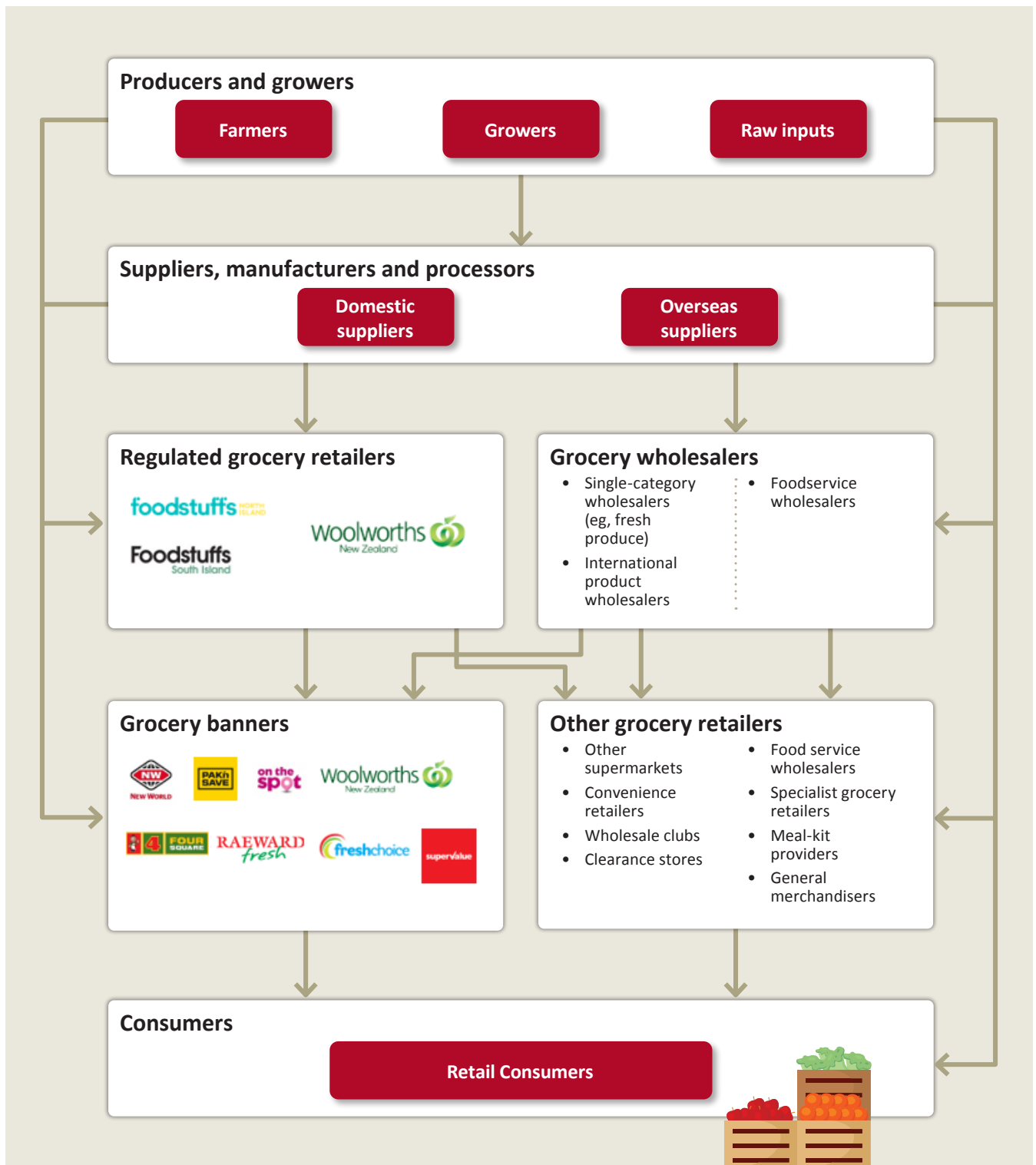
Chapter 3 provides an overview of the participants in the grocery industry, notes recent key developments that have impacted the industry, and outlines observed changes in grocery retailers since the Market Study.



GROCERY INDUSTRY OVERVIEW

TIROHANGA WHĀNUI KI TE AHUMAHĪ HOKO KAI

Figure 1: High-level summary of the New Zealand retail grocery industry



New Zealand consumers

Groceries are an essential purchase and a major expense for most households. In the year to 30 June 2023, the average New Zealand household spent \$214 per week on groceries (which equates to 13% of households' total weekly expenditure).²¹ Over the same period more than \$25 billion was spent at supermarkets and grocery stores in total.²² More detail is provided on groceries and household expenditure in Chapter 5.

The three regulated grocery retailers

There are three major grocery retailers operating in New Zealand: WWNZ and two Foodstuffs cooperative entities, FSNI and FSSI. Notably, the two Foodstuffs cooperatives operate in different geographic areas but present a single national offering through common banners.²³ This means that each main island of New Zealand has two major grocery retailers operating.

An overview of the RGRs is provided below; recent changes to the RGRs' store networks are discussed later in this chapter.

Each RGR operates stores belonging to different retail banners. Table 1 shows that as of December 2023, there were 770 retail stores across New Zealand belonging to the RGRs.

Table 1: RGRs' retail store networks as at December 2023

RGR	Banner	Number of retail stores
FSNI	Four Square	165
	New World	105
	Pak'nSave	46
FSSI	Four Square	60
	New World	43
	On The Spot	73
	Pak'nSave	12
	Raeward Fresh	4
WWNZ	Countdown/Woolworths	188
	SuperValue/FreshChoice	74

Source: Commission analysis of information provided by RGRs²⁴

21 Statistics New Zealand "Household expenditure statistics: Year ended June 2023" at table 1, <https://www.stats.govt.nz/assets/Uploads/Household-expenditure-statistics/Household-expenditure-statistics-Year-ended-June-2023/Download-data/household-expenditure-statistics-year-ended-june-2023-updated.xlsx>. Food group expenditure excluding restaurant and ready-to-eat food expenditure.

22 Statistics New Zealand "Retail trade survey: June 2023 quarter" at table 1, <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

23 Banners are grocery store brands/names retailers sell under (eg, New World, Pak'nSave, Woolworths, Fresh Choice).

24 The FSNI Pak'nSave figure includes one Pak'nSave Mini store. Only customer facing stores have been counted.

Foodstuffs North Island & Foodstuffs South Island

FSNI and FSSI operate as separate cooperatives serving the North Island and South Island respectively. Retail stores are owner-operated franchises which are supplied by their respective cooperative. The Pak'nSave, New World, and Four Square banners are present in both islands, while On the Spot and Raeward Fresh banners are only present in the South Island.

To facilitate the national banners, FSNI and FSSI have shared ownership of the following companies:

- Foodstuffs NZ Limited, which owns the retail banner brands for all Foodstuffs stores and provides services to both cooperatives.
- Foodstuffs Own Brands Limited, which manages private label products.

Additionally, FSNI and FSSI maintain shared ownership of Liquorland through Foodstuffs New Zealand Limited. Liquorland is a specialist liquor retailer with a network of over 175 individual owner-operated liquor stores nationwide.²⁵

In addition to its 316 retail stores, FSNI operates Gilmours Wholesale Limited (**Gilmours**), a foodservice wholesale business. Gilmours has seven cash and carry stores in the North Island which are run under an independent owner/operator model.²⁶

Similarly, in addition to its 193 retail stores, FSSI owns and operates Trents Wholesale Limited (**Trents**), a commercial wholesale business. Trents has five locations in the South Island and operates under a support centre corporate model.²⁷

On 15 December 2023, the Commission registered an application from FSNI and FSSI seeking clearance to merge into a single national entity.²⁸ The Commission's review of this clearance application is a separate process under Part 3 of the Commerce Act and is not covered in this report.²⁹

Woolworths New Zealand

WWNZ operates and supplies 193 stores under the Countdown/Woolworths banner across the country including five dark stores. WWNZ is currently in the process of rebranding all Countdown stores to trade under the Woolworths banner.³⁰ For the purposes of this report, we refer to these 193 stores as Woolworths.

Additionally, WWNZ owns Wholesale Distributors Limited, which acts as the franchisor for 74 owner-operated SuperValue and FreshChoice stores.

25 Liquorland "About Liquorland" (accessed 12 August 2024), <https://www.liquorland.co.nz/about>

26 Commerce Commission analysis of industry information.

27 Foodstuffs North Island & Foodstuffs South Island "Notice seeking clearance for the merger of Foodstuffs North Island Limited and Foodstuffs South Island Limited" (14 December 2023) at paragraph 36, https://comcom.govt.nz/_data/assets/pdf_file/0027/338436/FSNI-FSSI-clearance-application-14-December-2023.pdf.

28 Commerce Commission "Foodstuffs North Island and Foodstuffs South Island seek clearance to merge" (18 December 2023), <https://comcom.govt.nz/case-register/case-register-entries/foodstuffs-north-island-limited-and-foodstuffs-south-island-limited/media-releases/foodstuffs-north-island-and-foodstuffs-south-island-seek-clearance-to-merge>.

29 Information on the merger process can be found at <https://comcom.govt.nz/case-register/case-register-entries/foodstuffs-north-island-limited-and-foodstuffs-south-island-limited>.

30 Woolworths Group "Countdown to Woolworths" (18 July 2023), <https://www.woolworthsgroup.com.au/au/en/media/latest-news/2023/countdown-to-woolworths.html>.

Other retailers offering groceries

The following section discusses retailers who offer groceries to consumers using different business models from the RGRs. Despite the number of examples listed, these retailers make up a small part of New Zealand's grocery market. These retailers are not currently in competition with the RGRs for consumers' one-stop shop. Most lack product range to compete for a main shop. Apart from a limited number of exceptions, they do not compete with the RGRs on price as they lack scale and favourable buying terms (eg, promotional funding) to offer competitive pricing.

Instead, other retailers compete for top-up shops through offering convenience or for secondary shops by offering goods not available at the RGRs' retail stores. Many of these retailers are geographically limited to Auckland or the main cities.

We have outlined notable other retailers based on their offerings and business models below. While a discussion on recent entries, expansions, and exits of non-RGR retailers is provided later in this chapter.

Specialist and convenience grocery retailers

Specialist supermarkets

Specialist supermarkets compete for secondary shops of specific consumer segments by selling a wider range of specialised product categories than the RGRs. This can include health and organic foods, premium quality food, and food from specific countries/regions.

These supermarkets are mostly found in major cities. Notable examples of specialist supermarkets include:

- Bin Inn, a wholefood and specialty grocery retailer with 38 stores nationwide.
- Commonsense, an organic food retailer with five stores in Auckland and Wellington.
- Farro Fresh, a premium supermarket with seven stores in Auckland.
- Hesari, a Middle Eastern/Mediterranean supermarket/bakery with three stores across Auckland, as well as a wholesale division.
- Japan Mart, a specialist Japanese retailer with nine stores in Auckland, Wellington, and Christchurch.
- Paddock to Pantry, a primarily online premium supermarket which delivers across North and South Islands and has one store in Auckland.
- Tai Ping, an Asian supermarket with 10 stores in Auckland, as well as a wholesale division.
- The South African Shop, a specialist South African food retailer with three stores across Auckland.
- Yogijis Food Mart, a specialist Indian food retailer with seven stores nationwide.

In addition to bricks and mortar stores, some of these specialist supermarkets also offer online delivery services.

Convenience retailers

Convenience retailers have a narrower range of goods compared to supermarkets and are focused on top-up shopping missions (for example, milk, bread, tobacco) and on-the-go snacks, drinks and convenience foods. Convenience retailers are often open longer hours than other grocery retailers.

Notable examples of convenience retailers include:

- Night 'n Day, with 53 stores nationwide.
- MetroMart, with 23 stores, most of which are in the Christchurch area.
- Circle K, with six stores spread across the Auckland region.

In addition, full-service petrol stations fall into this category of convenience grocery retailing. The petrol station store can be run by the fuel retailer or by a separate party.

FSSI's On the Spot banner falls into this same category of convenience retailer with both stand-alone dairies and petrol station stores.

Alternative options for purchasing groceries

Clearance stores

Clearance stores operate predominantly on heavy discounts for consumers through selling products that are end of line, cancelled export orders, or short-dated stock. Due to their business model, the product range at these retailers can be highly variable.

Notable examples of clearance stores include:

- Reduced to Clear, a grocery focused clearance retailer with 14 stores across the North Island and one in Christchurch.
- Crackerjack, a general clearance retailer with 15 stores across the North Island.
- Save More, a grocery focused clearance retailer with three stores in the Canterbury region.

Wholesale clubs

Wholesale clubs are large warehouse stores that sell a wide variety of goods including groceries to members. Some clubs place a large emphasis on grocery products, whereas others have a smaller focus on grocery. Goods are often sold in large wholesale quantities; but unlike food service wholesalers, membership is open to anyone for purchase. A notable example in New Zealand is Costco, an international warehouse club with one store in Auckland. Costco places a strong emphasis on groceries, offering a range of grocery items.

Food service wholesalers

Food service wholesalers primarily serve wholesale customers such as cafes, restaurants, and charities. However, some operate cash and carry stores that allow members of the public to shop in-store. For example:

- Moore Wilson's, a Wellington-based wholesaler with four cash and carry stores in the region.

Single-category grocery retailers

Single-category grocery retailers specialise in particular product categories. These include greengrocers, butchers, bakeries, pet stores, and pharmacies. Notable examples of single-category grocery retailers include:

- The Mad Butcher, which provides meats and butchery services at 21 stores nationwide.
- The Chemist Warehouse, which provides a variety of pharmacy and chemist goods at over 50 stores nationwide.
- Animates, a pet food and accessories specialist retailer with 53 stores nationwide.

Along with bricks and mortar retailers, there are also online-only specialist retailers. Notable examples of online-only retailers include:

- Wonky Box, an online fruit and vegetable retailer which sells boxes of misshaped/lower grade produce.
- The Meat Box, a meat pack delivery service, providing meat boxes nationwide.

Meal kit providers

Meal kit providers operate on a subscription model where households receive ingredients and recipes to prepare home-cooked meals. Notable examples of meal kit providers include:

- My Food Bag, which delivers meal kits of ingredients to most urban areas of New Zealand.
- HelloFresh, which delivers individually packed meal kits to most towns and cities in New Zealand.
- Woop, which delivers meal kits containing pre-prepared ingredients to cities in the North and South Island.

Retailers who offer limited grocery categories as part of wider offering

General merchandisers

These retailers provide a diverse array of products across multiple categories, including clothing, electronics, homeware, and in some cases groceries. The focus of these retailers is providing a comprehensive selection of essential items in one location. Notable examples of general merchandisers include:

- The Warehouse, a general merchandiser with 88 stores nationwide which sell groceries.
- Kmart, a general merchandiser with 27 stores nationwide. Their grocery offering is generally limited to confectionery, pet food and health and beauty products.

Hardware stores

These retailers generally provide hardware equipment and tools for home and garden improvement. Additionally, some chains provide goods typically available in grocery stores, such as pet care, laundry and cleaning supplies. Notable examples of hardware stores include:

- Bunnings, an Australian hardware chain with 41 stores across New Zealand. Bunnings sells a limited range of grocery items such as pet care products, and laundry and cleaning supplies.
- Mitre 10, a New Zealand cooperative of 84 independently owned hardware stores. Mitre 10 sells a limited range of grocery items such as pet food, and laundry and cleaning supplies.

Wholesalers

Grocery or producer wholesalers are intermediaries who acquire products from suppliers and on-sell to grocery retailers.

All the RGRs' operations are vertically integrated, with integrated wholesale functions. This allows them to service their own retail businesses and their franchises. Other retailers can purchase groceries on a wholesale basis from the RGRs through the wholesale access regime.³¹ Further information on the wholesale access regime is provided in Chapter 7.

Apart from the RGRs there are some wholesale options for single product categories such as fresh produce (eg, T&G Fresh, Fresh Direct, MG Marketing), meat (eg, JR Wholesale Meats, Wholesale Meats Direct), and some categories such as bread and milk, where a large supplier will perform a wholesale function through a direct to store delivery model.

There are also wholesale options for international products (eg, Tai Ping, Wang Mart, MZ Holdings).

Separate wholesalers also exist to supply restaurants and other foodservice retailers. While these businesses focus on foodservice, they do supply some convenience stores and other grocery retailers. Two of these are the RGR-operated Gilmours (FSNI) and Trents (FSSI). There are also independent foodservice wholesalers such as Bidfood and Service Foods.

Suppliers

Suppliers may be growers of fresh produce, farmers, manufacturers, or processors.

In 2023, each RGR had between 1,800 and 2,500 suppliers providing products to them, including small local growers and craft food producers, iwi-owned businesses, through to large multinationals.³²

As we noted in the Market Study, suppliers are often dependent on RGRs as their main route for selling their products to consumers.³³ Some suppliers are more reliant on the RGRs (and hence their bargaining power) than others.

Discussion of supplier-related issues, including an overview of the measures to protect suppliers, is provided in Chapter 8.

31 Part 3 of the Act relates to the wholesale supply of groceries and sets out the requirements on RGRs to facilitate commercial agreements for the wholesale supply of groceries.

32 Commerce Commission analysis of industry information.

33 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022), at p. 324, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

GROCERY INDUSTRY HAS BEEN IMPACTED BY RECENT DEVELOPMENTS KUA PĀPĀNGIA TE AHUMAHĪ HOKO KAI I NGĀ MAHI O NĀ TATA NEI

Observations:

- COVID-19 was an unprecedented disruption on the economy.
- Since mid-2021 New Zealand has been experiencing a period of high inflation.
- COVID-19 led to an increasing adoption of online grocery shopping between 2020 and 2022. However, the end of COVID-19 restrictions and cost of living pressures have led consumers back in store.
- Extreme weather events in early 2023 impacted the agriculture industry, causing a spike in produce prices.
- Significant grocery-specific regulation was introduced in mid-July 2023.

This report covers a period of economic disruption

The New Zealand economy has been impacted by significant events in recent years.

COVID-19 was an unprecedented disruption on the economy

The whole economy was affected by the series of lockdowns implemented as a measure to prevent the spread of COVID-19. Lockdowns began in March 2020 and persisted until late 2021. Auckland and Northland regions were particularly impacted by the lockdowns, having longer periods of social distancing and preventative measures.³⁴

RGRs' bricks and mortar stores were given essential service status and allowed to remain open even under the tightest restrictions, while other grocery retailers' trading was restricted.

Food supply chains were significantly impacted by the pandemic.³⁵ This contributed to a rise in grocery prices, alongside other economically adverse outcomes.

Extreme weather events have impacted the agricultural industry

The Auckland Anniversary weekend floods and Cyclone Gabrielle in early 2023 impacted many sectors of New Zealand's economy. The Treasury estimated the cost of repairing the damage from these events to be between \$9-\$14.5 billion.³⁶ The agricultural industry was heavily affected by the extreme weather, creating spikes in the prices of fresh produce.

34 Department of the Prime Minister and Cabinet "Timeline of significant COVID-19 events" (8 October 2023), <https://www.dPMC.govt.nz/sites/default/files/2023-10/pr-timeline-significant-events-activities.pdf>.

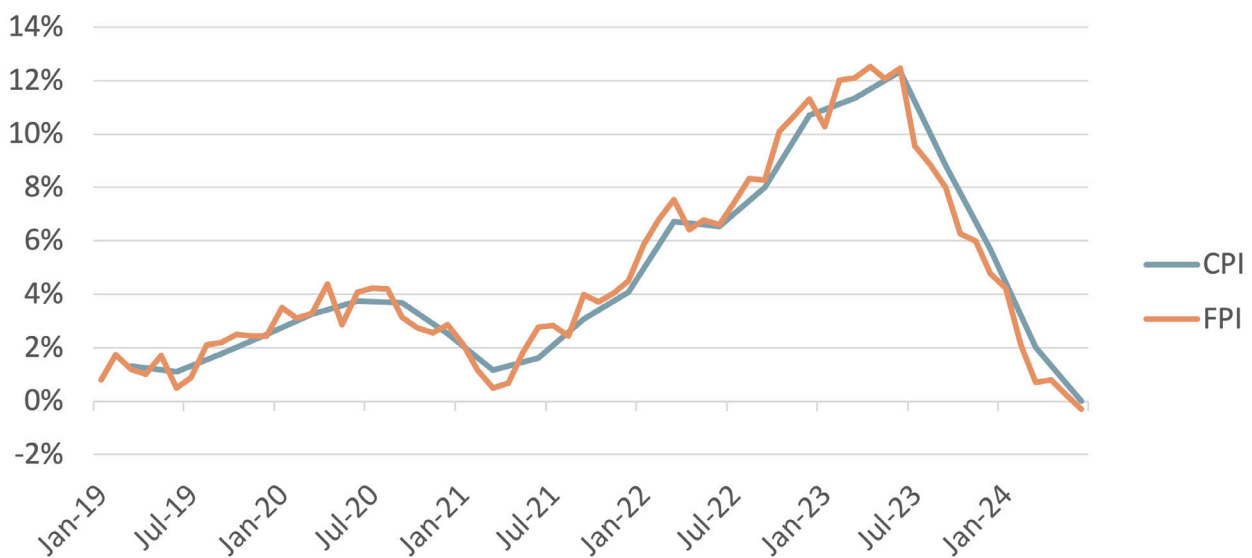
35 International Food Policy Research Institute "COVID-19 and rising global food prices: What's really happening?" (11 February 2023), <https://www.ifpri.org/blog/covid-19-and-rising-global-food-prices-whats-really-happening/>.

36 New Zealand Treasury "Impacts from the North Island weather events" (27 April 2023), <https://www.treasury.govt.nz/sites/default/files/2023-04/impacts-from-the-north-island-weather-events.pdf>.

Period of high inflation

As shown in Figure 2, since early 2022 New Zealand has been experiencing a period of high inflation. The Consumers Price Index (CPI) and Food Price Index (FPI) both had high annual percentage increases from early 2022, peaking in mid-2023. This resulted in higher costs for consumers across a range of expenses. See Chapter 5 for further analysis of price changes.

Figure 2: Consumers Price Index and Food Price Index annual percentage change January 2019 to June 2024



Source: Commission analysis of Statistics New Zealand data³⁷

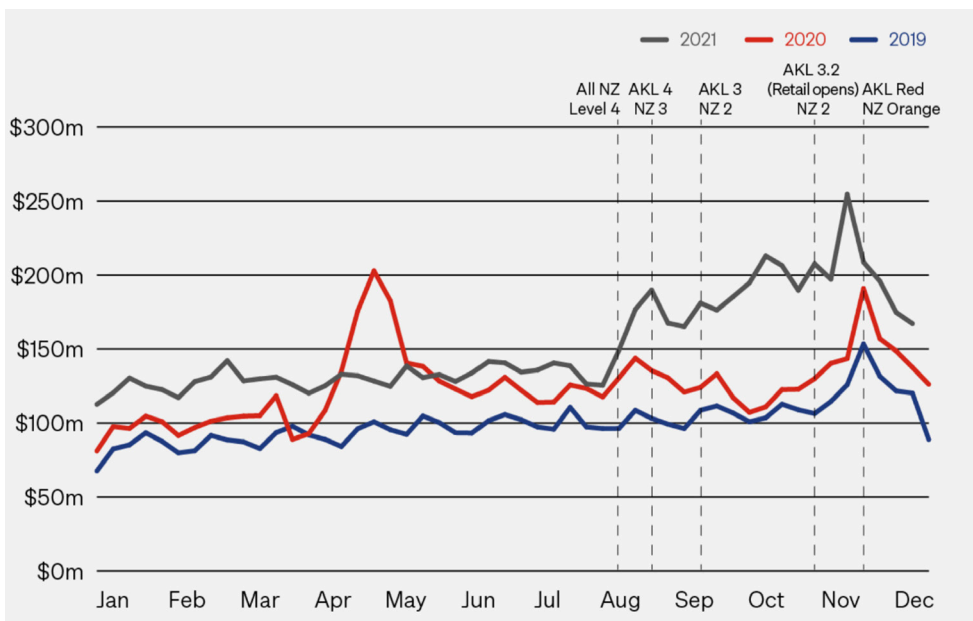
37 Statistics New Zealand "Consumers Price Index" (January 2019-January 2024), <https://www.stats.govt.nz/indicators/consumers-price-index-cpi/>.

Consumer preferences shift in response to COVID-19 and economic environment

Shift to online shopping

The COVID-19 pandemic dramatically reshaped consumer behaviour. With lockdowns, social distancing, and health concerns, consumers in New Zealand increasingly turned to online shopping as a safer and more convenient alternative to in-store purchases (see Figure 3 below).³⁸

Figure 3: Online shopping spend in New Zealand 2019–2021



Source: NZ Post³⁹

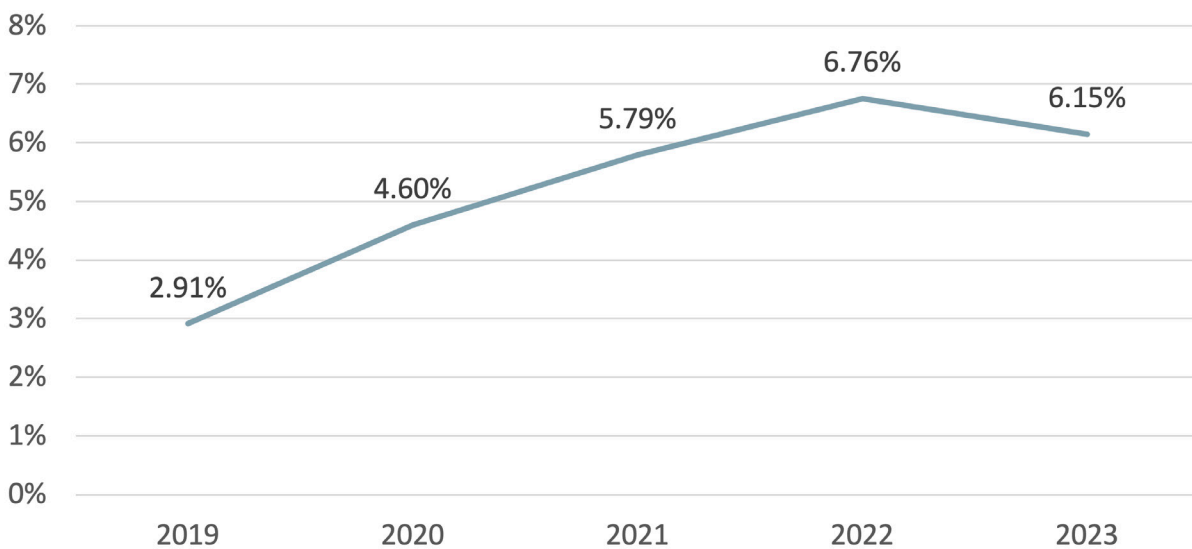
38 NZ Institute of Economic Research “Unmasking COVID-19’s economic impact” (January 2023), <https://www.nzier.org.nz/hubfs/Public%20Publications/Public%20good/WP2023-01%20Unmasking%20the%20economic%20impacts%20of%20COVID-19.pdf>.

39 NZ Post “2021’s seismic shopping shift” (11 February 2022), <https://www.nzpostbusinessiq.co.nz/latest-ecommerce-insights/2021s-seismic-shopping-shift>.

This shift to online shopping extended to grocery shopping. As shown in Figure 4, the proportion of RGRs’ sales made via click and collect or online delivery increased between 2019 to 2022. We have also seen data suggesting similar trends for other grocery retailers with an online offering.

New options for online delivery outside the RGRs became available during and after this time. For example, online supermarket Supie and online fruit and vegetable retailer Wonky Box entered the market. Kennerly Gourmet Grocery has steadily expanded in the online grocery space across their various brands, including Meat Box and Paddock to Pantry. In addition, rapid delivery options have expanded with UberEats adding grocery ordering functionality, and start-up Teddy launching.

Figure 4: Online sales as a percentage of total RGR sales – year ended 30 June⁴⁰



Source: Commission analysis of industry data

⁴⁰ Based on click & collect and online delivery revenue. Analysis excludes SuperValue and FreshChoice banners due to data limitations.

Focus on value

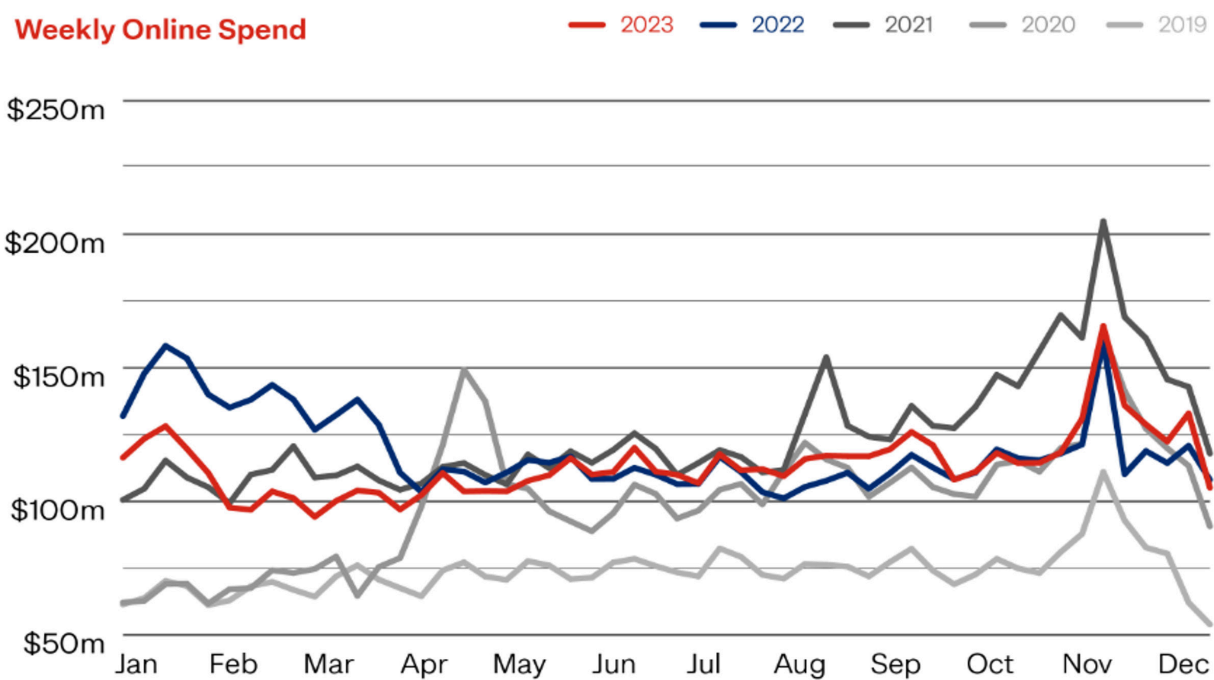
High inflation since mid-2021 has affected the cost of many goods and services, adding cost of living pressures for many New Zealand households. The increasing price of groceries is of particular concern for many.⁴¹

The post-pandemic removal of restrictions coupled with a surge in living costs has prompted consumers to revert to in-store shopping to better select items at favourable prices and minimise additional online transaction costs.⁴²

This is reflected in Figure 4, which shows a slight decrease in the importance of online sales for the RGRs in the year to 30 June 2023.

As shown in Figure 5, this correlates with broader online shopping trends, which saw 2023 online spending drop 4% below 2022 levels.

Figure 5: Online shopping spend in New Zealand 2019–2023



Source: NZ Post⁴³

41 Radio New Zealand “Grocery prices consumers’ biggest financial concern – survey” (15 March 2024), <https://www.rnz.co.nz/news/business/511763/grocery-prices-consumers-biggest-financial-concern-survey>.

42 NZ Post “How online shoppers navigated 2023’s rough economic seas” (16 February 2024), <https://www.nzpostbusinessiq.co.nz/latest-ecommerce-insights/how-online-shoppers-navigated-2023s-rough-economic-seas-0>.

43 NZ Post “How online shoppers navigated 2023’s rough economic seas” (16 February 2024), <https://www.nzpostbusinessiq.co.nz/latest-ecommerce-insights/how-online-shoppers-navigated-2023s-rough-economic-seas-0>.

New regulation of the grocery industry introduced

Commission undertook a Market Study

At the request of the Government, the Commission undertook a Market Study into competition in the retail grocery sector between late 2020 and March 2022.

The Market Study's final report found that competition in the retail grocery sector was not working well for consumers. In the final report the Commission made a range of recommendations to enhance competition in the grocery sector. Specifically, there are recommendations to:⁴⁴

- improve conditions for entry and expansion;
- improve competition for the acquisition of groceries;
- improve the ability of consumers to make informed decisions; and
- establish a new grocery sector regulator and dispute resolution scheme.

The Government responded with regulatory changes

Commerce (Grocery Sector Covenants) Amendment Act 2022

On 19 May 2022, the Minister of Commerce and Consumer Affairs (the **Minister**) introduced the Commerce (Grocery Sector Covenants) Amendment Bill, which sought to amend the Commerce Act.⁴⁵ The Bill directly addressed one of the Market Study's recommendations of banning restrictive covenants on land and exclusive covenants in leases.

The Bill was passed by Parliament and came into force on 30 June 2022.⁴⁶

Grocery Industry Competition Act 2023

On 30 May 2022, the Minister formally responded to the full set of Market Study recommendations.⁴⁷ The Minister accepted the majority of the recommendations. The Grocery Industry Competition Bill was introduced to Parliament on 21 November 2022.

The Bill was passed by Parliament and came into force on 10 July 2023, although the RGRs were given time to comply with certain provisions of the wholesale access regime.⁴⁸

44 The full list of recommendations can be found in the Market Study final report at chapter 9, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

45 Beehive "Govt helps supermarket shoppers get a fair deal" (19 May 2022), <https://www.beehive.govt.nz/release/govt-helps-supermarket-shoppers-get-fair-deal>.

46 Commerce (Grocery Sector Covenants) Amendment Act 2022.

47 Beehive "Government acts on supermarket duopoly" (30 May 2022), <https://www.beehive.govt.nz/release/government-acts-supermarket-duopoly>.

48 The RGRs were required to comply with s 36(1) and s 38(1) of the Act within two months, and s 44(1) within three months, of the Act coming into force.

The Act contains a set of measures to improve competition, including:

- Establishing a new wholesale access regime that creates obligations on RGRs to set up systems to facilitate wholesale supply to other grocery retailers. This is intended to make it easier for businesses to enter the retail market and support the growth of existing retailers. Chapter 7 provides our initial assessment of the RGRs' implementation of wholesale offers.
- Allowing for the creation of a Grocery Supply Code (the **Code**) that sets out the rules of engagement between suppliers and the RGRs.⁴⁹ Further information on the Code is provided in Chapter 8.
- Creating the framework for a new dispute resolution body to deal with disputes between RGRs and their suppliers or wholesale customers. Further information on the dispute resolution scheme is provided in Chapter 8.
- Amending the Fair Trading Act to extend protections against unfair contract terms to grocery supply contracts and to allow private parties to take enforcement action.^{50,51}
- Providing for regulations to be made on the recommendation of the Minister to enable collective bargaining by suppliers.⁵² No regulations have been passed at this stage.

Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023

On 23 November 2022, Government agreed to implement mandatory unit pricing for grocery products by way of a Consumer Information Standard under the Fair Trading Act.⁵³ The Consumer Information Standard directly addresses one of the Market Study's recommendations.

After a period of consultation, the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 were finalised on 31 July 2023.⁵⁴ The Consumer Information Standard came into force on 31 August 2023; however, a transition period of one year for physical stores and two years for online stores applies.

Further information on unit pricing is provided in Chapter 5.

49 The Grocery Supply Code came into force on 28 September 2023.

50 Refer sections 202 to 215 of the Act.

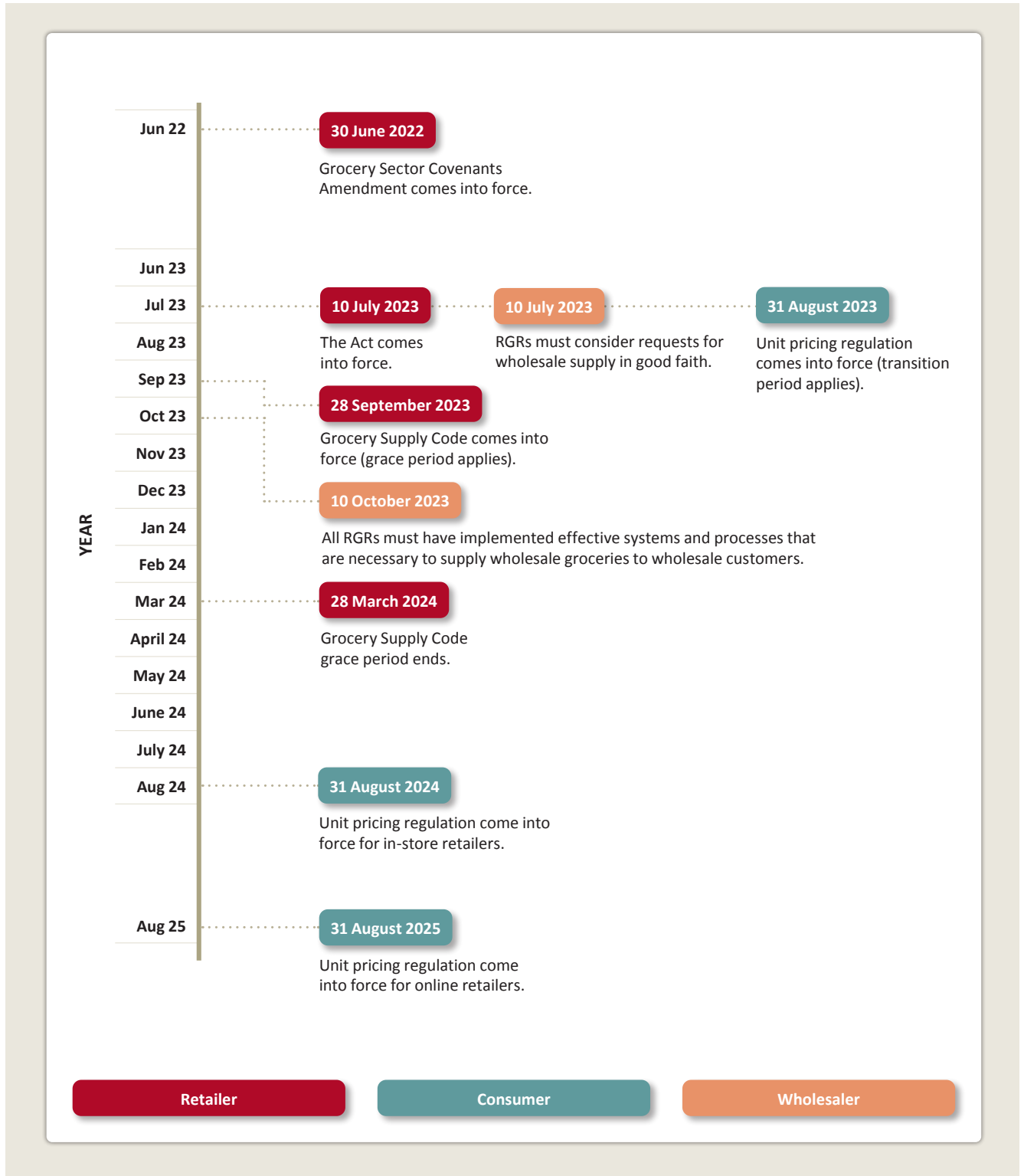
51 Under the Act any person may bring proceedings under the High Court for a compensatory order (s 134), vary or cancel a contract (s 136), and/or an injunction (s 137).

52 Refer sections 184 to 189 of the Act.

53 Cabinet minute "Mandatory unit pricing for grocery products" (23 November 2022), <https://www.mbie.govt.nz/dmsdocument/25857-mandatory-unit-pricing-for-grocery-products-minute-of-decision-proactiverelase-pdf>.

54 Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023.

Figure 6: Timeline of legislation change



RGRs response to market developments

RGR store networks continue to evolve

The RGRs have continued to evolve their store networks in recent years. Between February 2021 and December 2023, there was a net decrease of one RGR store overall. However, as illustrated in Table 2, some RGRs have expanded their store networks, while others have experienced a net decrease in stores with more closures than openings.

Table 3 below provides a detailed breakdown of the number of stores opened and closed, and the resulting net change by banner for the three RGRs. While both FSNI and FSSI have seen significant activity in store openings and closures, FSNI's changes took place on its larger banners (New World and Pak'nSave), whereas FSSI's changes predominantly affect its smaller convenience banners. WWNZ's opening and closing of stores in both small and large banners are part of a significant rebranding effort.

Table 2: Net change in store count between February 2021 and December 2023

RGR	Net change
FSNI	+6
FSSI	-13
WWNZ	+6

Source: Commission analysis of information provided by RGRs

Table 3: Store changes by banner between February 2021 and December 2023

RGR	Banner	Closed stores	Opened stores	Net change
FSNI	Four Square	13	13	0
	New World	2	6	4
	Pak'nSave	0	2	2
FSSI	Four Square	3	0	-3
	New World	0	1	1
	On The Spot	16	5	-11
	Pak'nSave	0	0	0
WWNZ	Countdown/Woolworths	5	11	6
	SuperValue/FreshChoice	11	11	0

Source: Commerce Commission analysis of information provided by RGRs

Impact of store closures varies

Some closures merely reflect a store de-bannering: the store continues to serve the community but under a different banner or independently. From February 2021 to December 2023, 10 stores de-bannered from FSNI and FSSI.

A closure might also occur when there is another equivalent store nearby, maybe as part of a store relocation or store network optimisation. For example, Countdown Central Mall in Rotorua closed in May 2024, with Woolworths Rotorua located minutes away.⁵⁵

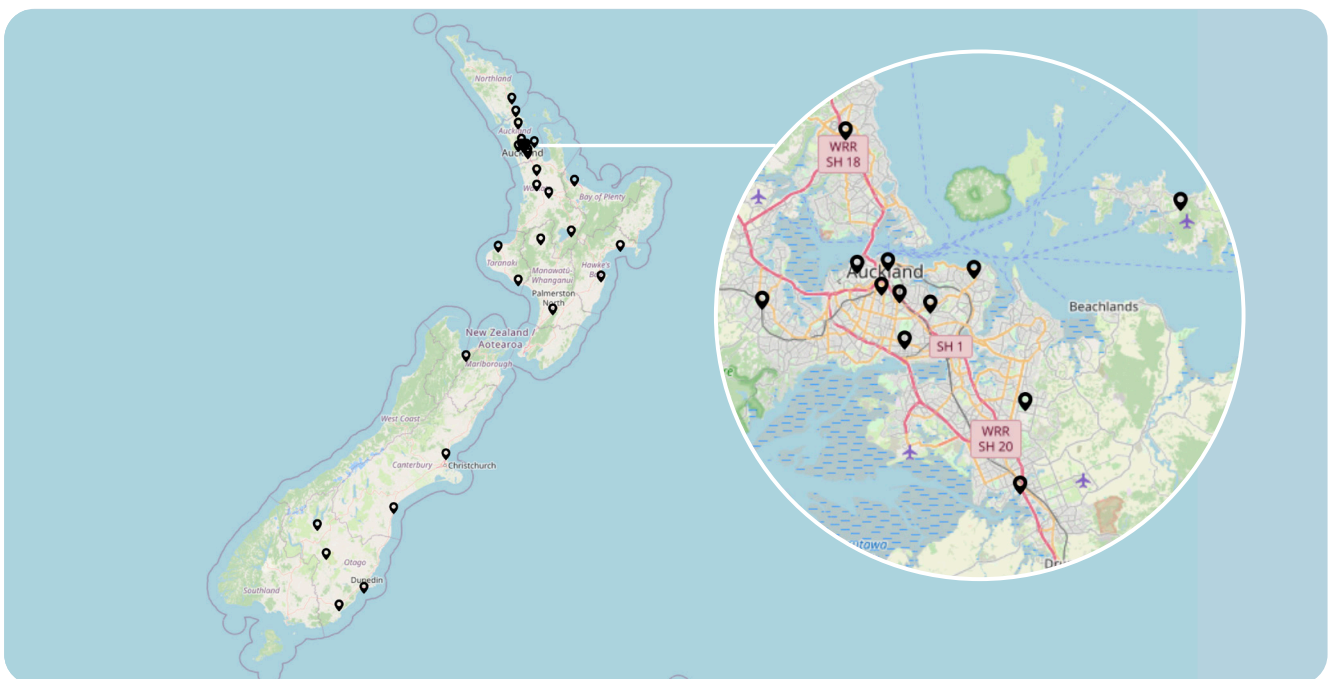
However, some closures can have a more severe impact, leaving a community without local supermarket access, such as Flaxmere New World's closure in February 2024.⁵⁶

Majority of new RGR stores in the North Island

There is a concentration of store openings in the North Island, with a total of 27 new stores, compared to 11 in the South Island, as illustrated in Figure 7.

Looking ahead, FSNI plans to open at least six new stores in 2024.⁵⁷ WWNZ has been granted approval under the Overseas Investment Act 2005 (**Overseas Investment Act**) to acquire up to 75 hectares of local land in a maximum of 75 transactions by 28 February 2027.⁵⁸ This will allow WWNZ to develop more supermarkets and facilities to support them.

Figure 7: RGR store openings from February 2021 to December 2023



Source: Commission analysis of information provided by major grocery retailers (where coordinates were provided), OpenStreetMap

55 NZ Herald "Countdown Central Mall in Rotorua closing in May" (10 April 2024), <https://www.nzherald.co.nz/rotorua-daily-post/news/countdown-central-mall-in-rotorua-closing-in-may/GFYNVWBOYVBX5KPK3DRAU2MBEE/>.

56 NZ Herald "Flaxmere New World to close, suburb of more than 10,000 loses only supermarket" (19 January 2024), <https://www.nzherald.co.nz/hawkes-bay-today/news/flaxmere-new-world-to-close/52DERZSARJE7HMFVQFQXGMWOK7I/?ref=readmore>.

57 Foodstuffs North Island Grocery Market Regulation Dashboard, <https://www.foodstuffs.co.nz/Grocery-Market-Regulation-Dashboard>.

58 National Business Review News "Woolworths NZ buys up more local land in expansion surge" (28 March 2024), <https://www.nbr.co.nz/property/woolworths-nz-buys-up-more-local-land-in-expansion-surge/>.

WWNZ rebranding programme underway

WWNZ started a significant rebranding effort in 2023. By December 2023, 29 stores had rebranded from Countdown to Woolworths.^{59,60} A further 38 stores were rebranded in the first half of 2024.⁶¹

WWNZ is also in the process of rebranding SuperValue stores to the FreshChoice banner. From February 2021 to December 2023, 11 stores rebranded.⁶² All remaining SuperValue stores are expected to be converted to FreshChoice in the future.⁶³

RGRs' online offerings increasingly available

In response to consumers' preference for online shopping, we have observed an expansion of the RGRs' online offerings. Some have offered click and collect services at more stores or expanded the types of delivery services. These changes are outlined in the investment and innovation section of Chapter 4.

Other responses

In response to consumers' growing focus on value, we have seen the RGRs run 'price freeze' campaigns and highlight their long-term price promotions. Further information on these is provided in Chapter 5.

59 Woolworths Group "Countdown to Woolworths" (18 July 2023), <https://www.woolworthsgroup.com.au/au/en/media/latest-news/2023/countdown-to-woolworths.html>.

60 Commerce Commission analysis of information supplied by WWNZ.

61 Commerce Commission analysis of information supplied by WWNZ.

62 Commerce Commission analysis of information supplied by WWNZ.

63 FMCG Business "New FreshChoice store for Papakura" (15 November 2023), <https://www.fmcbusiness.co.nz/new-freshchoice-store-for-papakura/>.

OBSERVED ENTRY AND EXPANSION

TE ĀHUA O TE WHAKAURUNGA ME TE WHAKAWHĀNUITANGA I TIROHIA

Observations:

- **Costco opened a store in Auckland in September 2022, marking the first large scale entrant into the New Zealand grocery market in over a decade.**
- **The Warehouse is expanding the range of groceries offered in its nationwide store network.**
- **Other bricks and mortar grocery retailers have had mixed success, with some retailers expanding their store networks and range while others closed stores.**
- **Online-only grocery retailers have struggled over the past few years with several going out of business.**

Large scale developments

In this section we look at two case studies – Costco’s entry into New Zealand and The Warehouse’s increased focus on groceries.

Costco enters New Zealand with store in Auckland

Costco is a wholesale club which offers a wide range of goods and services to its members for an annual fee of \$60 per year.⁶⁴ Costco’s core offering is grocery, though their proposition differs from the RGRs, Costco carry a narrower range of grocery products, many of which are in large wholesale quantities.⁶⁵

Costco launched its first store in New Zealand in West Auckland on 28 September 2022, following their fuel outlet which opened five months prior at the same site.⁶⁶

Costco’s entry into New Zealand is significant as it is the first large scale entrant into the New Zealand grocery market in over a decade. In addition, Costco is a large, well-known retailer with over 870 stores across the Americas, Asia, Europe, and Australia.⁶⁷

64 Business membership costs \$55 per year but only registered businesses can apply.

65 For instance, it has been reported that a typical Costco carries 4,000 stock keeping units compared to the 20,000 stock keeping units found at an average RGR supermarket. Costco Wholesale “2023 annual report” (7 December 2023) at p. 5, https://s201.q4cdn.com/287523651/files/doc_financials/2023/ar/cost-annual-report-final-pdf-from-dfin.pdf; Commerce Commission analysis of industry information.

66 NZ Herald “Costco NZ opening: What makes new store globally unique” (28 September 2022), <https://www.nzherald.co.nz/business/costco-nz-opening-what-makes-new-store-globally-unique/URN4JK5QCSHTGWAYSCXR7FLHY/>.

67 Costco Wholesale Corporation “Costco Wholesale Corporation Reports March Sales Results and Announces an Increase in Its Quarterly Cash Dividend” (10 April 2024), <https://investor.costco.com/news/news-details/2024/Costco-Wholesale-Corporation-Reports-March-Sales-Results-and-Announces-an-Increase-in-Its-Quarterly-Cash-Dividend/default.aspx>.

Given its brand recognition, Costco's store opening generated a lot of consumer interest, with 150,000 paid members signing up by March 2023.⁶⁸

Costco's West Auckland store reported revenue of \$341 million in its first full year of trading; despite this, it still suffered a \$20.5 million net loss.⁶⁹ Costco has made a noticeable impact, for example on grocery market shares in Auckland. This is discussed further in Chapter 4.

Costco's grocery acquisition model leverages its international supply agreements, especially those in Australia where it has 16 stores, to bring goods to New Zealand cheaply. Finding suitable land for expansion is one of its challenges.

There are no new Costco warehouses confirmed for New Zealand; however, there has been ongoing speculation of potential new locations in South Auckland, Wellington, and Christchurch.⁷⁰ Given timeframes for the development of Costco's West Auckland store, we expect that any future stores could take 2-3 years to open after being formally announced.⁷¹

The Warehouse increases focus on grocery

The Warehouse, a prominent retail chain in New Zealand, was established in 1982 and currently has 88 stores nationwide. For most of its history, The Warehouse has had a limited presence in the grocery market with its 'grocery' range largely limited to health/beauty and seasonal confectionery. The exceptions to this are:

- In 2006, The Warehouse launched a hypermarket format 'Warehouse Extra' with a stronger focus on groceries. However, the format was abandoned in 2008.
- Since the Market Study, The Warehouse has expanded its grocery range to include products such as bread and cereal, fruit and vegetables, milk, butter and cheese.

The Warehouse expands grocery range

Since the Market Study, The Warehouse has placed a renewed focus on its grocery offering with notable expansions of its grocery range.

In early 2023, The Warehouse began trialling the sale of fresh fruit and vegetables in select stores, with products such as apples, avocados, bananas, capsicums, carrots, kiwifruit, kūmara, mandarins, onions, and potatoes on offer.⁷²

68 NZ Herald "Costco Wholesale NZ: How many members after five months in business?" (3 March 2023), <https://www.nzherald.co.nz/business/costco-wholesale-nz-how-many-members-after-five-months-in-business/RHJJ6ZO2JBDI3FSGYM3ZDQU5EM/>.

69 Costco Wholesale New Zealand Limited "Annual financial report for the 53 weeks ended 3 September 2023" (11 January 2024), <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/220A978CFBC3D2626378E91CFA8E1702>.

70 Stuff "Costco 'definitely interested' in opening more NZ warehouses" (6 November 2023), <https://www.stuff.co.nz/business/133231951/costco-definitely-interested-in-opening-more-nz-warehouses>.

71 Costco's West Auckland store was announced in June 2019. RNZ "Costco plans on coming to NZ" (11 June 2019), <https://www.rnz.co.nz/news/business/391758/costco-plans-on-coming-to-nz>.

72 NewsHub "Revealed: Ten new The Warehouse stores to sell fresh fruit, vegetables" (10 April 2024), <https://www.newshub.co.nz/home/new-zealand/2024/04/revealed-ten-new-the-warehouse-stores-to-sell-fresh-fruit-vegetables.html>.

And as shown in Table 4, The Warehouse has steadily expanded the trial to further stores. By May 2024, 49% of all Warehouse stores offered fresh fruit and vegetables.⁷³

In 2024, The Warehouse launched a new trial of three frozen ready-to-eat meals in one Auckland store, which was then extended to a second store in Dunedin.⁷⁴ The frozen meals are part of The Warehouse’s private label grocery brand, which includes other products such as butter, pasta, and coffee.

Table 4: The Warehouse stores offering fresh produce products 2023–2024

Date	Number of retail stores
February 2023	6
July 2023	12
October 2023	22
April 2024	32
May 2024	43

Source: Commission analysis of information provided by The Warehouse and public announcements

The Warehouse can leverage store network

The Warehouse’s growing grocery range has significant potential because of its well-established store footprint across New Zealand. Its stores are in prime retail areas with each Warehouse store situated less than 600 metres from one of the major banners (Pak’nSave, Woolworths, and New World). All 48 Pak’nSave stores are within 5km of a Warehouse store.⁷⁵

The proximity of Warehouse stores to the RGRs’ stores means that, if The Warehouse can develop an attractive offering, they have the potential to attract customers to split their shop between RGR stores and The Warehouse. This level of proximity across the country would be difficult to emulate by other retailers in the short term. Further discussion on the issue of access to land is contained in Chapter 6.

73 The Warehouse Group “Almost half of The Warehouse stores now sell fresh produce” (1 May 2024), <https://www.thewarehousegroup.co.nz/news-updates/warehouse/half-the-warehouse-stores-sell-fresh-produce>.

74 The Warehouse Group “The Warehouse heats up frozen meal game in Dunedin” (4 April 2024), https://www.thewarehousegroup.co.nz/news-updates/warehouse/frozen_dunedin.

75 Commerce Commission analysis of industry information.

Grocery sales growing at The Warehouse

The Warehouse's grocery range expansion is reflected in the substantial growth of its grocery sales, which increased by 26.1% in FY23 with notable growth in the pantry, chilled, household cleaning products and pet care categories.⁷⁶

This has led to grocery sales making up a greater portion of total Warehouse sales. For example, in FY23 grocery sales made up 18.7% (\$355 million) of The Warehouse's total sales revenue.⁷⁷

Too early to reach conclusions on The Warehouse's impact on grocery prices and competition

Much of The Warehouse's grocery expansion has occurred in the second half of 2023 and first half of 2024. As our key metrics capture competitive changes up until 30 June 2023, it is too early to reach conclusions on The Warehouse's impact on grocery prices and competition.

At this early stage we have found that:⁷⁸

- The Warehouse's pricing of generic, non-branded butter may have elicited a response from the RGRs.
- There has not yet been a notable shift in market share that can be attributed to The Warehouse.

Further grocery expansion unclear

It is unclear if The Warehouse will continue to roll out its wider grocery range to its full store network.

Compared to Costco, The Warehouse already has an established store network, which they have begun reconfiguring to accommodate their expanding grocery range. However, The Warehouse does not have the same established international supply networks and must work with New Zealand-based suppliers to provide the items expected by consumers.

The Warehouse has been public about its difficulties accessing the goods it needs to expand and compete on prices, particularly with access to wholesale goods from the RGRs.⁷⁹ An assessment of the wholesale access regime is provided in Chapter 7.

Direct supply has also been an issue, as evidenced in Sanitarium's temporary suspension of Weet-Bix supply to The Warehouse.⁸⁰

Finally, The Warehouse has stated that it does not have plans for expansion to become a full-scale supermarket chain.^{81,82}

76 The Warehouse Group "2023 Integrated Annual Report" (27 October 2023), <https://www.twgannualreport.co.nz/>.

77 The Warehouse Group "2023 Integrated Annual Report" (27 October 2023) at p. 16, <https://www.twgannualreport.co.nz/>.

78 Commerce Commission analysis of industry information.

79 RNZ "Two major grocery operators still stifling competition in grocery sector, The Warehouse says" (24 March 2023), <https://www.rnz.co.nz/news/business/486611/two-major-operators-still-stifling-competition-in-grocery-sector-the-warehouse-says>.

80 Newshub "Sanitarium backtracks on decision to cut-off The Warehouse's Weet-bix supply" (3 October 2023), <https://www.newshub.co.nz/home/money/2023/10/sanitarium-backtracks-on-decision-to-cut-off-the-warehouse-s-weet-bix-supply.html>.

81 The Post "The Warehouse says it can't break up the supermarket duopoly" (25 November 2023), <https://www.thepost.co.nz/business/350117839/warehouse-says-it-cant-break-supermarket-duopoly>.

82 Business Desk NZ "The Warehouse's grocery gambit" (24 May 2024), <https://businessdesk.co.nz/article/retail/the-warehouses-grocery-gambit>.

Changes in other core competitors

This section outlines the other core competitors to the RGRs aside from Costco and The Warehouse. These core competitors are captured in the ‘other retailer’ portion of the market share analysis that appears in Chapter 4.

Mixed success of bricks and mortar supermarkets

Other bricks and mortar supermarkets have experienced mixed success since the Market Study:

- Farro Fresh have expanded their operations by opening their seventh store in February 2024.
- Commonsense closed their Milford store in December 2022, one year after it opened.
- Huckleberry was placed in liquidation in May 2024. At the time of its liquidation, it had three retail stores after closing their Royal Oak store in 2023.⁸³
- Bin Inn had a reduction in store count, closing five stores since March 2022.
- Tai Ping have gone through a period of expansion since the Market Study and now have 10 stores across the Auckland region.
- Independent supermarket FIFO (Fresh In Fresh Out) opened in the site of a former Woolworths store in Hamilton in May 2024.

Chain convenience retailers expand

We have observed an expansion of chain convenience retailers since the Market Study. However, it is unclear if there was a net increase in convenience retail stores or if the increase reflected a shift from independent dairies to chain retailers.

- MetroMart had the biggest expansion of any established chain, opening seven stores between March 2022 and June 2023 (five in Christchurch, two in Wellington).
- Circle K opened their sixth Auckland store in 2023.⁸⁴
- Night ‘n Day had a combination of store openings and closures, six openings and five closures (one temporary) between March 2022 and June 2023.

We have also seen Z Energy widen the range of fresh goods in its stores, including milk and bread.

Clearance grocery stores expand

With the current cost of living crisis driving a consumer preference for value, clearance grocery stores have been expanding their store networks, for example:

- Reduced to Clear have expanded their operations in the North Island, opening a new store in Masterton. They have also recently expanded into the South Island, opening a Christchurch store in 2024.
- Save More have opened their third store in Canterbury, with a new location in Ashburton.

83 NZ Herald “Organic grocer Huckleberry in liquidation, three Auckland stores to close, up to 35 staff affected” (31 May 2024), <https://www.nzherald.co.nz/business/organic-grocer-huckleberry-in-liquidation-three-auckland-stores-to-close-up-to-35-staff-affected/B7CPRXPLHVHBRJL7J6MMDHA4WA/>.

84 Circle K “Find your store” (accessed 1 August 2024), <https://circlek.co.nz/find-store/>.

Competitive fringe – bricks and mortar retailers grow, online retailers face challenges

The competitive fringe reflects specialist retailers who are not captured by the market share analysis in Chapter 4. These retailers may provide competitive pressure to the RGRs if consumers are willing to conduct multiple shopping missions.

Difficulties for online-only retailers

One of the most high-profile exits in the sector was the liquidation of online grocery retailer Supie. It was put into voluntary administration in October 2023, eventually leading to the liquidation of the company.⁸⁵ Supie had generated \$6.59 million in revenue and a net loss of \$3.89 million in FY24 at the time of liquidation. It had 73,000 members over its lifetime and 10,000 had placed an order in its last two years.⁸⁶ Supie's trademarks and website domains have since been acquired by online meat delivery business The Meat Box, which sees similarity in the two customer bases.⁸⁷

Grocery delivery businesses Teddy and Honest Grocer ended similarly, with Teddy no longer accepting deliveries and Honest Grocer being subsumed into the owner's other online non-grocery business.^{88,89} Several factors led to the closure of these businesses, such as the difficulty in securing favourable contracts with suppliers and funding to scale the business, access to delivery infrastructure, cost of living pressures and consumer habits reverting to prefer in-store shopping post-COVID.^{90,91}

85 NZ Herald "Supie collapse: Liquidators' first report reveals why grocer failed, how much it owes" (16 November 2023), <https://www.nzherald.co.nz/business/supie-collapse-liquidators-first-report-reveals-why-grocer-failed-how-much-it-owes/6JVB3GW455CUJF5FALGQCC7CZA/>.

86 PwC "Supie Group report for watershed meeting" (1 November 2023), <https://www.pwc.co.nz/pdfs/supie-group/report-for-watershed-meeting.pdf>.

87 NZ Herald "Supie partially snapped up by online butcher The Meat Box" (24 January 2024), <https://www.nzherald.co.nz/business/supie-partially-snapped-up-by-online-butcher-the-meat-box/3XK6SURIJZCG5I3KV5RKPXTX7A/>.

88 Business Desk "Grocery delivery businesses struggle with falling demand" (3 May 2024), <https://businessdesk.co.nz/article/retail/grocery-delivery-businesses-struggle-with-falling-demand>.

89 Newsroom "'Heartbreaking': Grocery start-ups shut down in shadow of big supermarkets" (2 May 2022), <https://newsroom.co.nz/2022/05/02/grocery-start-ups-shut-down-in-shadow-of-big-supermarkets/>.

90 NZ Herald "Groceries are simply failing to deliver" (13 May 2024), <https://www.pressreader.com/new-zealand/the-new-zealand-herald/20240513/281878713468982>.

91 Newsroom "Heartbreaking: Grocery start-ups shut down in the shadow of big supermarkets" (2 May 2022), <https://newsroom.co.nz/2022/05/02/grocery-start-ups-shut-down-in-shadow-of-big-supermarkets/>.

Similar trends are evident with meal kit providers like My Food Bag, which recorded a decreased profit in FY24, falling from \$7.9 million to \$6 million.⁹² Multinational meal kit company HelloFresh recorded an \$11.1 million profit in New Zealand for FY23; it has also recorded decreased earnings internationally from the peak of its popularity during the pandemic.^{93,94}

In comparison, online food box operator Wonky Box appears to be faring better, expanding into the South Island in 2024.⁹⁵

Single category pharmacies expand

The Chemist Warehouse has gone through a period of rapid expansion. It now has over 50 stores across New Zealand, growing from 12 stores in February 2020.⁹⁶ Bargain Chemist has also expanded to 21 stores from 12 in 2020.⁹⁷ Pharmacies and supermarkets have some product overlap, mainly in the health, beauty, personal hygiene and pharmaceutical categories.

Hardware store expands grocery range

Bunnings is also expanding its range to include more grocery items, specifically pet and cleaning products.⁹⁸ This reflects changes made in its Australian stores, which began selling bulk cleaning products in late 2023.⁹⁹

Single category grocery retailers expand their range using the wholesale regime

We have seen some single category grocery retailers expand their range using the RGRs' wholesale offerings. For example, Mad Butcher has expanded to selling general grocery goods including toilet paper, oil, and noodles.

Impact on competition



We will continue to monitor developments, emerging trends and potential issues in the New Zealand grocery industry over time and comment on these in our annual reports.

Chapter 4 presents competition metrics that we are monitoring to quantify the impact of changes in the industry.

- 92 My Food Bag "Annual Report 2024" (May 2024), https://investors.myfoodbag.co.nz/FormBuilder/_Resource/_module/yjlwqod6gUO7ZC-T4Wdz6Q/file/MFB_Annual_Report_FY24.pdf.
- 93 Hello Fresh NZ "HelloFresh NZ Limited Financial Statements year ended 31 December 2022" (17 October 2023), <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/4B27CD80D60A37FC21D3F38EDED71494>.
- 94 BBC "HelloFresh shares plunge 40% after earnings warning" (9 March 2024), <https://www.bbc.com/news/articles/cgevn1kkjwzo>.
- 95 Otago Daily Times "Wonky Box extending South Island reach" (12 February 2024), <https://www.odt.co.nz/business/wonky-box-extending-south-island-reach>.
- 96 Inside Retail "Chemist Warehouse to open 10 stores in New Zealand this year" (26 February 2020), <https://insideretail.co.nz/2020/02/26/chemist-warehouse-to-open-10-stores-in-new-zealand-this-year/>.
- 97 Inside Retail "Bargain Chemist to bring store count to 30 by 2021" (12 March 2020), <https://insideretail.co.nz/2020/03/12/bargain-chemist-to-bring-store-count-to-30-by-2021/>.
- 98 Bunnings "Bunnings announces half year results" (15 February 2024), <https://media.prod.bunnings.com.au/api/public/content/a964ecdbf2924de1947df16a8544f6ef?v=c3a834bb>.
- 99 9News "Bunnings expands bulk cleaning products to compete with supermarkets" (21 November 2023), <https://www.9news.com.au/national/bunnings-cleaning-products-expansion/2ce87496-337a-43ea-a2e0-f0fe95c0a829>.

COMPETITION AT THE RETAIL LEVEL

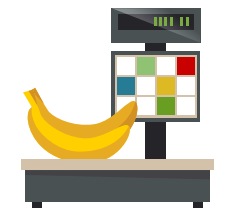
WHAKATAETAETANGA Ā-KAIHOKO

In Chapter 4 we report on measures or indicators which reflect competition in retail grocery markets in New Zealand, including market shares, margins, profitability and investment and innovation.

These measures broadly correlate with the indicators used in the Market Study. We are interested in ongoing monitoring of these measures, and how they change over time.

Competition at the retail level has not improved materially since the Market Study. This assessment is based on analysis of a range of information within the core metrics of the industry, as there is no singular metric which can reveal the state of competition in the market.

Analysis of these core metrics over time will enable us to identify sustained changes in retail competition over the long term.



Observations:

- RGRs continue to maintain high market share despite changes amongst competitors.
- Price competition between the major banners has weakened.
- RGR profitability remains high.
- It is unclear if investments will benefit consumers without strong competition.

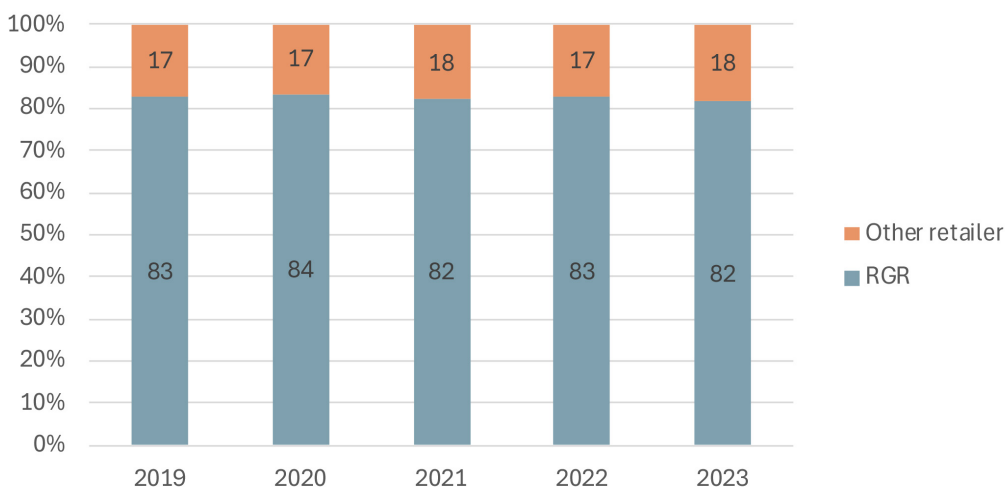
The grocery industry remains highly concentrated

Measures of market shares and market concentration, and in particular changes in these measures over time, can indicate the extent to which firms in a market are subject to competitive constraints.

This analysis calculates market shares based on retailers' sales revenue and uses Statistics New Zealand's definition of the supermarket and grocery industry and its reported retail sales for the industry. For the year to June 2023, retail sales in the grocery industry were \$25.45 billion, up from \$24.08 billion in the year to June 2022.¹⁰⁰

Single category retailers (eg, Chemist Warehouse, Mad Butcher) or fringe competitors like meal kit providers (eg, Hello Fresh, My Food Bag) or food box operators (eg, Wonky Box, Ooooby) are not captured in the 'other retailer' category. Acknowledging The Warehouse's expanding grocery offering, we have included their grocery sales revenue within this analysis.

Figure 8: National market shares 2019–2023



Source: Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data¹⁰³

National market shares stable

The Market Study found that the grocery industry in New Zealand is a highly concentrated market with WWNZ and Foodstuffs (NI and SI) accounting for a combined market share of 80%-90%, and a fringe of smaller competitors.¹⁰¹ It also found that market shares of the RGRs had been stable between 2015 and 2020, indicating that the intensity of competition between the RGRs is muted.¹⁰²

High market shares maintained over a longer period can indicate weak competition.

As shown in Figure 8 below, the RGRs' combined share of the national retail grocery market has remained high and stable since the Market Study, with the RGRs' combined share still exceeding 80% of the grocery market.

100 Statistics New Zealand "Retail trade survey: June 2023 quarter" at table 1, <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

101 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 164, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

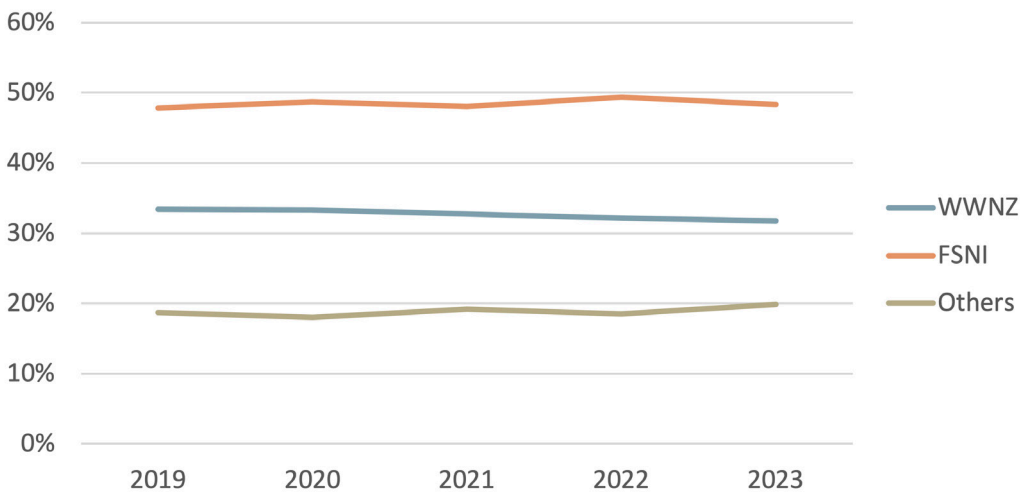
102 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 147, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

103 Statistics New Zealand "Retail trade survey: June 2023 quarter" at table 1, <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

Additionally, RGRs’ individual market shares have barely fluctuated, moving only within a 1% range each year for the last five years. This suggests the RGRs have faced

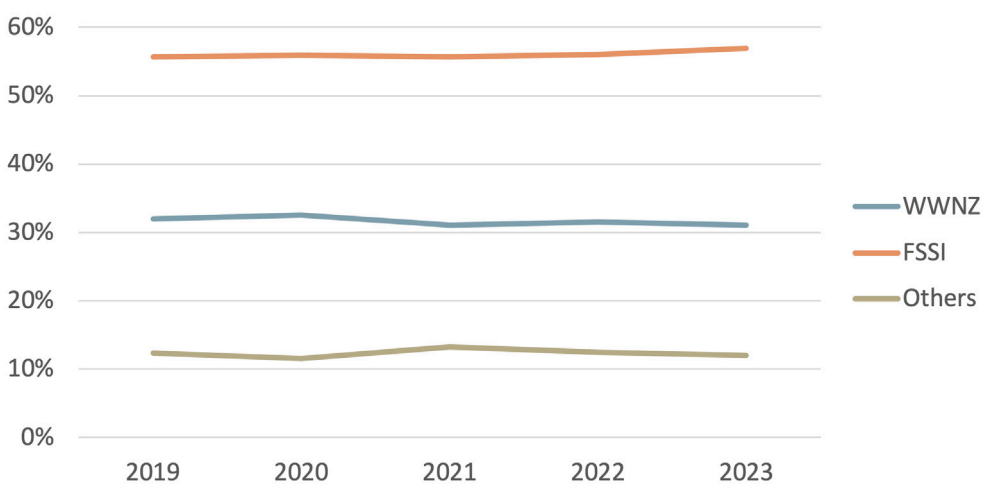
few serious challenges to their market position since the Market Study, and that inter-RGR competition is minimal.

Figure 9: North Island market shares 2019–2023



Source: Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data¹⁰⁴

Figure 10: South Island market shares 2019–2023



Source: Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data¹⁰⁵

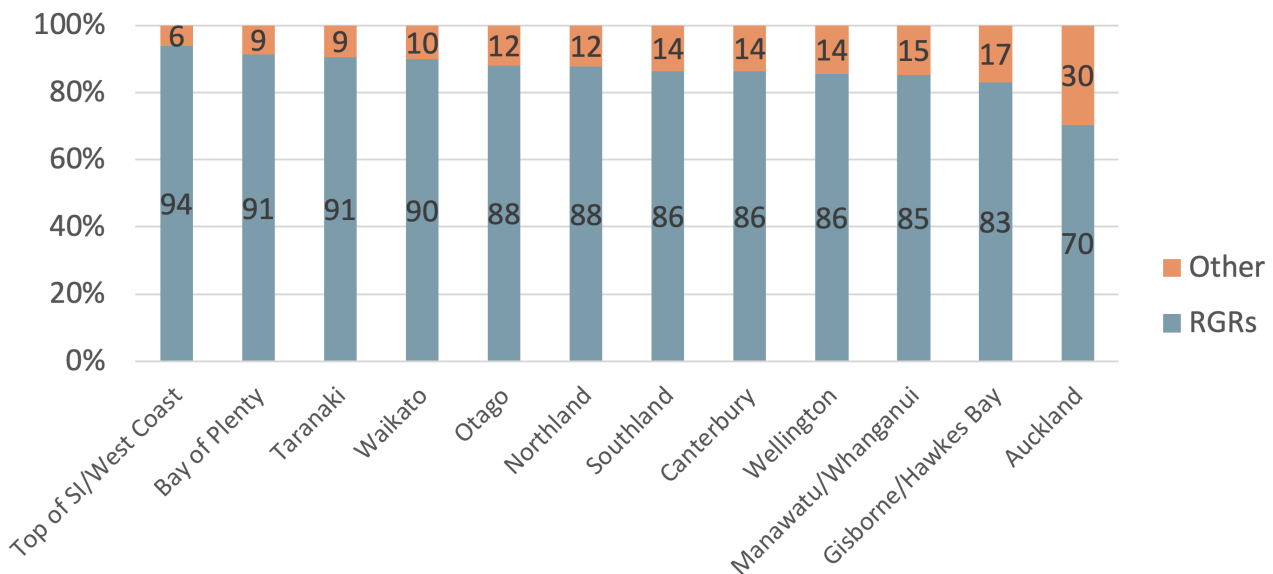
104 Statistics New Zealand “Retail trade survey: June 2023 quarter” at table 1, <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

105 Statistics New Zealand “Retail trade survey: June 2023 quarter” at table 1, <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

Market share varies by region

The RGRs’ market share in Auckland is much lower than in the other regions, at 70% compared to 88% outside of Auckland. In 2023, Marlborough, Nelson, Tasman and West Coast collectively had the highest RGR market share (94%) out of all regions in New Zealand.¹⁰⁶ In 2019, Auckland had 73% RGR market share, and Marlborough, Nelson, Tasman, and West Coast had 92%.¹⁰⁷ This reflects more consumer options on grocery retailers in Auckland, including Auckland-based retailers Costco, Farro Fresh and Tai Ping. Outside of the main centre, New Zealanders have fewer options for their main shop besides RGRs.

Figure 11: Market share 2023 by region



Source: Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data¹⁰⁸

¹⁰⁶ These regions are combined in the Statistics New Zealand Retail Trade Survey regional splits; our analysis has used this convention also for comparison.

¹⁰⁷ Commerce Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data.

¹⁰⁸ Based on custom retail trade survey information obtained from Statistics New Zealand.

Costco's entry has decreased RGR market share in Auckland

RGR market share in Auckland dropped four percentage points between 2022 and 2023 – almost certainly due to the opening of Costco in September 2022.¹⁰⁹ This demonstrates the potential impact that sizeable new competitors can have at the local or regional level in a relatively short time frame, although there has been no notable change at the national level attributable to Costco's entry. While market share data is only one indicator of how competition is evolving, Auckland's market share trend does indicate that a greater range of grocery retailer options is likely beneficial for achieving a more even market share spread.

We have observed market share increases for other competing retailers like The Warehouse. However, these increases have been modest, and to-date have not had a material impact on the RGRs' market shares.¹¹⁰ Additionally, The Warehouse's grocery revenue across all stores for 2023 (\$355 million) is approximately the same as Costco's total revenue at its single store in the first year of trading (\$341 million).^{111,112}

While these estimated market shares do not include fringe retailers, we have observed growth in category specific retailers, which may be competing at the fringe for consumers who undertake secondary shops. This includes the growth of big health and beauty retailers such as Chemist Warehouse and Bargain Chemist.

It is likely regional differences will become more pronounced where sizeable participants like Costco enter in specific locations.

HHI

An alternative measure of market concentration is the Herfindahl-Hirschman Index (**HHI**).¹¹³ HHI takes the market shares of each firm in a market to produce a measure of market concentration.

We estimate that HHI for the grocery industry in 2023 is 3,559.¹¹⁴ This indicates that the grocery market is highly concentrated. For comparison, the fixed broadband market is moderately concentrated with an HHI of approximately 2,235.¹¹⁵ Additionally, there has been no material change in grocery industry market concentration since 2019, when the HHI was 3,593.¹¹⁶

In the long term, with improved competition in the grocery sector we expect that the HHI should fall.

We have committed to measuring HHI over time as part of our Statement of Performance Expectations.¹¹⁷

109 Commerce Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data.

110 Commerce Commission analysis of industry information.

111 The Warehouse Group "2023 Integrated Annual Report" (27 October 2023) at p. 16, <https://www.twgannualreport.co.nz/>.

112 Costco Wholesale New Zealand Limited "Annual financial report for the 53 weeks ended 3 September 2023" (11 January 2024), <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/220A978CFBC3D2626378E91CFA8E1702>.

113 HHI takes better account of the impact of size differences between firms on competition than analysing market shares alone. It is the sum of the square of the market shares.

114 This analysis combines FSNI and FSSI.

115 Commerce Commission "2022 Telecommunications Monitoring Report" 15 June 2023 at p. 30, https://comcom.govt.nz/_data/assets/pdf_file/0028/318907/2022-Annual-Telecommunications-Monitoring-Report-15-June-2023.pdf.

116 Commerce Commission analysis of industry information.

117 Commerce Commission "Statement of Performance Expectations 2024/25" at p. 30, https://comcom.govt.nz/_data/assets/pdf_file/0021/357213/Statement-of-Performance-Expectations-202425.pdf.

Price competition has not been able to limit margin growth

New Zealand consumers have experienced rising prices for many grocery goods over the past few years. RGRs point to rising costs (both from suppliers and the general cost of doing business) as the reason.¹¹⁸ However, higher retail prices are not fully explained by higher costs for retailers, with higher RGR margins and profitability showing that price competition has not been able to limit margin growth in the retail market.

Retail prices have risen faster than costs

Statistics New Zealand's Producer Price Index (PPI) has two main series:

- the Outputs series, which measures changes in the prices received by businesses for the goods and services they produce; and
- the Inputs series, which measures changes in costs paid by businesses. The types of costs that are measured by the PPI Input series include the purchase of materials, fuel, electricity, transport, and rent/lease costs (but excludes other costs such as wages and salaries, and capital expenditure).¹¹⁹

Differences between the rate of change in the PPI Outputs and PPI Inputs series can be used to estimate whether overall margins in an industry are increasing or decreasing.

118 Infometrics "Costs from grocery suppliers to supermarkets increase by 3.0%pa in April" (10 May 2024), <https://www.infometrics.co.nz/article/2024-05-mr-grocery-supplier-cost-index-april-2024>.

119 Although a number of costs are not included in the PPI Inputs series, the costs that the RGRs pay to suppliers ('the purchase of materials') are included and represent a significant proportion of retail prices.

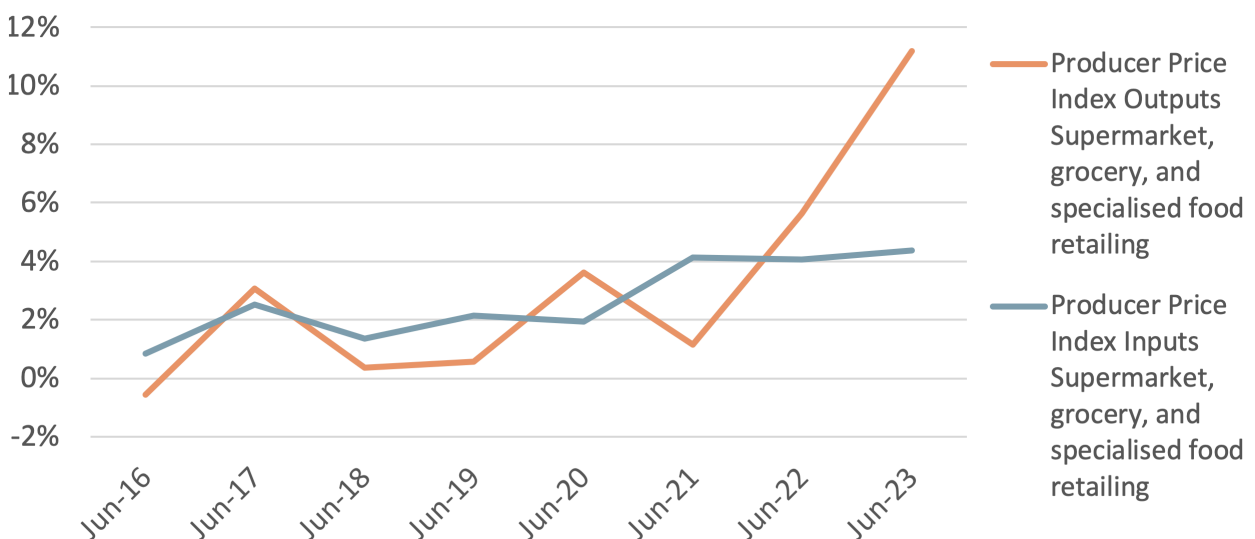
Statistics New Zealand’s PPI series are reported on an industry level, including the ‘Supermarket, grocery, and specialised food retailing’ sub-group.¹²⁰

As shown in Figure 12 below, over the period from 2019-2023, the prices received by businesses in the ‘supermarket, grocery and specialised food retailing’ industry sub-group have generally been increasing at a faster rate than the costs paid by such businesses.

Over the period from June 2019 to June 2023, the PPI Outputs index increased by a total of 23.1%, and the PPI Inputs index increased by a total of 15.2%. This indicates that gross margins in the sector expanded over the period to 2023.¹²¹

This is broadly consistent with the year-on-year changes in the following section and our analysis of product and department-level margins.

Figure 12: PPI outputs vs inputs annual percentage change 2016–2023



Source: Commission analysis of Statistics New Zealand’s Producers Price Index¹²²

120 This is a wider definition than the one in the Retail Trade Survey used to calculate supermarket/grocery market share; PPI includes single-category retailers.

121 Commission analysis of Statistics New Zealand’s Producers Price Index.

122 Statistics New Zealand “Business Price Indexes” (June 2016 – June 2023), <https://www.stats.govt.nz/information-releases/business-price-indexes-march-2024-quarter/>.

Gross margins for major retail banners have increased

Price-cost margins are a measure of the difference between the price a firm receives for the sale of an item and the direct supply costs incurred. For grocery retailers, it measures the difference between the total revenue a retailer receives from consumers and the total cost of goods sold that the retailer pays its suppliers, as a percentage of the total revenue.¹²³ This measure is also referred to as the gross margin.

Gross margins, and how they change over time, are a reasonable indicator of how competition in a market is evolving.

The price-cost margin is a better measure of price competition than the average price or average cost of goods sold alone. This is because prices depend partially on costs and other factors unrelated to competition in the grocery market, and the cost of goods sold covers much of the suppliers' costs, which may also be driven by external factors such as weather conditions and fuel costs.

We are particularly interested in the change in the price-cost margins over time. An increase in price-cost margins over time could indicate that price competition has weakened over that time; alternatively, margins could be increased by retailers who saw an opportunity to exercise the market power they already possessed.

We refrain from comparing the magnitudes of the price-cost margins across RGRs because they have different definitions on the cost of goods sold. However, we believe that the comparison of the price-cost margins over time within each RGR is legitimate because each of their definitions on the cost of goods sold is unchanged during the period of our analysis. In future reports we will look to provide more detailed margin analysis, potentially including margins up and down the supply chain.

The Market Study did not compute price-cost margins using disaggregated data. We have obtained data stretching back to July 2018 in this report for comparison. We analysed fresh categories (bakery, fresh meat and poultry, produce, seafood and service deli) separately from other product categories due to differences in how costs are accounted for.

From 2019 to 2023, we observe that price-cost margins have increased by 3.1 percentage points on average, among the New World, Pak'nSave and Countdown banners, across all non-fresh product categories.¹²⁴ The individual banner-level changes range from 2.3 to 3.9 percentage point increases.

Table 5: Price-cost margins for non-fresh product categories by RGR banner

RGR	Banner	Difference between price-cost margins between 2019 and 2023
FSNI	New World	3.9 percentage point increase
FSNI	Pak'nSave	2.3 percentage point increase
FSSI	New World	2.9 percentage point increase
FSSI	Pak'nSave	2.7 percentage point increase
WWNZ	Countdown	3.6 percentage point increase

Source: Commerce Commission analysis of industry information

The price-cost margins across all fresh product categories (bakery, fresh meat and poultry, produce, seafood and service deli) increased by 0.4 percentage points on average, among the New World, Pak'nSave and Countdown banners, in the same period.¹²⁵

123 Cost of goods sold refers to money spent in the production and acquisition of goods for sale.

124 We exclude departments such as Bulk Foods, Café, Florist, Pharmacy, and Services.

125 Commerce Commission analysis of industry information.

The New World, Pak'nSave and Countdown banners have all experienced an increase in price-cost margins. This happens when retail prices increase at a faster rate than the cost of goods sold. This is consistent with the relative changes in the PPI series discussed above and is an indication that price competition between the major banners has been weak over the past five years.

Among the major banners (New World, Pak'nSave and Countdown) we observe a range of average price-cost margin values, from 10% to 24%, in our five-year period.¹²⁶ While we cannot make direct comparisons between RGRs due to varying cost definitions, we observe that the ranking of price-cost margins, from low to high, between these RGRs and banners at each point in time stayed constant from year to year during this period.

We also observe an equally wide range of price-cost margins across different product categories. Across the major banners among non-fresh product categories, the products with average price-cost margins in the highest quartile are general merchandise, bread (excluding in-house bakery), cooking needs (eg, flour, eggs, oil, herbs), health products and toiletries. Those in the lowest quartile are baby products, beverages, biscuits, breakfast (cereals and spreads), confectionery and tobacco.¹²⁷

Supply costs may have increased

Economic consultancy Infometrics is commissioned by Foodstuffs to produce and release a monthly 'Grocery Supply Cost Index' (GSCI), which tracks the monthly percentage changes in the list price of grocery items charged by suppliers to the Foodstuffs cooperatives.¹²⁸ This report is publicly released and often picked up by news media, and generally suggests that price increases are out of Foodstuffs' control and are due to increased costs on the suppliers' end.

According to the GSCI, Foodstuffs' supply costs began increasing steadily from late 2021, with the rate of change peaking at 10.6% in December 2022; some of this was caused by inflation affecting the whole supply chain, not just retail prices.¹²⁹ The rate of increase of Foodstuffs' cost to suppliers has been decelerating since early 2023, but the rate of change is still positive.

We have concerns with some of the limitations of the methodology used to create this index. It is unlikely that the GSCI alone can provide a comprehensive picture of grocery supply cost changes.¹³⁰ The report only considers list prices paid to suppliers by Foodstuffs, not any other grocery retailer. Additionally, the GSCI only measures changes in the list prices paid to suppliers, and therefore does not take into account trade spend and other rebates which suppliers pay to retailers. Trade spend includes any discretionary rebates, discounts and payments for improving sales or encouraging retailers to support products. We have seen evidence that trade spend in the New Zealand grocery industry is material (billions of dollars per year).¹³¹ As such, the actual price paid by Foodstuffs to suppliers will usually be less than the list price once trade spend and other discounts and rebates are factored in.

126 Commerce Commission analysis of industry information.

127 Commerce Commission analysis of industry information.

128 Infometrics "Costs from grocery suppliers to supermarkets increase by 3.0%pa in April" (10 May 2024), <https://www.infometrics.co.nz/article/2024-05-mr-grocery-supplier-cost-index-april-2024>.

129 Commerce Commission analysis of industry information.

130 Infometrics "Infometrics-Foodstuffs NZ Grocery Supplier Cost Index Methodology Report" (August 2022), <https://static.infometrics.co.nz/Content/Grocery-Supplier-Cost-Index/Grocery-Supplier-Cost-Index-Methodology-Report.pdf>.

131 Commerce Commission analysis of industry information.

Persistently high profitability may indicate competition is not working well

Profitability is one of the observable outcomes analysed during the Market Study to give an indication of whether there were competition issues in the grocery industry. Profits that are persistently higher than a normal level of return may indicate that competition is insufficient to return profits to normal levels.

Analysis of profitability focuses on ongoing trends rather than a firm's performance in any given year. In a competitive market, profits are a reward to businesses for achieving lower costs than their rivals or attracting new customers with good offers. High profits provide a signal for new entry or expansion in a market, which should force profits back towards normal levels over time.

One potential explanation for RGRs' increased margins is to cover rising operating costs (eg, wages). Profitability analysis takes into account both the costs to RGRs for purchasing products and the costs of running their businesses, so it can be used to supplement analysis of margins.

The Market Study assessed profitability to 2019. We have updated this analysis to cover the period to 2023.

To assess the RGRs' profitability, we have:

- analysed their profit and loss statements over the period 2019 to 2023;
- repeated the return on average capital employed (ROACE) vs weighted average cost of capital (WACC) analysis conducted in the Market Study over the period 2019 to 2023; and
- looked at their internal business cases for site development since the Market Study.

Margin increases only partially explained by rising operating costs

Our analysis of RGRs' banner-level profit and loss statements from 2019 to 2023 showed that some operating costs have increased over this period. However, they also showed that bottom line earnings have largely remained constant or in some cases have increased. This demonstrates that margin increases are only partially explained by rising operating costs.

ROACE estimates above our WACC estimate

We have assessed each of the RGRs' profitability by benchmarking their ROACE against our estimate of a normal rate of return for firms in the New Zealand retail grocery sector.

ROACE derives an annual return based on the amount of earnings a company has made in a financial year relative to the value of the assets that were employed in that year to generate those earnings.

Our estimate of the normal rate of return is the estimated WACC. WACC is the expected financial return that investors require for an investment given the riskiness of that investment. We calculate a 'central' estimate of WACC as our best estimate of the normal rate of return, along with a 'higher' estimate as a sensitivity.¹³²

The Market Study undertook ROACE vs WACC analysis of the RGRs over the period 2015 to 2019 and concluded that the RGRs had achieved a higher level of profitability than would be expected in a workably competitive market.¹³³

132 As WACC cannot be observed there is a risk of misestimating it, which is why we use a range of estimates.

133 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 45, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

We have repeated this ROACE vs WACC analysis of the period between 2019 and 2023 using methodology that is largely the same as the Market Study. The two exceptions are:

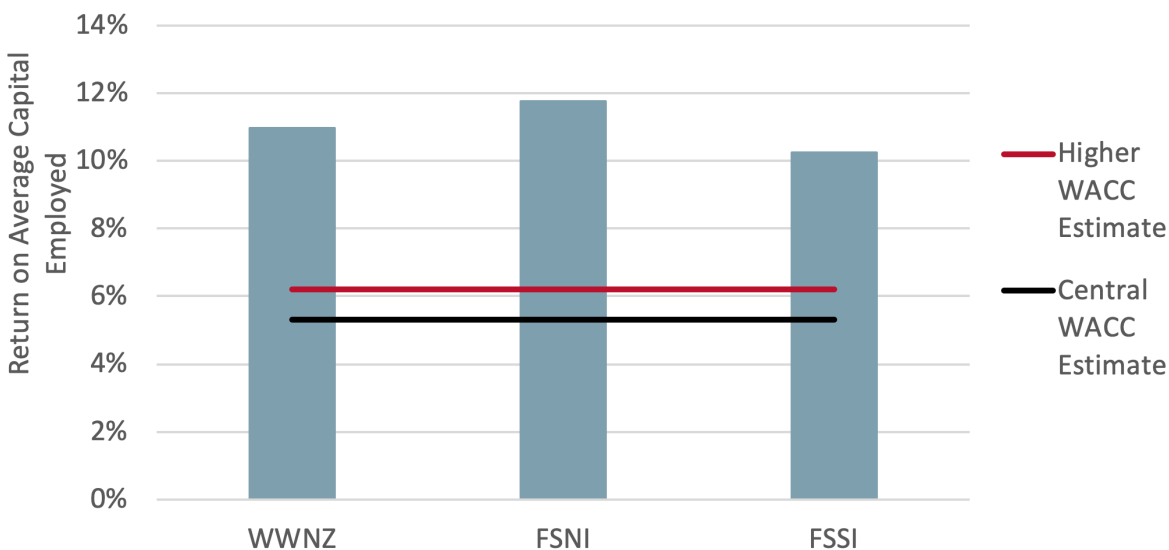
- Our treatment of RGRs’ property assets and their associated value gains in the calculation of ROACE has been refined to ensure consistent treatment across the RGRs.
- The tax-adjusted market risk premium rate used in the higher estimate of WACC has been updated to the most recent estimate.

Detailed methodology for our calculations of ROACE vs WACC is provided in the Supplementary Methodology paper available on the Commission’s website.¹³⁴

Our estimate of the WACC has experienced a small decrease since the Market Study. The central estimate of WACC has decreased by 0.2 percentage points (down from 5.5%) and the higher estimate of WACC has decreased by 0.4 percentage points (down from 6.6%).¹³⁵

For the period between 2019 and 2023, we have calculated average ROACE estimates of 11.8% for FSNI, 10.2% for FSSI, and 11.0% for WWNZ.¹³⁶ These are well above our central estimate of a normal rate of return for grocery retailing of 5.3%. And, as shown in Figure 13, the ROACE estimates remain comfortably higher than the upper WACC estimate of 6.2%.¹³⁷

Figure 13: Average ROACE for each RGR compared to WACC 2019–2023



Source: Commission analysis of industry information

134 See <https://comcom.govt.nz/regulated-industries/grocery>.

135 Commerce Commission analysis of industry information.

136 Due to changes in the treatment of RGRs’ property assets and their associated value gains, a direct comparison between ROACE figures and these figures cannot be made.

137 Commerce Commission analysis of industry information.

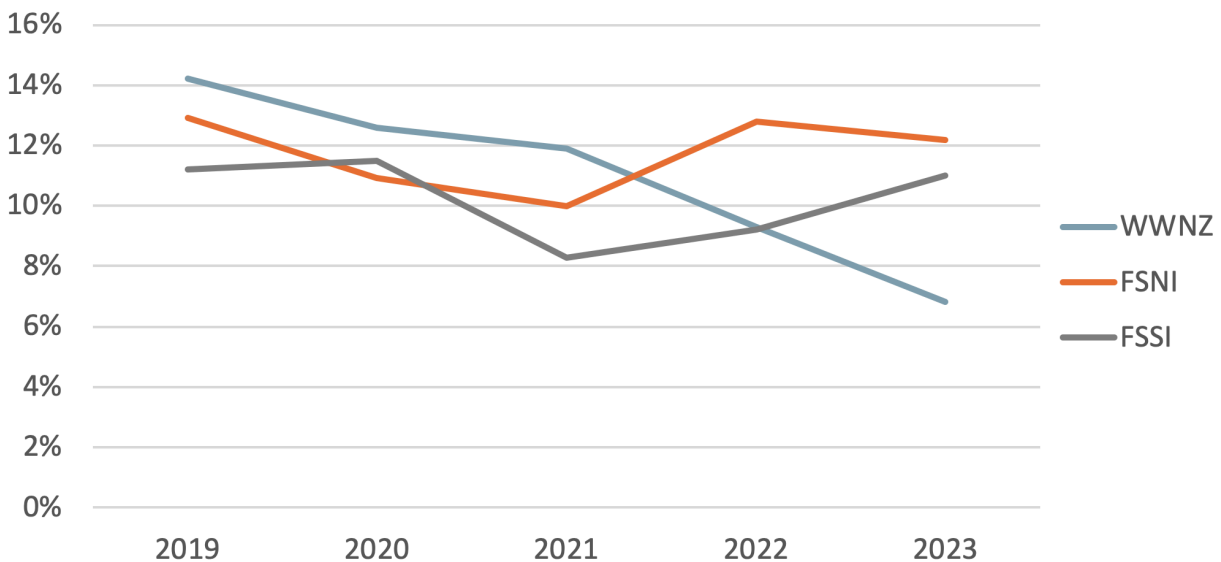
This demonstrates that the RGRs continue to achieve higher levels of profitability than we would expect in a workably competitive market. FSNI and FSSI, in particular, have consistently achieved elevated profit levels over the 2019 to 2023 period, as shown in Figure 14.

If the average ROACE was 6.2% (our higher WACC estimate), the RGRs’ profits would reduce by approximately \$372 million per year.¹³⁸

ROACE is calculated as the five-year average of certain historic financial information. As a result, ROACE is a lagging indicator of competition. The analysis of ROACE in the Market Study and this report suggests the RGRs have earned profits above a normal level over the past decade.

In future reports we will focus more on leading indicators of competition, to assess whether the conditions for competition are improving. Material, sustained improvements in the conditions for competition should lead to stronger competition and lower grocery industry profit over time. Accordingly, we will only report ROACE occasionally in future reports.

Figure 14: Annual ROACE for each RGR 2019–2023



Source: Commission analysis of industry information

138 Due to methodological changes this figure is not directly comparable with the Market Study.

RGRs' internal rate of return expectations unchanged

Another measure of profitability are the returns that RGRs expect to earn from proposed new investments, and the level of financial return they require for a new business case to be approved.

The Market Study included assessment of business plans for investments in new stores over the period from 2015 to 2019. Analysis showed average expected returns to be well above the hurdle rate, which is our workable competition benchmark.¹³⁹

Our analysis of RGR business cases from November 2020 to October 2023 shows that RGRs' average expected return to be earned on new business cases is unchanged since the Market Study.¹⁴⁰ This suggests that profitability expectations remain elevated, and competition is not yet sufficient to drive returns towards the levels we would expect to see in a competitive market.

INVESTMENT AND INNOVATION HAUMITANGA ME TE AUAHATANGA

Investment and the pace of innovation is one of the observable outcomes indicative of whether competition is working well. When companies have weak incentives to innovate and invest, it affects the range, quality, and pricing in the long term. In general, strong competition incentivises improvements in technologies, processes and methods, which benefit consumers.

As noted in the Market Study, there are no conclusive benchmarks that can be used to monitor the scale and pace of innovation. Instead, we can observe investment trends and innovations in the context of New Zealand consumers' preferences. For instance, retailers can make investments solely to fulfil legal obligations rather than furthering their competitive advantage to benefit consumers.

139 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 59, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

140 Commerce Commission analysis of industry information.

Online shopping options expanded

Online shopping encompasses both online delivery and click and collect from the RGRs, as well as on-demand grocery delivery from other parties.

The Market Study noted that some of the RGRs had been slow to introduce online sales channels.¹⁴¹ Specifically, FSSI’s slow adoption of online shopping was at least partially attributed to a lack of meaningful competition with smaller online retailers and/or larger retailers offering online shopping.^{142,143} FSSI have since specifically identified a focus on e-commerce growth and the importance of closing this gap with competitors.

The COVID-19 pandemic necessitated widespread use of online ordering. Between 2019–2022, brick and mortar sales decreased in proportion to the increase in delivery and click and collect orders for all RGRs.¹⁴⁴ This was likely due to the COVID-19 lockdowns and COVID-19’s continued presence through to 2022. Bricks and mortar sales increased proportionally again in 2023, likely due to the absence of lockdowns and the end of the pandemic.¹⁴⁵

FSNI and FSSI have continued to roll out online services which were underway at the time of the Market Study. FSNI noted plans to begin offering online shopping at Four Square stores during the Market Study and have since partnered with Uber Eats.¹⁴⁶

Table 6: RGRs’ current online grocery offerings by banner

RGR	Banner	Current status	
		Delivery	Click and collect
WWNZ	Woolworths	✓	✓
	FreshChoice ¹⁴⁷	✓	✓
	SuperValue	✓	✓
FSNI	New World	✓	✓
	Pak’nSave	✗	✓
	Four Square ¹⁴⁸	✓	✗
FSSI	New World	✓	✓
	Pak’nSave	✗	✓
	Four Square	✗	✗

141 Market Study into the retail grocery sector – final report” (8 March 2022) at p. 44, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

142 Commerce Commission “Market Study into the retail grocery sector – final report” (8 March 2022) at p. 98, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

143 FSSI adoption of online shopping was also delayed due to the emergence of COVID-19 in early 2020.

144 Commerce Commission analysis of industry information.

145 Commerce Commission analysis of industry information.

146 Commerce Commission “Market Study into the retail grocery sector – final report” (8 March 2022) at p.89, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

147 Only available at select FreshChoice and SuperValue stores.

148 No central delivery service is offered instead select stores offer delivery via Uber Eats.

Grocery delivery services, including those offered by the RGRs, have dropped in popularity since the end of COVID-19 restrictions. Despite this, initiatives focused on delivery and convenience continue to be introduced, and the availability of on-demand grocery services has increased. DeliverEasy and DoorDash both offer grocery delivery, and WWNZ launched grocery delivery startup Milkrun in 2023 following its purchase by Woolworths Australia.¹⁴⁹ The app-based service offers groceries delivered within an hour to several large cities and towns across New Zealand. Similarly, FSNI partnered with Uber Eats in 2021 to deliver groceries from selected New World and Four Square stores around the North Island.¹⁵⁰

WWNZ also introduced a 'direct to boot' service in 2023, whereby customers place an order online and WWNZ staff deliver it directly to their boot upon pickup.¹⁵¹ Similarly, they also offer a contactless pickup locker service, where customers collect their items from an assigned locker without entering the store, after ordering online. They have also indicated plans for a solely direct to boot outlet in Auckland without a supermarket attached.¹⁵²

Bricks and mortar stores receive ongoing investment

As noted in the Market Study, while consumers appear to care the most about convenience and price, factors such as quality and service are also important to some.

RGRs continue to spend on store upgrades and renovations. FSNI states that it spends around \$100 million each year opening new stores and renovating existing ones. They intend to refurbish 50 stores in 2024, in addition to opening six new stores.¹⁵³

FSSI states that it spends \$65 million on new stores and renovations each year. It has two new stores, and refurbishments on at least five New World stores and the Four Square network planned in 2024.¹⁵⁴

WWNZ has also signalled significant investment into stores, with \$400 million planned for the three years from mid-2023 to renew the store network, including rebranding Countdown stores as Woolworths.¹⁵⁵ RGR store network changes are explained further in Chapter 3. Store renovation can improve shoppers' experience, which is one of the factors that consumers consider when they decide where to shop.

149 NZ Herald "Milkrun NZ launch: Woolworths launches service delivering groceries within an hour" (25 July 2023), <https://www.nzherald.co.nz/nz/milkrun-nz-launch-woolworths-launches-service-delivering-groceries-within-an-hour/RVT33HAHR5BDPLUZE66VDVZ4/>.

150 Foodstuffs North Island "New World and Four Square trial New Zealand's first grocery delivery offer with Uber Eats" (30 November 2021), <https://www.foodstuffs.co.nz/news-room/first-grocery-delivery-offer-with-uber-eats>.

151 Stuff "Woolworths launches 'direct to boot' grocery pick up service" (7 November 2023), <https://www.stuff.co.nz/business/133248135/woolworths-launches-direct-to-boot-grocery-pickup-service>.

152 NZ Herald "Supermarket splurge: Foodstuffs' 14 new stores, Woolworths' new Christchurch site" (7 March 2024), <https://www.nzherald.co.nz/business/supermarket-splurge-foodstuffs-14-new-stores-woolworths-new-christchurch-site/PUCEHH56WJFG7IXL4C3SC7A5MQ/>.

153 Foodstuffs North Island "Grocery Market Regulation Dashboard", <https://www.foodstuffs.co.nz/Grocery-Market-Regulation-Dashboard>.

154 Commerce Commission analysis of industry information.

155 Commerce Commission analysis of industry information.

In-store technology focused on consumer convenience

Most of the in-store innovation of recent years has aimed to make grocery shopping easier for consumers by giving them more control over scanning and packaging their items, skipping long queues at the checkout, and tracking their spending as they shop. However, not all these innovations have become permanent features.

WWNZ discontinued its 'scan & go' service in early 2024 after trialling it in selected stores.¹⁵⁶ The service was designed to increase consumer convenience and continued the international trend of contactless shopping, whereby customers scanned items on their phone as they shopped, using the WWNZ app, and paid at the kiosk using a specially generated QR code.¹⁵⁷

Foodstuffs still offers a similar service at selected New World stores and Pak'nSave called SHOP'nGO. This system enables customers to pack items as they shop and skip the checkout line, as well as track the cost of the items chosen throughout the shop.¹⁵⁸

Foodstuffs also introduced Zoom Trolleys in 2020. The trolleys included a tablet with a built-in barcode scanner. Customers could scan items as they add them to the trolley and use the tablet to search the location of other items in the store.¹⁵⁹ These technologies were pioneered overseas with companies like Amazon.¹⁶⁰

Improvements for consumer decision making

All RGRs have introduced electronic shelf labels – battery powered electronic price displays – to replace paper price labels. However, coverage varies between banners. FSSI has told us that all New World and Pak'nSave stores are equipped, while FSNI state it is continuing rollout across these banners. Both state that most Four Square stores in both the North and South Islands are still waiting to be outfitted.¹⁶¹ WWNZ planned to have 133 Woolworths stores converted by June 2024.¹⁶² Technology like electronic shelf labels has the potential to make the shopping experience clearer for consumers. Each of the RGRs have commenced rollout of electronic shelf labels, which show price, unit price and specials more clearly. The labels should result in increased accuracy in representing price information by reducing manual ticket printing and changing. However, there is always the risk that goods are not placed in the correct shelf, or pricing and promotional changes aren't updated correctly.

Unit pricing was used to an extent by the RGRs at the time of the Market Study, and mandatory display of unit pricing has since been introduced (see Chapter 5).¹⁶³ It aims to help consumers make better informed decisions between prices of different weight and packaging by showing product cost in the same unit of measurement. This should incentivise retailers to compete on price as consumers are better able to discern the relative value between products.

156 Stuff "Woolworths drops 'scan and go'" (18 January 2024), <https://www.stuff.co.nz/business/350150298/woolworths-drops-scan-and-go>.

157 Stuff "Woolworths drops 'scan and go'" (18 January 2024), <https://www.stuff.co.nz/business/350150298/woolworths-drops-scan-and-go>.

158 New World "Shop & go" <https://www.newworld.co.nz/discover/in-store/shop-and-go>.

159 New World "The frictionless future of supermarket shopping is here – Introducing New World Zoom Trolleys" (3 December 2019), <https://www.newworld.co.nz/who-we-are/news/introducing-new-world-zoom-trolleys>.

160 Stuff "New World, Farro to introduce high-tech shopping trolleys" (3 December 2019), <https://www.stuff.co.nz/business/117902844/new-world-farro-to-introduce-hightech-shopping-trolleys>.

161 Investment into electronic shelf labels by Four Squares is considered on a case-by-case basis as it comes at a significant cost to the individual Four Square store.

162 Woolworths "Woolworths Supermarket moves to electronic shelf labels" (22 November 2023), <https://www.woolworths.co.nz/info/news-and-media-releases/2023/woolworths-supermarket-moves-to-electronic-shelf-labels>.

163 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at paragraph 7.107, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Security measures are prioritised

RGRs' concerns over shoplifting and other offences within stores has prompted them to invest in and prioritise security and staff safety measures. Woolworths is investing \$45 million in security measures, including a trolley lock system which immobilises a trolley leaving the store without stopping at the checkout, body cameras for staff, and new camera technology which identifies items that have not been scanned and paid for.¹⁶⁴ FSNI have taken similar measures and have also begun using facial recognition technology to identify past offenders who enter the store.^{165,166}

Demand for narrow range, price-focused retailers

There have been delays in introducing overseas innovations to New Zealand, such as a food discounter business model (narrow range of products, predominantly private label, and lower price). Research conducted during the Market Study showed that some consumers would prefer innovations that enhance price competition rather than product and service innovation.¹⁶⁷

Given price is known to be a key driver of store choice for many consumers, this indicates there may not be strong incentives for retailers to innovate and invest to win consumers on this dimension. The Market Study found no evidence to indicate that New Zealand's

relatively small size was a reason for the delays and noted Woolworths was a multinational corporation.¹⁶⁸ Costco's growth shows there is demand from consumers for narrow range price-focused retailers.

Supply chain benefits uncertain

Supply chain upgrades have been ongoing, with the opening of several large facilities across all RGRs since the Market Study. FSNI opened new cross dock facilities in Hastings, Northland and Wellington for \$14 – \$21 million each, and FSSI have work underway on a Christchurch distribution centre for storing frozen goods.¹⁶⁹ FSSI states it has \$14 million capital expenditure for the next financial year for equipment replacement, modernisation and innovation across the supply chain.¹⁷⁰

WWNZ opened a fresh produce distribution centre in Auckland, a \$99 million fresh distribution centre in Christchurch, a distribution centre in Palmerston North, and partnered with Hilton Foods to open a meat and seafood processing plant in Auckland.^{171,172}

The Market Study noted that strong competition is required to incentivise RGRs to pass any cost savings from supply chain investments through to consumers.¹⁷³ New cross docking facilities and distribution centres may improve logistics and stock reliability, which have some contribution to consumers' shopping experience, albeit not directly on price.

164 Radio New Zealand "Countdown investing \$45 million in security after huge jump in assaults and thefts" (21 August 2023), <https://www.rnz.co.nz/national/programmes/checkpoint/audio/2018903542/countdown-investing-dollar45-million-in-security-after-huge-jump-in-assaults-and-thefts>; NZ Herald "Woolworths roll out body cameras for supermarket staff as assaults, abuse skyrockets" (22 April 2024), (<https://www.nzherald.co.nz/nz/45m-security-spend-woolworths-roll-out-body-cameras-for-staff-as-assaults-abuse-skyrockets/5SIOOXDFP5GC3JAWPHDKXEL3BA/>).

165 1News "Foodstuffs trialling use of facial recognition tech" (7 February 2024), <https://www.1news.co.nz/2024/02/07/foodstuffs-trialling-use-of-facial-recognition-tech/>.

166 FSNI facial recognition technology is being implemented as a six-month trial scheduled to end in September 2024. The trial is being conducted in 25 New World and Pak'nSave stores. FSNI highlight that the trial is under the close scrutiny of the Office of the Privacy Commissioner and a separate independent evaluator.

167 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at paragraph 3.163, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

168 Commerce Commission "Market Study into the retail sector – final report" (8 March 2022) at p. 97, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

169 Commerce Commission analysis of industry information.

170 Commerce Commission analysis of industry information.

171 The Post "Woolworths opens hi-tech Christchurch distribution centre" (28 February 2024), <https://www.thepost.co.nz/business/350193102/woolworths-opens-hi-tech-christchurch-distribution-centre>.

172 Commerce Commission analysis of industry information.

173 Commerce Commission "Market Study into the retail sector – final report" (8 March 2022) at paragraph 3.222, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

OUTCOMES FOR CONSUMERS

NGĀ HUA MŌ
NGĀ KIRITAKI

Chapter 5 summarises consumers' experiences of the retail grocery market, including in relation to retail pricing, expenditure and consumer understanding of grocery offers.

Looking at consumers' experiences shines a light on how competition in the industry may be impacting everyday New Zealanders.

Consumers play an important role in ensuring competition is effective. Markets work better when consumers are confident market participants. Consumers have confidence when they have access to accurate information that helps them make informed purchasing decisions and when they can assess whether businesses are trading fairly.

Observations:

- Grocery food prices have increased more than any other common household bill between 2019 and 2023. This was driven primarily by increases in the price of fruit and vegetables.
- In 2022, New Zealand had the fourth highest grocery expenditure in the OECD. New Zealand consumers are spending more on groceries than their Australian and UK counterparts.
- RGRs use high-low pricing which makes it hard for consumers to accurately judge the claims the RGRs make that their pricing is low, special or extra low and accurately assess the value of competing offers.
- The Commission is calling on RGRs to put in place and prominently promote to consumers a refund policy that properly incentivises consumers to come forward and raise incorrect pricing issues with stores.

CONSUMERS ARE CONCERNED ABOUT GROCERY PRICES MĀHARAHARA ANA NGĀ KIRITAKI KI NGĀ UTU HOKOHOKO

Groceries are an essential purchase that make up 13% of households' average weekly expenditure.¹⁷⁴ As such, price rises can be a source of financial pressure and concern for many households. For example:

- A Canstar survey in 2024 showed that the price of groceries was consumers' biggest financial pressure.¹⁷⁵
- Consumer NZ's consumer sentiment tracker shows that in 2023 the cost of food was consumers' second highest concern after housing. In comparison, food was ranked the eighth highest concern in 2021.¹⁷⁶

Food prices rising in New Zealand and abroad

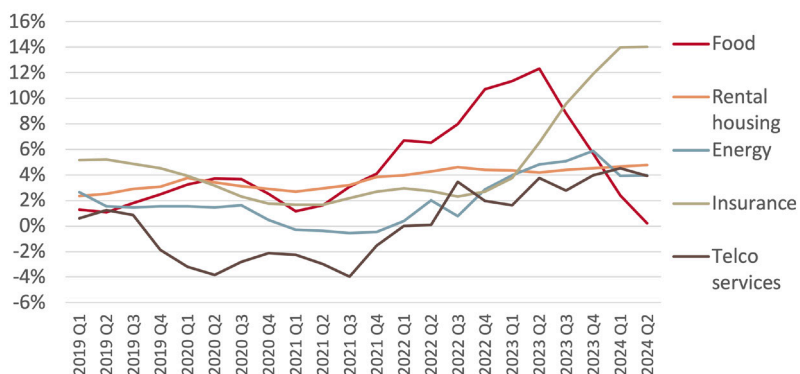
Food price inflation is greater than inflation of other household bills

The most common measure of retail price inflation is the Consumers Price Index (CPI) produced by Statistics New Zealand. The CPI measures price changes over time for the goods and services that New Zealanders most commonly purchase.

Food is one of the groups within the CPI. Figure 15 shows that between 2022 and mid-2023, inflation in the food group was greater than other groups representing common household bills.

Annual food inflation peaked at 12% in Q2 2023. This is the highest annual increase in food inflation since GST was introduced in 1986.¹⁷⁷ Figure 15 shows recent food inflation has only been exceeded by insurance inflation in early 2024. Other household bill groups never exceeded an annual increase of 6% over the period 2019 to 2023.

Figure 15: Select CPI groups – annual percentage change



Source: Commission analysis of Statistics New Zealand data¹⁷⁸

174 Statistics New Zealand "2023 Household Economic Survey" (March 2024), <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2023/>.

175 Canstar "2024 Consumer Pulse Report" (14 March 2024), <https://www.canstar.co.nz/banking-insurance/canstar-nz-consumer-pulse-report-2024/>.

176 Consumer NZ "Loyalty cards: great value for the supermarket, not the customer" (14 January 2024), <https://www.consumer.org.nz/articles/loyalty-cards-great-value-for-the-supermarket-not-the-customer>.

177 Statistics New Zealand "CPI Level 1 Groups for New Zealand (Qrtly-Mar/Jun/Sep/Dec)", <https://www.stats.govt.nz/indicators/consumers-price-index-cpi/>.

178 Statistics New Zealand "Consumers Price Index" (December 2023, December 2022, December 2021, December 2020, December 2019), <https://www.stats.govt.nz/indicators/consumers-price-index-cpi/>.

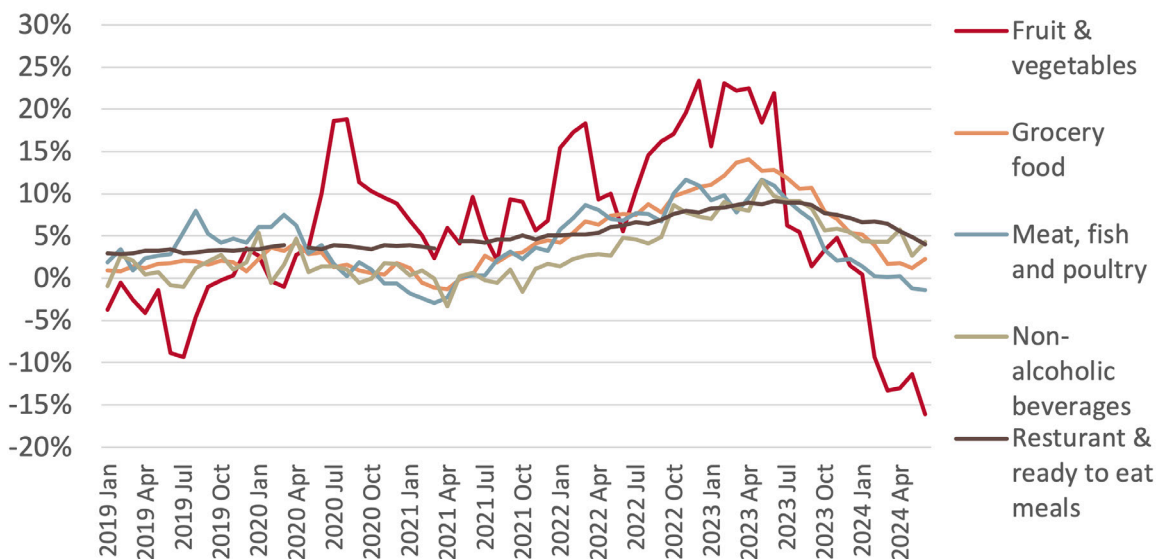
Food price inflation was driven by fruit and vegetable price rises

Within the food group there are five sub-groups of expenditure – fruit and vegetables, grocery food, meat and fish, non-alcoholic beverages, restaurant meals and takeaways. Four of these sub-groups are commonly sold in grocery stores. Restaurant meals & takeaways is the only subgroup which is not.

Figure 16 shows that the fruit and vegetable sub-group experienced the greatest price increases among all food sub-groups between 2019 and 2023. It did so by a considerable margin. Fruit and vegetable inflation peaked at 23% in February 2023. The sub-group with the next highest peak was grocery food, for which price inflation reached 14% in March and April 2023.

The price volatility in the fruit and vegetable group can be at least partially attributed to the extreme weather events impacting New Zealand in early 2023. Both the Auckland Anniversary weekend floods and Cyclone Gabrielle had a significant impact on the agriculture sector, with Federated Farmers chief executive Terry Copeland stating that the damage was “beyond comprehension.”¹⁷⁹ Apple orchards, vineyards, kiwifruit, avocados, and other crops were heavily affected in these events, which contributed to inflation spikes in this sub-group.

Figure 16: Food sub-groups – annual percentage change



Source: Commission analysis of Statistics New Zealand data¹⁸⁰

179 Stuff “Cyclone Gabrielle the biggest natural disaster to hit primary industries; may be ‘last straw’ for some” (26 March 2023), <https://www.stuff.co.nz/business/the-monitor/131501601/cyclone-gabrielle-the-biggest-natural-disaster-to-hit-primary-industries-may-be-last-straw-for-some>.

180 Statistics New Zealand “Food Price Index” (13 March 2024), <https://stats.govt.nz/information-releases/selected-price-indexes-february-2024/>.

Furthermore, price increases in the grocery food sub-group can be at least partially attributed to shortages of eggs linked to legislative changes. In 2012, a new Animal Welfare (Layer Hens) Code of Welfare was released by the Government.¹⁸¹ The Code bans the sale of battery cage eggs from January 2023, making colony caged eggs the only type of legal caged egg.^{182,183} The ban created a shortage of eggs in early 2023, as supply of non-battery eggs was not able to match demand. This led to price rises, with the price of a dozen eggs increasing by 56.1% between July 2022 and July 2023.¹⁸⁴

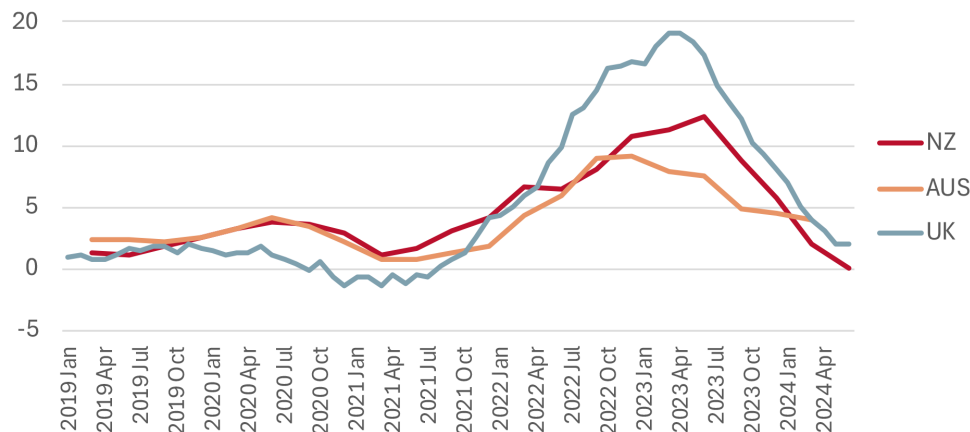
While competition does play a factor in grocery prices, domestic events are often a main influencing factor on the price paid at checkout.

Food prices have increased around the world

Recent high food price inflation has occurred worldwide, not just in New Zealand. For example, the Organisation for Economic Co-operation and Development (OECD) annual average for food price inflation rose from 3.35% in 2021 to 13.16% in 2022.¹⁸⁵

Figure 17 below shows that New Zealand experienced greater food price inflation than Australia, but less than the UK. In the past year, UK food price inflation peaked at 19%, New Zealand's peaked at 12% and Australia's at 9%.

Figure 17: Food inflation comparison – annual percentage change



Source: Commission analysis of Australian Bureau of Statistics, Office for National Statistics, and Statistics New Zealand data¹⁸⁶

181 Animal Welfare (Layer Hens) Code of Welfare 2012, Amendment Notice 2013 <https://eggfarmers.org.nz/nz-egg-farming/the-code-of-welfare-updated-2018/>.

182 Woolworths plan to have 100% cage-free eggs on shelves by the end of 2024 in the North Island and the end of 2025 in the South Island. Woolworths NZ "Animal welfare" (accessed 6 August 2024), <https://www.woolworths.co.nz/info/community-and-environment/environmental-sustainability/responsible-and-sustainable-sourcing/animal-welfare>.

183 Foodstuffs have committed to ending the sale of all cage eggs by 2027. Animals Aotearoa "Eggsplainer – Why has there been an egg shortage?" (13 February 2023), <https://animalsaotearoa.org/2023/02/13/egg-shortage-eggsplainer/>

184 Statistics New Zealand "Food Price Index" (July 2022, July 2023), <https://www.stats.govt.nz/information-releases/food-price-index-july-2022/>; <https://www.stats.govt.nz/information-releases/food-price-index-july-2023/>.

185 OECD Data "National CPI, Growth rate over one year" (8 May 2024), [https://data-explorer.oecd.org/vis?tm=national%20CPI%2C%20growth%20rate%20over%20one%20year&pg=0&snb=15&si=2&vw=ov&df\[ds\]=dsDisseminateFinalDMZ&df\[id\]=DSD_PRICES%40DF_PRICES_N_CP01&df\[ag\]=OECD.SDD.TPS&df\[vs\]=1.0&dq=M...CP01...&lom=LASTNPERIODS&lo=12&to\[TIME_PERIOD\]=false](https://data-explorer.oecd.org/vis?tm=national%20CPI%2C%20growth%20rate%20over%20one%20year&pg=0&snb=15&si=2&vw=ov&df[ds]=dsDisseminateFinalDMZ&df[id]=DSD_PRICES%40DF_PRICES_N_CP01&df[ag]=OECD.SDD.TPS&df[vs]=1.0&dq=M...CP01...&lom=LASTNPERIODS&lo=12&to[TIME_PERIOD]=false).

186 Australian Bureau of Statistics "Consumer Price Index, Australia" (24 March 2024), <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release#data-downloads>; Office for National Statistics "Consumer Price Inflation, UK: January 2024" (14 February 2024), <https://www.ons.gov.uk/releases/consumerpriceinflationukjanuary2024>; Statistics New Zealand "Consumers Price Index" (17 April 2024), <https://www.stats.govt.nz/indicators/consumers-price-index-cpi/>.

International disruption and global supply chain issues have impacted the retail prices paid by New Zealand consumers. For example:

- The invasion of Ukraine in 2022 saw increases in grain, fuel and fertiliser costs in New Zealand.¹⁸⁷ This contributed to an increase in manufacturing costs for suppliers, leading to increases in overall grocery prices.
- COVID-19 caused wide disruption to supply chains. The period was marked by the sharp increase in shipping prices worldwide. While supply chains are slowly returning to normal post-pandemic, prices are still considerably higher than in 2019. FSNi reported that per container shipping costs were still 86% higher in July 2022 than May 2019.¹⁸⁸

The worldwide trend of food price increases shows external international factors have the potential to have a much more significant impact on food pricing than the level of competition in the New Zealand grocery industry.

New Zealand food prices remain higher than the OECD average

The Market Study found that New Zealand food prices were high relative to the OECD average.¹⁸⁹ Table 7 shows that this continues to be the case when looking at the most recent OECD data.

Table 7: Price of food and non-alcoholic beverages in NZ vs OECD average

Year	2020	2021	2022
NZ prices vs OECD	+7%	+14%	+9%

Source: Commission analysis of OECD data¹⁹⁰

¹⁸⁷ Newshub "Fuel, food and fertiliser: How Ukraine's invasion impacted New Zealand's economy" (26 February 2022), <https://www.newshub.co.nz/home/money/2023/02/fuel-food-and-fertiliser-how-ukraine-s-invasion-impacted-new-zealand-s-economy.html>.

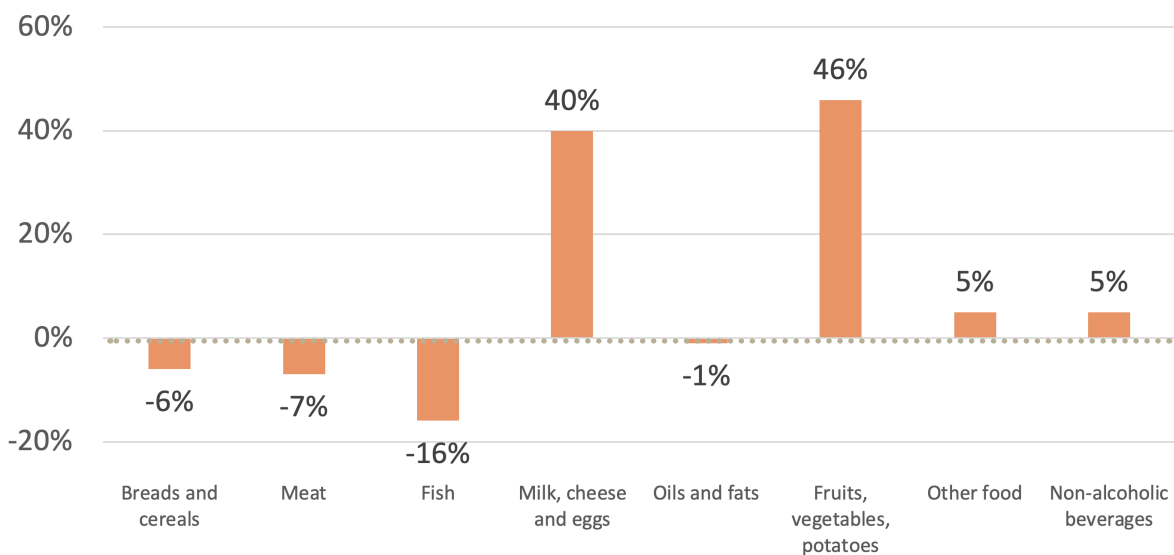
¹⁸⁸ Foodstuffs North Island "Food sector still facing complex challenges – pace of cost increases moderating, but a long road to tame record inflation" (13 July 2023), <https://www.foodstuffs.co.nz/news-room/2023/Food-sector-still-facing-complex-challenges-pace-of-cost-increases>.

¹⁸⁹ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 65, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

¹⁹⁰ OECD "Data Explorer – PPP detailed results, 2020 onwards" (Accessed 16 May 2024), [https://data-explorer.oecd.org/vis?tm=PPP%20detailed%20results%20&pg=0&snb=11&df\[ds\]=dsDisseminateFinalDMZ&df\[id\]=DSD_PPP%40DF_PPP&df\[ag\]=OECD.SDD.TPS&df\[vs\]=1.0&dq=.A.PPP...OECD&pd=2020%2C2020&to\[TIME_PERIOD\]=false](https://data-explorer.oecd.org/vis?tm=PPP%20detailed%20results%20&pg=0&snb=11&df[ds]=dsDisseminateFinalDMZ&df[id]=DSD_PPP%40DF_PPP&df[ag]=OECD.SDD.TPS&df[vs]=1.0&dq=.A.PPP...OECD&pd=2020%2C2020&to[TIME_PERIOD]=false).

The most recent OECD data in Figure 18 below shows that prices for goods in the ‘milk, cheese, eggs’ and ‘fruits, vegetables, potatoes’ categories in particular are higher than the OECD average. Of concern is that many of the goods in these two categories are produced and sold domestically.

Figure 18: Food prices in NZ vs OECD average (2022)



Source: Commission analysis of OECD data¹⁹¹

191 OECD “Data Explorer – PPP detailed results, 2020 onwards” (Accessed 16 May 2024), [https://data-explorer.oecd.org/vis?tm=PPP%20detailed%20results%20&pg=0&snb=11&df\[ds\]=dsDisseminateFinalDMZ&df\[id\]=DSD_PPP%40DF_PPP&df\[ag\]=OECD.SDD.TPS&df\[vs\]=1.0&dq=.A.PPP...OECD&pd=2020%2C2020&to\[TIME_PERIOD\]=false](https://data-explorer.oecd.org/vis?tm=PPP%20detailed%20results%20&pg=0&snb=11&df[ds]=dsDisseminateFinalDMZ&df[id]=DSD_PPP%40DF_PPP&df[ag]=OECD.SDD.TPS&df[vs]=1.0&dq=.A.PPP...OECD&pd=2020%2C2020&to[TIME_PERIOD]=false).

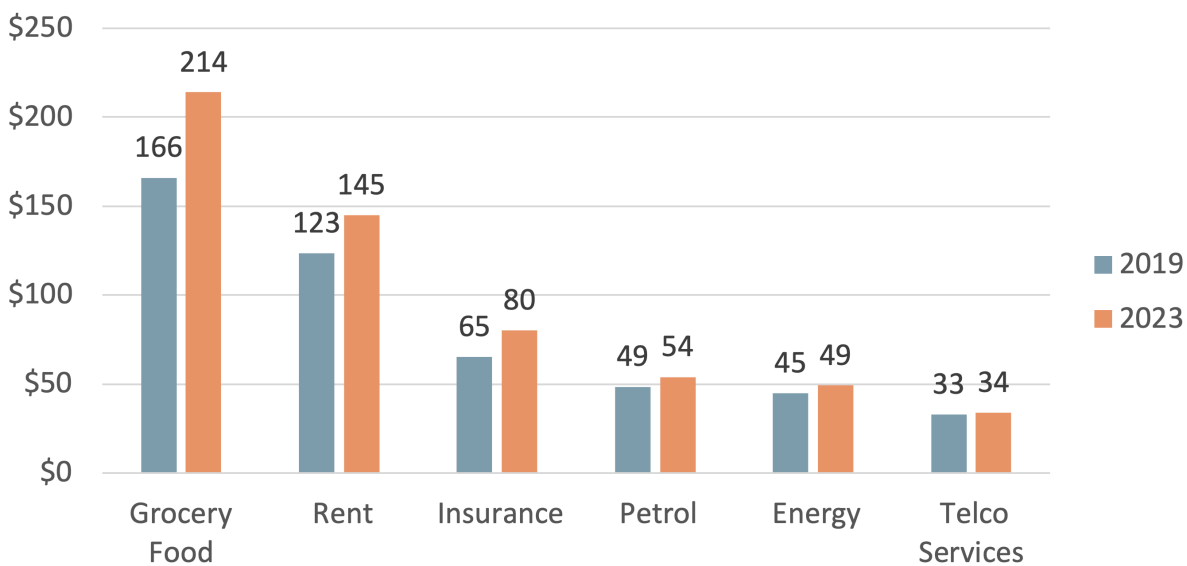
Expenditure on grocery food rises

Grocery food expenditure in New Zealand is greater than many other household expenses

The Statistics New Zealand Household Economic Survey (HES) collects information on average household expenditure on a three-yearly basis. We note that delays arising from the COVID-19 pandemic resulted in a four-year gap after the 2019 survey.¹⁹²

Figure 19 shows the average household spend on common household bills per week based on the most recent HES data. On average, households spent \$214 on grocery food in 2023, up from \$166 in 2019.¹⁹³ Of these common household bills, only telecommunications saw an increase below 5% between 2019 and 2023. Overall, the 2023 HES estimated that, on average, households spent a total of \$1,597.50 per week on goods and services.

Figure 19: Average weekly household expenditure on common household bills



Source: Commission analysis of Statistics New Zealand data¹⁹⁴

¹⁹² Statistics New Zealand “Household expenditure statistics: Year ended June 2023” (5 March 2024), <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2023/>.

¹⁹³ Statistics New Zealand’s “Food” expenditure group includes expenditure on restaurant meals and ready to eat foods. Since we are primarily interested in grocery food spending, “Grocery food expenditure” is total food expenditure minus restaurant meals and ready to eat foods.

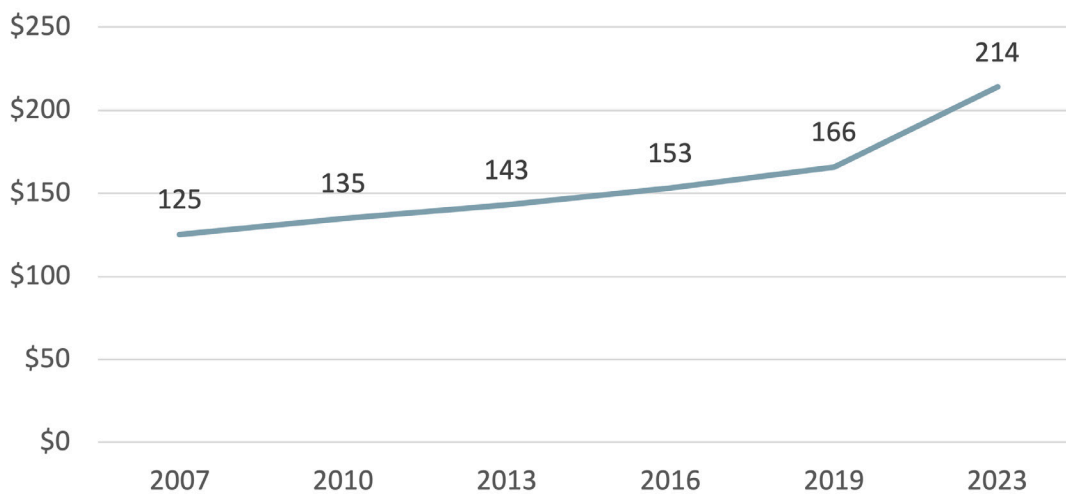
¹⁹⁴ Statistics New Zealand “Household expenditure statistics: Year ended June 2023” (5 March 2024), <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2023/>.

Expenditure on grocery food increases

According to the HES results, between 2007 and 2019 average weekly household expenditure on grocery food increased on average 7.3% every three years. However, the most recent HES reported a significantly higher increase of 28.9%, reflecting the high grocery food inflation that has taken place over the period since the previous HES results in 2019 (with the caveat that this is one year longer than the typical HES cycle).

In both 2019 and 2023, 29% of average household food spending was spent on restaurant meals and ready to eat food.¹⁹⁵ This indicates that consumers have not been substituting restaurant meals or takeaway food for grocery food and the increase in grocery expenditure is driven primarily by an increase in grocery prices.

Figure 20: Average weekly household expenditure on grocery food



Source: Commission analysis of Statistics New Zealand data¹⁹⁶

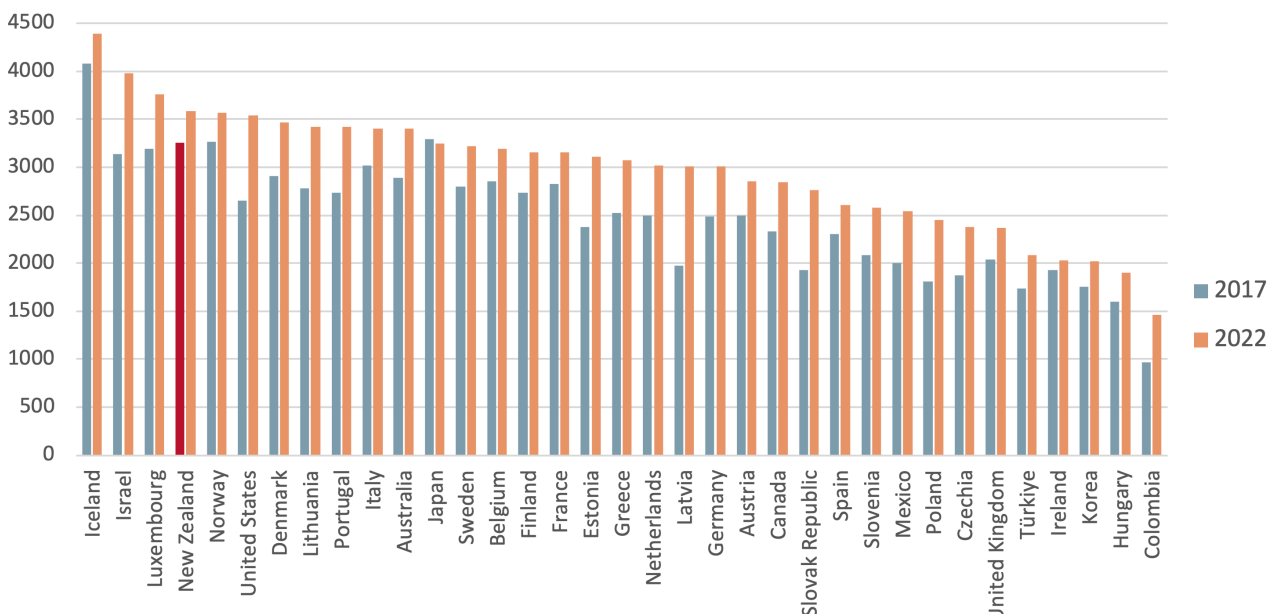
¹⁹⁵ Statistics New Zealand “Household expenditure statistics: Year ended June 2023” (5 March 2024), <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2023/>.

¹⁹⁶ Statistics New Zealand “Household expenditure statistics: Year ended June 2023” (5 March 2024), <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2023/>.

New Zealand grocery expenditure remains high relative to OECD countries

The Market Study found that New Zealand’s per capita expenditure on food and alcoholic beverages was high relative to other OECD countries.¹⁹⁷ The most recent OECD data shows that New Zealand expenditure has remained high, with New Zealand having the fourth highest expenditure in the OECD in 2022.

Figure 21: Per capita expenditure on food and non-alcoholic beverages – blended conversion¹⁹⁸



Source: Commission analysis of OECD data¹⁹⁹

197 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at para 3.91, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

198 Results converted from national currencies using the same blended conversion methodology used in the Market Study. Chile, Costa Rica, and Switzerland are not shown due to data gaps.

199 OECD “Data Explorer” (Accessed 16 May 2024), <https://data-explorer.oecd.org>.

INFORMED CONSUMERS HELP INFLUENCE COMPETITION KA WHAKAAWEAWE NGĀ KIRITAKI MATATAU I TE WHAKATAETAETANGA

When consumers can easily make meaningful comparisons between competing offers, they can make informed choices, develop accurate perceptions of value over time, and help choose the best place to shop for their needs. This incentivises retailers to improve their offers to attract consumers from competitors. Conversely, if it is difficult for consumers to compare offers, they may make less-informed purchasing decisions and be less likely to shop around, which can reduce price competition.

This section looks at information available to grocery consumers, including the RGRs' promotional practices and loyalty schemes, and provides an overview of new unit pricing regulations.

RGRs run multiple promotional mechanisms

The Market Study highlighted that the large number of promotions in supermarkets could be confusing for consumers and create an overload of information when making purchasing decisions. It was recommended that the RGRs ensure that their pricing, promotional practices, and materials are simple and easily understood by consumers.²⁰⁰

This is important as promotions are commonplace in New Zealand, with the Market Study noting that spending on products on promotions was higher in New Zealand than other comparable countries including Australia, Britain, Germany and France.²⁰¹

RGRs primarily use three pricing strategies, loyalty pricing which rewards members with special discounts, short-term discounts being defined as limited time offers, and long-term price promises, ie, a price being held for a period of time.²⁰² As shown in Table 8, each of the RGRs make use of enduring 'base' pricing tickets for these strategies which are always in use, though the exact products using these tickets can change week to week. Examples of 'base' pricing tickets include:

- Loyalty tickets, eg, Woolworths' Member Price;
- Short term discounts tickets, eg, New World's Super Saver, Woolworths' Red Hot Deal; and
- Long term price promise tickets, eg, Pak'nSave's Everyday Low, Woolworths' Price Freeze.

200 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 427, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

201 Commerce Commission "Market study into the retail grocery sector – Preliminary issues paper" (10 December 2020) at Figure 4, https://comcom.govt.nz/data/assets/pdf_file/0033/229857/Market-study-into-the-retail-grocery-sector-Preliminary-issues-paper-10-December-2020.pdf.

202 New World "3 ways to save at New World" (accessed 23 July 2024), <https://www.newworld.co.nz/promotions/3-ways-to-save>; Woolworths "More ways to save" (accessed 23 July 2024), <https://www.woolworths.co.nz/info/save>.

Table 8: Number of base pricing tickets by major banner

	Woolworths ²⁰³	New World ²⁰⁴	Pak'nSave ²⁰⁵	Four Square ²⁰⁶
Loyalty	1	1	none	none
Long term	1	1	1	1
Short term	2	1	1	1
Multibuy	2	none	none	none
Other	3	none	none	none
Total	9	3	2	2

Source: Commission analysis of industry information

The RGRs also often run themed promotions (eg, baby week, and holiday themed deals). Themed promotions can make use of base pricing tickets, eg, discounting nappies using an existing ticket during 'baby week'. However, themed promotions can also go beyond base tickets, for example, Pak'nSave does not have a base multi-buy pricing ticket but does use it during 'multi-buy week'.

RGRs may also run continuity programmes, which enable consumers to collect items of high value (eg, cookware, knives, glassware) or other collectibles (eg, garden seeds, bricks, replica products). These programmes are often run over an extended length of time, alongside promotions which increase consumer spend to earn rewards by way of stickers or tokens, which are then exchanged for goods.

203 Woolworths' base promotions are 'Member price', 'Low price' (which replaced 'Great price'), 'Special', 'Clearance', 'Multibuy', '3 for deal', 'New', 'Fresh Deal', and 'Boost offer'.

204 New World's base promotions are 'Club deal', 'Everyday low price', and 'Super saver'.

205 Pak'nSave's base promotions are 'Everyday low' and 'Extra low'.

206 Four Square's base promotions are 'Everyday great price' and 'Special'.

Moving to an everyday pricing model would benefit consumers

We have observed higher use of everyday low pricing (EDLP) strategies by major supermarkets overseas and the Commission believes that a more widespread use of this model would help ensure New Zealand consumers can have confidence that they are getting a genuinely good price when shopping for groceries.

EDLP is a pricing strategy based on offering a constant price on products for an extended period, as opposed to cycling between discounted and non-discounted prices.

RGRs use high-low pricing

Frequent use of short-term promotions by RGRs creates a pattern of high-low product prices. This makes it harder for consumers to accurately assess the value of competing offers or to develop accurate perceptions of value over time, even when there are genuine savings on offer and the information provided is clear.

In some cases, products cycle through promotions weeks-on-weeks-off and this pattern occurs at alternating banners (see Table 9).

Table 9: Illustration of alternating promotions

Product	Banner A	Banner B
Week 1	On promotion	Off promotion
Week 2	Off promotion	On promotion

The impact of this cycle of alternating promotions is that consumers who purchase goods at their 'high' price are paying much more than the minimum they could be paying. However, consumers' ability to purchase goods at their 'low' price can be limited if they cannot choose when and where they shop or are unable to bulk purchase goods.

In addition, because most consumers are looking to purchase multiple products during a single shopping trip, they are likely to encounter some products at their 'high' price and some their 'low' price at a single store. Thus, to get the best deal on all products consumers need to make an assessment and choose whether to conduct a single shop or split across retailers. Without a price comparison tool this becomes a very difficult task for consumers to undertake.

No substantial movement towards everyday prices

During the Market Study, the RGRs told the Commission that they planned to increase their emphasis on EDLP over time.²⁰⁷ In the period since the Market Study we have not observed a store-wide shift towards EDLP, instead the RGRs have introduced ‘price freeze’ schemes and long-term discount promotions, particularly in response to rising inflation and the cost of living crisis.

For example, in 2022 and 2023 WWNZ ran a ‘Winter Price Freeze’ at Woolworths stores, locking down the price of 300-500 items as a measure to “fight the cost of living crisis”.²⁰⁸ This has now been replaced with an ongoing ‘Low Price’ promotional ticket.²⁰⁹

Similarly, FSNI and FSSI ran a ‘Price Rollback’ on 110 items at New World, Pak’nSave, and Four Square stores between mid-2022 and mid-2023.²¹⁰ Some of these 110 products remain on ‘Everyday Low Price’ tickets in New World stores and ‘Everyday Low’ promotional tickets at Pak’nSave.

RGRs need to substantiate their promotional claims and claims must not be false or misleading

Under the Fair Trading Act, it is illegal for businesses to make claims about their goods or services without a reasonable basis, including claims about pricing.²¹¹ As such the RGRs need to ensure that the representations they make about their prices are clear, accurate and unambiguous.

Consumer NZ ran a ‘dodgy specials’ campaign between September 2022 and June 2023, asking consumers to send in examples of supermarkets’ unclear or misleading pricing and promotions.²¹² Through the campaign, ConsumerNZ received over 600 alleged examples of unclear or misleading pricing and promotions from members of the public. Some of the alleged issues related to RGRs’ promotional practices being misleading through their use of comparing discounted prices against the non-sale price of the good.²¹³

Comparing a non-sale ‘usual’ price to a sale price might be misleading where:

- The usual price has never been charged.
- A retailer has a strategy of deliberately inflating the usual price of a good, knowing it will lead to no or few sales, so that they can attract consumers by subsequently offering the goods at a discounted price.
- The claimed usual price is one of many prices at which the retailer commonly sells the good.
- The claimed usual price is out of date, ie, the retailer no longer commonly sells the good at that price and it has been superseded by another price.

Importantly, if a retailer continually sells products at a promotional price, then the promotional price becomes the usual selling price. It would be misleading for a retailer to continue to claim it was discounting a price when that price has become the usual price.

207 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at paragraph 7.55, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

208 Radio New Zealand “Countdown to freeze prices on 300 products but only two vegetables make the list” (31 May 2023), <https://www.rnz.co.nz/news/business/491031/countdown-to-freeze-prices-on-300-products-but-only-two-vegetables-make-the-list>.

209 Woolworths “Woolworths brings customers new ways to save more and find healthier value this Spring” (25 September 2023), <https://www.countdown.co.nz/info/news-and-media-releases/2023/woolworths-brings-customers-new-ways-to-save-more-and-find-healthier-value-this-spring>.

210 Foodstuffs North Island “Foodstuffs rolls back prices by an average of 10% on more than 110 everyday items to 2021 levels” (11 May 2022), <https://www.foodstuffs.co.nz/news-room/Price-Rollback>.

211 See the Commission’s Fair Trading Act Pricing Fact Sheet for further information, https://comcom.govt.nz/_data/assets/pdf_file/0026/90746/Pricing-Fact-sheet-June-2017.pdf.

212 Consumer NZ “Help us stop dodgy supermarket ‘specials’” (22 September 2022), <https://www.consumer.org.nz/articles/send-us-your-examples-of-dodgy-supermarket-specials>.

213 Consumer NZ “Commerce Commission investigates problematic supermarket pricing following Consumer NZ complaint” (24 January 2024), <https://www.consumer.org.nz/articles/commerce-commission-investigates-problematic-supermarket-pricing-following-consumer-nz-complaint>.

Unclear value of loyalty schemes

The New World and Woolworths banners both have loyalty card schemes. New World has a ‘Clubcard’ while Woolworths recently transitioned its loyalty scheme from ‘OneCard’ to ‘Everyday Rewards’. This change in February 2024 was part of WWNZ’s wider rebrand of Countdown to Woolworths to align more closely with Woolworths in Australia.²¹⁴

Loyalty programmes can offer benefits to consumers in the form of discounted prices and/or accumulated rewards and for many consumers, a loyalty card is necessary to access these benefits. With loyalty cards driving consumers to chase specials and rewards, a Consumer NZ poll of 1,650 supporters found that 84% had a loyalty card.²¹⁵

Loyalty schemes add complexity

Despite potential benefits, loyalty programmes can reduce price transparency and make it more difficult for consumers to make informed purchasing decisions.

The Market Study found that consumer understanding of supermarket loyalty schemes was low, particularly in relation to how rewards are earned and redeemed.²¹⁶ As such it was recommended that the RGRs should ensure that the presentation of the reward structures offered by their loyalty programmes is clear, transparent and readily understandable by consumers.²¹⁷

Table 10 shows that there have been no changes to the rate of reward since the Market Study that equates to a little over 70c per \$100 spent by loyalty members. Clubcard, which has been in place since the Market Study, and the updated Everyday Rewards, formerly Onecard, have very similar rates of reward. However, there were bonus points on offer during the shift to Everyday Rewards and WWNZ appears to have increased its focus on Boost offers.

Table 10: Rewards earned through Clubcard and Everyday Rewards

Programme	NZD spend	Points earned	Conversion	Rate of reward
Clubcard	\$25	1 Flybuys point <i>or</i>	28 Flybuys points = \$5	0.71% (Flybuys)
		0.185 Airpoints	1 Airpoint = \$1	0.74% (Airpoints)
Everyday Rewards	\$1	1	2000 points = \$15	0.75%

Source: Commission analysis of loyalty scheme websites²¹⁸

214 WWNZ media release “Countdown to Woolworths” (18 July 2023), <https://www.woolworthsgroup.com.au/en/media/latest-news/2023/countdown-to-woolworths.html>.

215 Consumer NZ “Loyalty cards: great value for the supermarket, not the customer” (18 January 2024), <https://www.consumer.org.nz/articles/loyalty-cards-great-value-for-the-supermarket-not-the-customer>.

216 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 304, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

217 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 433, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

218 Foodstuffs South Island “Clubcard frequently asked questions” (accessed 6 June 2024), <https://www.foodstuffs-si.co.nz/sitecore/content/Sitecore/Brands/Brand-New-World/home/clubcard/clubcard-faqs>; Everyday Rewards “Terms and conditions” (accessed 6 June 2024), <https://www.everydayrewards.co.nz/terms-and-conditions>.

Boost offers are where consumers can earn additional points for purchasing select products. They are not provided to consumers automatically; instead, consumers must check what offerings are boosted and activate them manually. Currently, these offers are only available to consumers who have the ability to digitally register for the Everyday Rewards programme.²¹⁹

In May 2024, Fly Buys announced the programme will begin to wind down.²²⁰ Consumers are able to earn points up until 31 October 2024 and redeem any remaining points until 31 December 2024. Despite the closure of Flybuys, New World consumers can continue collecting New World Dollars or Airpoints using a Clubcard after 31 October 2024.²²¹

In addition to RGR-led loyalty schemes, all three RGRs began partnering with ASB credit card schemes in 2024.²²² The True Rewards (accepted at FSNI and FSSI banners) and Everyday Rewards (WWNZ) schemes operate essentially as a cashback option on ASB credit cards, where cashback True Rewards and Everyday Rewards points can be spent at partnered stores including RGRs' supermarkets.²²³

While the cash back options offer benefits for ASB consumers, it further adds complexity to consumers' decision making. In addition, as shown in Table 11, the rate of reward for these ASB schemes is less than in-store loyalty cards.

Table 11: Rewards earned via ASB rewards credit card²²⁴

Programme	NZD spend	Points earned	Conversion	Rate of reward
True Rewards	\$150	1	1 True Rewards point = \$1	0.67%
Everyday Rewards	\$2	1 + 2,000 bonus points every 6 months	2,000 points = \$15	0.38% (excluding bonus points)

Source: Commission analysis of reward scheme websites²²⁵

219 Consumer NZ "Woolworths Everyday Rewards card digitally excluding shoppers" (6 June 2024), <https://www.consumer.org.nz/articles/woolworths-everyday-rewards-card-digitally-excluding-shoppers>.

220 Newshub "Flybuys announces closure after nearly 30 years" (30 May 2024), <https://www.newshub.co.nz/home/money/2024/05/flybuys-announces-closure-after-nearly-30-years.html>.

221 Foodstuffs South Island "Clubcard frequently asked questions" (accessed 6 June 2024), <https://www.foodstuffs-si.co.nz/sitecore/content/Sitecore/Brands/Brand-New-World/home/clubcard/clubcard-faqs>.

222 Foodstuffs North Island "Foodstuffs teams up with ASB, offering True Rewards redemption at grocery stores nationwide" (30 April 2024), <https://www.foodstuffs.co.nz/news-room/2024/Foodstuffs-teams-up-with-ASB-offering-True-Rewards-redemption-at-grocery-stores-nationwide>.

223 True Rewards is a rewards programme run by ASB. ASB customers who have an ASB Credit Card can obtain rewards points by scanning their card at participating retail stores which include New World, Pak'nSave, and Four Square (as well as other NZ retailers).

224 Analysis is based on an ASB rewards credit card, the earn rate on platinum rewards and business rewards cards are higher. A platinum or business rewards card provides 1 True Reward point for every \$100 spent or 1 Everyday Reward for every \$1 spent. ASB sets the rate of return.

225 ASB "Everyday Rewards" (accessed 5 June 2024), <https://www.asb.co.nz/banking-with-asb/everyday-rewards.html>; ASB "True Rewards Calculator" (accessed 5 June 2024), <https://www.truerewards.co.nz/calculator?p=1>.

Loyalty schemes may not be the best deal on offer

The Market Study found that many consumers sign up to loyalty programmes to gain access to member-exclusive specials.²²⁶ However, these specials might not be the cheapest price if other banners' and retailers' prices are considered.

For example, recent Consumer NZ analysis found that Pak'nSave offered an equal or cheaper price than a Clubcard deal 70% of the time.²²⁷ Similar examples with Everyday Rewards have also been reported on.²²⁸

Both the Clubcard and Everyday Rewards schemes are linked to fuel discount schemes. As part of the Commission's work monitoring fuel markets, we have found that loyalty programmes may not result in the lowest average retail price for fuel.²²⁹

Another concern raised is whether the loyalty promotions are providing genuine discounts or if non-member prices are being inflated to create the illusion of a special.

For example, Consumer NZ looked at the pricing history of 25 grocery items to determine whether the current price was a 'good deal' or not. The analysis found that Clubcard member-only prices were a 'good deal' only 16% of the time.²³⁰ Everyday Rewards meanwhile were a 'good deal' 56% of the time.

When a retailer offers member deals, consumers are encouraged to spend more to gain reward, whether that be a discount, bonus points for loyalty programmes, or fuel discounting. Consumer NZ research shows that consumers are more susceptible to what they may perceive as a deal.²³¹

In such an example of a perceived deal, Consumer NZ tracked Woolworths Everyday Rewards 'boost' offers for a family shop over a three week period and found that the majority of boosted items, or an alternative, were cheaper at Pak'nSave.²³² While more points would have been accumulated, this created a false economy as the amount spent could have been less through alternative products or shopping at a different banner.

We have also observed that 'boosted' offers may not be discounted and may not offer the best deal for rewards members in the same supermarket. 'Boosted' offers may give the perception of reward, eg, bonus 100 points for purchase of an item, but an equivalent alternative may be on deal for a discount of double the reward value.

226 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 265, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

227 Consumer NZ "Loyalty cards: great value for the supermarket, not the consumer" (14 January 2024), <https://www.consumer.org.nz/articles/loyalty-cards-great-value-for-the-supermarket-not-the-customer>.

228 Consumer NZ "Consumer NZ warns supermarket shoppers: Beware of loyalty lure" (26 March 2024), <https://www.consumer.org.nz/articles/consumer-nz-warns-supermarket-shoppers-beware-of-loyalty-lure>.

229 Commerce Commission "Quarterly fuel monitoring report – for the quarter ended 30 September 2023" (13 February 2024) at p. 15, https://comcom.govt.nz/_data/assets/pdf_file/0017/343232/Quarterly-fuel-monitoring-report-Quarter-ending-30-September-2023-13-February-2024.pdf.

230 Newshub "Are supermarkets' special prices for loyalty members actually special?" (20 February 2024), <https://www.newshub.co.nz/home/money/2024/02/are-supermarkets-special-prices-for-loyalty-members-actually-special.html>.

231 Consumer NZ "Consumer NZ warns supermarket shoppers: Beware of loyalty lure" (26 March 2024), <https://www.consumer.org.nz/articles/consumer-nz-warns-supermarket-shoppers-beware-of-loyalty-lure>.

232 Consumer NZ "Is it worth 'boosting' products at Woolworths?" (28 March 2024), <https://www.consumer.org.nz/articles/is-it-worth-boosting-products-at-woolworths>.

Commission still has concerns over consumer understanding of RGR data collection

Loyalty schemes generate large amounts of consumer data for the RGRs, but the Market Study found that some consumers may not be aware of or understand how RGRs collect consumer data through their loyalty programmes and how this data is used.²³³ This in turn makes it harder for consumers to make well-informed decisions about participating in loyalty schemes.

Since the Market Study, FSNI has stated that it has made its loyalty programme terms and conditions easier to understand.²³⁴ This is by implementing changes to its New World privacy policy and creating a Clubcard FAQs page for consumers.

All RGRs have a clause within their privacy policy that personal information collected by loyalty membership may be shared with advertising, social media, and search engine companies like Google and Meta to help target advertising towards consumers.²³⁵ Any data shared with Google and Meta is non-identifiable and aggregated. As per the privacy policy for RGRs, information which could be used to identify a customer, such as their name or email address, is held by the RGR and not shared with the likes of Google or Meta.²³⁶

New unit pricing laws help consumers make better purchasing decisions

Unit pricing helps consumers understand the real cost of grocery items through visibility of price per standard unit of measurement such as per gram or litre. It divides the price for total package size by the standard unit of measurement, giving consumers the unit price, eg, 1kg block of cheese at \$15.00 would equate to \$1.50 per 100g.

Consistent unit pricing can help consumers compare the price of goods within and between retailers. Even when not directly comparing products and retailers, clear and accurate unit pricing information can help consumers to develop perceptions of value over time, which in turn helps them decide where to shop to best meet their needs.

At the time of the Market Study, while unit pricing was already being used to a reasonable extent by supermarkets, it was not used consistently. As such the Market Study recommended that certain grocery retailers be required to display unit pricing in a specified and consistent format.²³⁷

233 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at paragraph 7.146, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

234 Foodstuffs North Island "From our Chair" (7 July 2023), <https://annualreports.foodstuffs.co.nz/leadership-reports/from-our-chair>.

235 Newshub "Are supermarkets' special prices for loyalty members actually special?" (20 February 2024), <https://www.newshub.co.nz/home/money/2024/02/are-supermarkets-special-prices-for-loyalty-members-actually-special.html>.

236 Woolworths NZ Privacy Policy (5 March 2024), <https://www.woolworths.co.nz/info/policies/privacy-policy>; New World Privacy Policy (7 February 2024), <https://www.newworld.co.nz/privacy-policy>.

237 Commerce Commission "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 430, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

New Consumer Information Standard introduced

In response to the Market Study recommendation, as part of the 2023 grocery industry regulatory changes, the Government decided to implement mandatory unit pricing for grocery products by way of a Consumer Information Standard under the Fair Trading Act.²³⁸

After a period of consultation with industry, the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 were finalised on 31 July 2023.²³⁹ They came into force on 31 August 2023.

A transition period of one year for physical stores and two years for online stores applies.

Unit pricing regulations apply to a broad range of retailers

Unit pricing regulation requires grocery retailers to display the unit price for goods clearly and legibly, at no less than 25 percent the size of the marked price. This is for both online and in-store prices. Physical stores must comply by 31 August 2024, and online stores by 31 August 2025. The guidelines apply to grocery retailers who meet the qualifying criteria of having an internal floor space of at least 1,000sqm and selling all of these ten categories: bread, dairy products, eggs or egg products, fruit, vegetables, meat, fish, rice, sugar, and manufacturer-packaged foods. Online stores with all ten of these categories must comply with the regulations as well.

RGRs need to ensure they are charging customers the right amount

Consumers need to have assurance that they are being charged the correct amount at the checkout, so they can shop effectively and with confidence in supermarkets, as it can be hard for consumers to quickly ascertain if they have been charged correctly. We are investigating a number of alleged pricing integrity issues and continue to receive complaints around pricing integrity in supermarkets.

Information for retailers



The Commission has published guidance on the new unit pricing regulations at <https://comcom.govt.nz/regulated-industries/grocery/information-for-retailers-unit-pricing>.²³⁹

The guidelines were developed to support grocery retailers to understand their obligation.

238 Cabinet minute “Mandatory unit pricing for grocery products” (23 November 2022), <https://www.mbie.govt.nz/dmsdocument/25857-mandatory-unit-pricing-for-grocery-products-minute-of-decision-proactiverelase-pdf>.

239 Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023, <https://www.legislation.govt.nz/regulation/public/2023/0185/latest/LMS824115.html>.

240 Commerce Commission “Information for retailer – unit pricing” (March 2024), <https://comcom.govt.nz/regulated-industries/grocery/information-for-retailers-unit-pricing>.

The Commission continues to receive complaints

Consumer NZ's 'dodgy special' campaign found over 50 cases where it was alleged that the shelf pricing did not match the price the customer was charged at the checkout.²⁴¹ Based on these Consumer NZ lodged a complaint with the Commission in July 2023.²⁴²

The Commission has continued to receive complaints from consumers regarding price differences between the shelf and the checkout. In the first six months of 2024, the primary issue raised in approximately 20% of all grocery related concerns is the alleged price difference between the advertised or shelf label price and the price charged at the point of sale.²⁴³ We are concerned that we are continuing to hear from consumers that prices advertised or displayed on the shelf are not always charged accurately at the checkout. Being charged the wrong amount at the checkout, no matter how small, can add up. Consumers' trust in markets may be eroded when these situations continue to occur.

We are investigating the RGRs' pricing and promotional practices

The Commission launched investigations in December 2023 into all three of the RGRs to determine if their pricing and promotional practices comply with the Fair Trading Act.²⁴⁴

RGRs should compensate consumers at the checkout if they have been charged incorrectly

The Commission considers that RGRs should compensate consumers in situations where the price at the checkout is higher than what was displayed on the shelf. RGRs should have a compensation policy that is prominently promoted and understood by staff, clearly explaining the compensation available to consumers. However, a compensation policy is not a replacement for good policies and processes to ensure customers are charged correctly, but a complementary backstop if those policies are not followed.

Currently WWNZ has a refund policy for its Woolworths stores where they will refund the price paid and the customer can keep the product free of charge for the first product.²⁴⁵ We think this policy should be more prominently displayed and advertised by WWNZ.

The equivalent policy of FSNI and FSSI in their banner stores is to refund the difference between the shelf label and the purchase price.²⁴⁶ This is out of step with WWNZ and with Australian grocery retailers (who generally offer to allow the customer to get the good for free and get a full refund of the purchase price). It does not provide much of an incentive for consumers to check their receipts at Pak'nSave and New World. We note that FSSI do not provide any information on their refund policy online.

241 Radio New Zealand "Hundreds of misleading supermarket specials and price errors reported to Consumer NZ" (6 April 2023), <https://www.rnz.co.nz/news/national/487456/hundreds-of-misleading-supermarket-specials-and-price-errors-reported-to-consumer-nz>.

242 Consumer NZ "Commerce Commission investigates problematic supermarket pricing following Consumer NZ complaint" (24 January 2024), <https://www.consumer.org.nz/articles/commerce-commission-investigates-problematic-supermarket-pricing-following-consumer-nz-complaint>.

243 Based on enquiries to the Commission.

244 Foodstuffs North Island case register, <https://comcom.govt.nz/case-register/case-register-entries/foodstuffs-north-island-limited-foodstuffs-ni>
Foodstuffs South Island case register, <https://comcom.govt.nz/case-register/case-register-entries/foodstuffs-south-island-limited-foodstuffs-si>
Woolworths case register <https://comcom.govt.nz/case-register/case-register-entries/woolworths-new-zealand-limited-woolworths-nz>.

245 Woolworths "Refund policy" 2024, (accessed 6 June 2024) <https://www.woolworths.co.nz/info/policies/refund-policy>.

246 Pak'nSave "Refunds & returns policy" (December 2023), <https://www.paknsave.co.nz/terms-and-conditions/refund-policy-ni>; New World "North Island stores refund & returns policy" (December 2023), <https://www.newworld.co.nz/north-island-stores-refund-and-returns-policy>.

CONDITIONS OF ENTRY AND EXPANSION

TIKANGA WHAKAURU, WHAKAWHĀNUI HOKI

Chapter 6 explores the ability of retailers to enter the grocery industry in New Zealand and expand their operations.

Conditions of entry and expansion can limit both the number of competitors in an industry and the development of further competition.²⁴⁷ If entry and expansion is difficult, then it is more likely that less competitive offerings will persist long term, to the detriment of consumers.

The Market Study concluded that entry or expansion at the scale required to compete with the RGRs was unlikely to occur under the conditions that existed at the time.²⁴⁸ As such, throughout this chapter we comment on whether there has been a material improvement in conditions for entry and expansion since the Market Study.

Observations:

- **Legislation introduced in mid-2022 banned RGRs from enforcing land and lease covenants that inhibit retail grocery store development.**
- **93 land covenants and 26 lease covenants have been removed following these changes, leaving 21 unenforceable land covenants in land deeds and 105 unenforceable lease covenants in contracts.**
- **The number of properties held by RGRs but not being used in their retail operations has reduced since the Market Study. However, there are differences between the RGRs with FSSI expanding its property count.**
- **There are 46 properties owned by the RGRs which have not been used in their retail operations for over 20 years, compared to 32 at the time of the Market Study.**
- **There continues to be scope to make central and local government regulations more competition friendly, particularly in planning law and overseas investment.**

²⁴⁷ If entry and expansion costs are low enough, then the threat of entry by new firms, and the potential for existing firms to readily expand, can significantly constrain the behaviour of existing firms, even when they do not face significant constraints from existing firms.

²⁴⁸ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 189, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Types of entry and expansion conditions

Conditions of entry and expansion can be grouped into three types:

- **Structural conditions** – inherent industry characteristics, such as the technologies and resources needed to enter, plus characteristics of the market such as its geographic location and population size.
- **Regulatory conditions** – the extent to which laws, consenting and licensing processes, and regulatory requirements create roadblocks, add complexity, uncertainty and cost.
- **Strategic conditions** – actions taken by incumbent firms to discourage prospective entrants or expansion by existing firms.

Structural conditions make profitable entry difficult

New Zealand's small market size and geographic population spread makes large-scale retail entry challenging, as there are limited locations and concentrations of demand where a store can profitably operate. In addition, strong brand recognition is another part of the existing structure that poses challenges for entrants.

There are significant economies of scale throughout the grocery industry (eg, in the acquisition and distribution of groceries, and in retail), which means that small scale retailers face cost disadvantages compared to larger retailers, including the RGRs.

The Market Study noted that other retailers' and entrants' inability to access these economies of scale is a significant factor impacting entry and expansion.²⁴⁹ This continues to be the case and will likely continue into the future.

249 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at paragraph 6.121, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

There is scope to make central and local government regulation more competition friendly

There are both central and local government regulations (eg, planning law and overseas investment approval processes) that can impact competition in the grocery industry, as well as more grocery specific licensing requirements (eg, alcohol licensing). These regulations are outside the Commission's remit, although we do explore these topics and their implications for competition in this chapter.

The Market Study recommended that competition impacts, such as those outlined in the paragraph above, be considered during the next reviews of relevant legislation.²⁵⁰ To date these recommendations have not been taken forward and the Commission still considers that future legislative reviews should take competition impacts into account.²⁵¹

Some strategic behaviour is addressed under the new Act

Aside from raising the necessary capital, the two key inputs to grocery retailing are access to land and access to groceries – both of which can be affected by strategic behaviour by incumbents.

Since the Market Study, there have been several changes to strategic conditions: grocery-related covenants are now prohibited and unenforceable, land banking is being monitored, RGRs are subject to regulatory obligations to facilitate wholesale access to groceries for competing grocery retailers, and restrictive supply agreements which unduly hinder or obstruct trading relationships are prohibited. These measures seek to address a large component of what is required to establish a grocery retail business.

Strategic conditions are the only conditions which the Commission has the jurisdiction to directly enforce via the Grocery Industry Competition Act and the Commerce Act.

This chapter explores issues of access to land (covenants, land banking, planning law, and overseas investment) before looking at access to groceries (wholesale access, restrictive supply agreements, and access to alcohol).

250 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 380, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

251 The Commission and the Ministry for Business, Innovation and Employment have jointly published Competition Assessment Guidelines to assist public officials, businesses, and other interested parties to consider competition at an early stage in decisions and actions that influence markets, https://comcom.govt.nz/_data/assets/pdf_file/0022/293143/Competition-Assessment-Guidelines-January-2023.pdf.

ACCESS TO APPROPRIATE SITES IS NECESSARY TO IMPROVE COMPETITION

ME MĀTUA WHAI WĀHI PAI HEI TŪNGA KIA PAI AKE TE WHAKATAETAETANGA

Access to land is one of the key barriers to entry and expansion in the grocery industry. Acquiring suitable sites is a requirement for successful entry and expansion of new or existing grocery retailers. A retailer wishing to enter or expand on a regional or national basis would require access to multiple suitable sites, with specific site requirements for retail stores (including size, access, exposure to consumers, and carparking). Access to land is also a requirement for online businesses (eg, online grocery retailers, meal kit providers) as they require space to hold and process goods; however, their needs differ from a bricks and mortar retailer. While the discussion of land as a critical input for entry and expansion in this chapter implies a greenfields entry model, it may prove easier for an entrant to convert an existing building than construct a new one.

Investing in a suitable site for grocery retailing is a significant undertaking and can take time to implement.

The Market Study identified that there had been a lack of suitable land available for the development of retail grocery sites, with the availability of land being impacted by:²⁵²

- RGRs placing restrictive covenants on land and exclusivity covenants in leases that prevented rival retailers from developing stores;
- land banking by RGRs; and
- planning laws and their practical implementation by local authorities.

Separately, foreign firms' access to sites can be delayed or declined through the Overseas Investment Act processes.

Covenants have historically restricted site availability

Covenants are an example of strategic conduct undertaken by incumbent firms to restrict access to suitable sites for grocery retailing. Covenants can be placed on both land and leases, and the Market Study identified this as a significant barrier to entry and expansion.²⁵³ This is particularly the case where there are no other suitable sites, or only less suitable sites in a given area (such as a town centre). The Market Study recommended that restrictive and exclusivity covenants that inhibit retail grocery store development be prohibited.²⁵⁴

Historically, the RGRs had lodged covenants on land which prevented or restricted other supermarket or food retail store development (known as restrictive covenants).

These covenants were placed upon land titles for a determined period of time to ensure the land was not developed or used by potential competitors.

252 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 200, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

253 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 211, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

254 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 392, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Data collected during the Market Study identified more than 90 restrictive land covenants entered into by the RGRs.²⁵⁵ The majority of these land covenants were still active in March 2022.²⁵⁶

The RGRs had also entered into leases which contained covenants restricting the development of rival supermarkets and/or other retail grocery businesses on adjacent or proximate premises (known as exclusivity covenants). Examples of typical exclusivity covenants seen during our recent monitoring include:

- A 50% reduction in rent if the landowner allows a supermarket or food retailer to trade on any adjoining premises;
- A 50% reduction in rent if the landowner permits any of their sites, and those within a one-kilometre radius, to be used for retail or wholesale grocery sales;
- Disallowing competitors to establish stores in the same mall or shopping centre.

The Market Study identified over 100 exclusivity covenants in leases entered into by the RGRs. The majority of these lease covenants were still active in March 2022.²⁵⁷

RGRs have made progress to remove covenants

The Commerce (Grocery Sector Covenants) Amendment Act 2022 was passed on 30 June 2022 and made amendments to ‘Part 2 – Restrictive trade practices’ of the Commerce Act in response to recommendations made in the Market Study. These amendments to the Commerce Act prohibit the use of restrictive and exclusivity covenants that inhibit retail grocery store development and deem existing covenants unenforceable.²⁵⁸ As a result, RGRs can no longer use restrictive and exclusivity covenants to increase barriers to entry for rivals.

Although covenants are no longer enforceable, removing covenants has been a priority since the amendments to the Commerce Act, as it reduces the risk of inadvertent attempts at enforcement by anyone in the future.

Following these amendments, the RGRs have made progress in removing restrictive covenants from land deeds and exclusivity covenants from contracts. The Commission has been monitoring the number of covenants in place and the work being undertaken by the RGRs to reduce these.

255 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 210, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

256 Commerce Commission analysis of industry information provided via the Market Study and subsequent information requests.

257 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 210, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

258 Limited to covenants of which a designated grocery retailer has an interest in. Designated grocery retailer is currently defined in s28A of the Commerce Act as FSNI, FSSI, and WWNZ including all franchises and interconnected bodies corporate.

Table 12 and Table 13 show that the RGRs have made more progress removing restrictive land covenants than removing exclusive lease covenants. This is likely because the amendments gave RGRs a two-year window until 30 June 2024 to revoke or modify any prohibited and unenforceable covenants from land deeds without needing to seek permission from the current landowner.²⁵⁹

We have seen evidence that the RGRs are continuing to make progress removing covenants and the Commission will continue to collect information periodically and publish it in future monitoring reports.²⁶⁰

However, any land covenants that were not removed by 30 June 2024 may be difficult to remove. The RGRs have all stated they may not be able to remove all existing covenants, particularly those registered to land of which they are not a party to the covenant as not all new landowners are interested in making changes to historic covenants. It is important to note that while the number of total covenants may never reach zero, legally, they will not be able to be enforced.

Table 12: Reduction in land covenants – June 2022 to August 2023²⁶¹

RGR	June 2022	August 2023	Number change	% change
FSNI	62	15	-47	⬇️ 76%
FSSI	26	1	-25	⬇️ 96%
WWNZ	26	5	-21	⬇️ 81%
Total	114	21	-93	⬇️ 82%

Source: Commission analysis of industry information²⁶²

Table 13: Reduction in lease covenants – June 2022 to August 2023²⁶³

RGR	June 2022	August 2023	Number change	% change
FSNI	24	13	-11	⬇️ 46%
FSSI	11	11	0	➡️ 0
WWNZ	96	81	-15	⬇️ 16%
Total	131	105	-26	⬇️ 20%

Source: Commission analysis of industry information

259 Section 28B(5) of the Commerce Act.

260 FSNI report their progress publicly via their Grocery Market Regulation Dashboard; their numbers differ slightly from our reporting as they use a different methodology to count covenants and affected titles. See Foodstuffs North Island Grocery Market Regulation Dashboard – Freeing up land for development, <https://www.foodstuffs.co.nz/Grocery-Market-Regulation-Dashboard>.

261 Analysis of most recent data available. FSSI data is correct as of September 2023.

262 Total figure includes properties classified as expired or non-applicable due to being lodged by another party. Reduction does not include properties determined as TBC for amendment or revocation where RGR had indicated they were awaiting response. Data is correct as of September 2023.

263 Analysis of most recent data available. FSSI data is correct as of September 2023.

The RGRs have informed us that they have contacted other parties to their lease agreements containing restrictive covenants. This is to ensure they are aware that any restrictive clauses cannot be enforced. The Commission is conscious of the risk that through change of management or ownership of leased premises, an attempt could be made to enforce a restrictive clause. We have heard anecdotal evidence of this occurring. We will continue to monitor these clauses over time and investigate where necessary. We also encourage RGRs to continue to educate other parties to lease agreements about these clauses being unenforceable and the potential consequences of attempting enforcement.

To date we have not observed any new entry involving land that was previously subject to restrictive or exclusivity covenants. However, the timeframe of this change has been relatively short and the development of land for grocery retailing takes time. We would expect to see suitable sites that have opened up be used by competing retailers in the medium to long term.

Proceedings filed for historic covenant use

In June 2024, the Commission filed proceedings against FSNI in the High Court alleging that it historically lodged anti-competitive land covenants with the purpose of substantially lessening competition in local markets by blocking competitors from opening rival supermarkets at particular sites and developing existing ones at several locations.

The Commission and FSNI have entered into a settlement to resolve the proceedings on terms acceptable to both parties.²⁶⁴ The High Court will determine any orders to be made in relation to FSNI in due course.

²⁶⁴ Commerce Commission “ComCom files proceedings against Foodstuffs North Island for blocking rivals” (19 June 2024), <https://comcom.govt.nz/news-and-media/media-releases/2024/comcom-files-proceedings-against-foodstuffs-north-island-for-blocking-rivals>.

Land banking can reduce site availability

Buying and holding onto properties without any specific plans for its use or development is known as land banking. This is another example of strategic conduct by incumbents that can reduce the number of suitable sites available to other retailers looking to enter or expand.

Large retailers, including in the grocery industry, tend to take a long-term approach towards store development, which includes identifying and acquiring suitable properties or sites that may become suitable for future development to meet growth. However, the RGRs may also have other incentives to acquire and hold properties, which can prevent those properties being used by competing retailers.

While RGRs historically may have preferred to use covenants, due to a lower cost than holding land, there is potential for increased land banking due to the 2022 enforcement ban on covenants that inhibit retail grocery store development.²⁶⁵

As noted in the Market Study, in some circumstances land banking may contravene sections 27 or 47 of the Commerce Act, relating to anticompetitive agreements and acquisitions respectively.²⁶⁶

Some RGRs have reduced their non-retail property holdings since the Market Study

In addition to properties where retail stores are located, each of the RGRs own and/or lease other properties. These non-retail properties can be in use as part of an RGRs' back-office and supply chain operations or can be held for 'future development'.²⁶⁷

While we acknowledge that store development takes time and there are legitimate reasons for RGRs to hold properties for several years, the possession of properties for significant durations (eg, over 20 years) can impact entry and expansion of competing retailers.

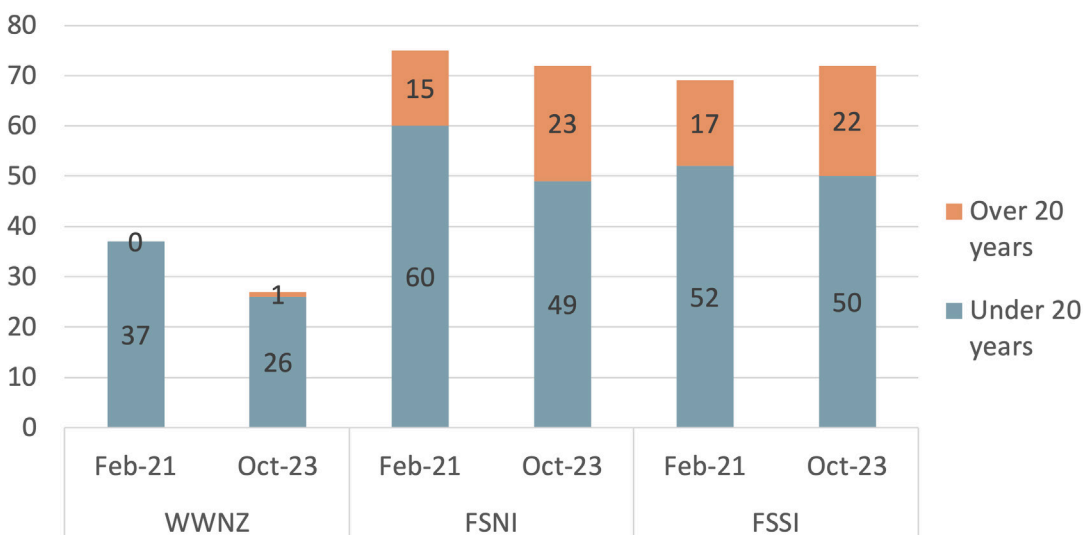
²⁶⁵ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 222, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

²⁶⁶ Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 221, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

²⁶⁷ By non-retail we mean properties not currently being used by the RGRs for their retail operations. It is possible that some of the 'future development' properties the RGRs own are leased to other companies for retail purposes.

In total the RGRs hold 171 non-retail properties. As shown in Figure 22, the non-retail property holdings of FSNI and WWNZ have decreased since the Market Study, but mainly among comparatively newer properties, while the total number of non-retail properties held by FSSI has increased. Each RGR now has more properties owned for over 20 years compared to the Market Study, and the average length of ownership has increased.

Figure 22: Non-retail properties owned February 2021 vs October 2023



Source: Commission analysis of industry information

Land banking is an area of concern for the Commission

Currently it is unclear how many of the properties noted above are being actively used for back office, supply chain or other operational purposes versus properties held for ‘future development’. Instances of RGRs acquiring and holding properties without specific plans to use the properties for their operations within a set timeframe is an area of concern to the Commission.

In the coming year we intend to look into the issue of land banking in more detail.

Planning law restricts retail development

To develop a bricks and mortar retail grocery store, a retailer must comply with planning regulations, such as zoning requirements within the local council’s District Plan, and in some cases the resource consent process. Planning regulations can slow the development of new stores if there are additional costs or delays in the consenting process. Compliance with planning law is a necessary pre-requisite to any entry or expansion in retail grocery. This is particularly, but not exclusively, the case for bricks and mortar retailers.

The Market Study recommended that the availability of sites for retail grocery stores should be improved under planning law.²⁶⁸ Independent of the Market Study recommendation, the previous Government repealed the Resource Management Act 1991 (**RMA**) and planned to replace it with three separate Acts.²⁶⁹

The Commission submitted on two of these, the Natural and Built Environment Bill and the Spatial Planning Bill. We proposed changes that would support greater access to land for all retail developments, including grocery sector participants.²⁷⁰ However, our proposed changes were not taken forward beyond Select Committee and both Acts were subsequently repealed. The RMA was then reinstated with the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.²⁷¹

The Government plans to replace the current RMA with new resource management legislation.²⁷² In this new legislation there will again be an opportunity to support greater access to land for grocery retail developments, as well as for other retail sectors.

268 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 380, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

269 The RMA was planned to be replaced with the Spatial Planning Act, the Natural and Built Environment Act, and the Climate Adaptation Act.

270 Commerce Commission “Submission on the Natural and Built Environment Bill and Spatial Planning Bill” (2 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0024/343185/Submission-to-Environment-Committee-on-the-Natural-and-Built-Environment-Bill-and-Spatial-Planning-Bill-2-February-2022.pdf.

271 Beehive NZ “NBA and SPA successfully repealed” (20 December 2023), <https://www.beehive.govt.nz/release/nba-and-spa-successfully-repealed>.

272 Beehive NZ “First RMA amendment Bill introduced to Parliament” (23 May 2024), <https://www.beehive.govt.nz/release/first-rma-amendment-bill-introduced-parliament>.

Overseas Investment Act creates barriers for investment

The Market Study also identified that the Overseas Investment Act is a regulatory process that can make it more difficult for overseas retailers to enter the grocery industry using overseas capital.²⁷³

The Overseas Investment Office is the agency responsible for assessing notifications and applications for consent under the Overseas Investment Act. It also monitors and enforces compliance relating to overseas investment. The Overseas Investment Office sits under its parent agency Toitū Te Whenua Land Information New Zealand.

The Overseas Investment Act requires a transaction to go through a consenting process if it will result in overseas investment in sensitive land or significant business assets.^{274,275} This process may create additional costs, delays and/or uncertainty in site acquisition for overseas entities looking to invest in or enter the New Zealand retail grocery industry.²⁷⁶ Additionally, where consent is still required, there is a potential for incumbents to make submissions opposing applications for consent by their competitors, or to judicially review decisions of the Overseas Investment Office where it grants consent. Foodstuffs has engaged in such action in the past.²⁷⁷

In June 2024, the Associate Minister of Finance issued a new Ministerial directive letter to Land Information New Zealand, the parent agency of the Overseas Investment Office. The directive aims to minimise compliance costs and reduce consent timeframes under the Overseas Investment Act.²⁷⁸

While the Overseas Investment Act process may impact on entry and expansion in the grocery industry, we note that there are a range of policy considerations underpinning the Overseas Investment Act, and it is for policy makers to determine the weight that competition should be given as part of the Overseas Investment Act regime relative to other factors.

The Market Study recommended looking at the Overseas Investment Act to consider if it unduly impacts entry and expansion conditions.²⁷⁹ We encourage policy makers to consider this when the Overseas Investment Act is next reviewed.

273 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 258, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

274 Overseas Investment Act 2005.

275 The Market Study noted the purchase or lease of land bordering on reserves and streams, land with any residential zoning, and land adjoining a marine or coastal area, or a lake can require consent from the Overseas Investment Office.

276 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 259, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

277 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 259, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

278 Beehive NZ “Making it easier to invest in New Zealand” (6 June 2024), <https://www.beehive.govt.nz/release/making-it-easier-invest-new-zealand>.

279 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 380, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

ACCESS TO GROCERIES TE WHAI WĀHI KI NGĀ KAI

Wholesale access to groceries

The Market Study found that without wholesale supply, smaller independent stores and smaller new entrants were unlikely to be able to access a range of groceries cheaply enough to compete with the RGRs.²⁸⁰ This is a symptom of the structural conditions of the grocery industry.

The wholesale access regime introduced under Part 3 of the Act is intended to enable other retailers to take advantage of the RGRs' scale and efficiency in purchasing and distributing groceries. It should enable other grocery retailers to improve their retail offering and to compete more effectively with the RGRs, which should then lead to better outcomes for New Zealand consumers.

Further information on the wholesale access regime, including our assessment of the RGRs' wholesale offers, can be found in Chapter 7.

Measures to put an end to contractual terms which unduly obstruct supply

Best price clauses and exclusive supply agreements are an example of strategic conduct used by RGRs that may affect the ability of suppliers to supply other parties.

Exclusive supply agreements are clauses which specify that a supplier is to supply products or certain brands of products exclusively to a particular grocery retailer. Information provided by the RGRs during the Market Study similarly indicated that exclusive supply arrangements do not appear to be widespread.²⁸¹ However, comments made by Supie at the Grocery Market Study Conference indicated that exclusive supply arrangements had a significant impact on its ability to stock a full range of products.²⁸²

Best price clauses ensure a particular buyer obtains products from a supplier on terms that are at least as good as (or, in some cases, better than) those provided to other buyers. They do not appear to be very common, and parties have not generally indicated that they significantly restrict the availability of supply to grocery retailers or the price at which grocery retailers can purchase products from suppliers.²⁸³

280 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 189, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

281 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at paragraph 6.196.2, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

282 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 253, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

283 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 253, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Clause 22 of the Grocery Supply Code and section 45 of the Act seek to address exclusive supply agreements and best price clauses that “unduly” hinder or obstruct relevant trading relationships. These provisions are aimed at preventing problematic conduct that is intended to obstruct a supplier or wholesale customer from providing a genuine competitive offer.

The Market Study recommended monitoring the major grocery retailers’ use of best price clauses and exclusive supply agreements, which may impact on the conditions of entry and expansion.²⁸⁴

The Commission will be monitoring the use of best price clauses and exclusive supply agreements by RGRs over time, including investigating where these may be non-compliant with the Grocery Supply Code.

Sale and supply of alcohol

Restrictions on the number and type of retailers that can sell alcohol is an example of a regulatory condition that can impact the grocery industry. The Market Study noted that current alcohol licensing laws could be a factor impacting retailers’ ability to enter and expand in the grocery sector.²⁸⁵

Alcohol licensing and selling is governed by the Sale and Supply of Alcohol Act 2012 (**Sale and Supply of Alcohol Act**). Its purpose is that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.²⁸⁶

The Sale and Supply of Alcohol Act has a number of sections which reduce the availability of alcohol, including specifying that small retailers such as dairies or convenience stores cannot sell alcohol.²⁸⁷ In particular, the Sale and Supply of Alcohol Act largely limits the issuance of ‘off-licences’ to sell alcohol in a retail context to specialised liquor stores, supermarkets with a floor area of at least 1,000 square metres, or grocery stores.

284 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 380, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

285 Commerce Commission “Market study into the retail grocery sector – final report” (8 March 2022) at p. 260, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

286 Sale and Supply of Alcohol Act 2012, s 4.

287 Ministry of Justice “Alcohol Reform 2010: Regulatory Impact Statement”, <https://www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-2010-Alcohol-Reform.pdf>; Ministry of Justice “Regulatory Impact Statement: Regulatory Regime for the new Alcohol Law”, <https://www.justice.govt.nz/assets/Documents/Publications/RIS-Regulations.pdf>.

Since the Market Study, the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023 gives local communities a greater voice to oppose alcohol sales in their community.²⁸⁸ The amendment has the following effects which further restrict the sale of alcohol.²⁸⁹

- Removes the ability for parties to appeal provisional local alcohol policies.
- Removes the ability to cross-examine at alcohol licensing hearings.
- Allows any person or group to object to a licence application (with a narrow exception for trade competitors).
- Extends the timeframe for objecting, to give people more time to prepare evidence.

The Market Study noted that consumers prefer one-stop shopping. As a result, consumers seeking to purchase alcohol as part of their shopping basket might not consider shopping at grocery retailers that do not sell alcohol.²⁹⁰

There are documented public policy reasons for restricting the types of business who can sell alcohol, including to help reduce alcohol-related harm.

However, creating extra restrictions or barriers to the sale of alcohol may further discourage retailers from entering or expanding in the retail grocery market. Alcohol licensing laws may make it difficult for some existing or prospective retailers to offer a full range of products that consumers wish to buy. This includes dairies and convenience stores, as well as other existing retailers seeking to expand into grocery products.

Night 'n Day Foodstores highlighted this concern in their submission to Select Committee during the development of the Sale and Supply of Alcohol Act, noting that outside of Foodstuffs cooperatives and Woolworths, there is no other nationwide chain that can supply consumers with grocery products and alcohol.²⁹¹

A recent example of this is independent Hamilton supermarket FIFO, which has not been able to acquire a license to sell alcohol at their store.²⁹² FIFO has noted that the ability to sell alcohol would allow them to offer a one-stop shop.

The Market Study recommended looking at the Sale and Supply of Alcohol Act to consider if it unduly impacts entry and expansion conditions.²⁹³ This could be revisited when this Act is next reviewed.

288 Sale and Supply of Alcohol (Community Participation) Amendment Act 2023.

289 Beehive NZ "Huge win for communities with passing of new alcohol laws" (24 August 2023), <https://www.beehive.govt.nz/release/huge-win-communities-passing-new-alcohol-laws>.

290 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 260, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

291 Parliament NZ "Grocery Market Review submission" (17 January 2024), https://www.parliament.nz/resource/en-NZ/53SCED_EVI_129934_ED11544/3a1b392b25e6aefab72ccbea6bb0b34adc7b3e4b.

292 Waikato Times "Beer and wine sales at new FIFO supermarket face objections" (22 May 2024), <https://www.waikatotimes.co.nz/nz-news/350284448/beer-and-wine-sales-new-fifo-supermarket-face-objections>.

293 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 380, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

WHOLESALE ACCESS REGIME

TĀ TE KAIHOKO WAENGA TIKANGA WHAI WĀHI

In Chapter 7 we report on how the wholesale supply of groceries by RGRs is progressing following the introduction of the Act's grocery wholesale regulatory regime (the wholesale regime).

In particular, we assess:

- Whether wholesale customers have reliable and cost-effective access to wholesale supplies of groceries, and reasonable access to the benefits of the scale and efficiency of the RGRs;^{294,295}
- Whether the RGRs' wholesale offerings are consistent with a competitive wholesale market;²⁹⁶ and
- Whether the wholesale regime is helping to materially improve competition and efficiency, and benefiting New Zealand consumers.²⁹⁷

Observations:

- While the Act's wholesale regime may be improving the supply options for some grocery retailers, we are concerned the impact is limited and the regime is not on track to achieve its intended benefits for consumers.
- There seem to be fundamental issues with the wholesale offerings that have been established under the regime, on pricing, product ranges, and systems and processes.
- Further regulatory interventions may be necessary to achieve the intended benefits of the wholesale regime.
- We have launched an inquiry to consider whether further intervention is required.

²⁹⁴ Under section 25(1) of the Act a 'wholesale customer' means any person that receives the wholesale supply, or wants to obtain the wholesale supply, of groceries from a regulated grocery retailer for the purpose of supplying groceries, directly or indirectly, at retail to consumers.

²⁹⁵ Section 21 of the Act.

²⁹⁶ Section 23 of the Act.

²⁹⁷ Section 3 of the Act.

Aim of wholesale regulatory regime

The Market Study identified wholesale access to grocery products as one of the factors that was likely to be preventing or slowing the entry and expansion of other retailers into the retail grocery industry.²⁹⁸

The Regulatory Impact Statement on the Grocery Industry Competition Bill summarised the Government's expectations of the wholesale regime as follows:²⁹⁹

"Competition for grocery retail may be improved if other existing or new grocery retailers are better able to leverage the scale and efficiency advantages of major grocery retailers."

Smaller wholesale customers (such as independent dairies or smaller chains) provide some limited competitive constraint on the major grocery retailers, which could potentially be increased if they can access wholesale supply in the long term to provide a wider selection of products at prices that are more attractive to consumers. Larger grocery retailers (such as national or regional retail chains diversifying into groceries) may view wholesale access as a springboard to grow volume and customers while they invest to build their own relationships with suppliers.

In the long term consumers would benefit by having more choices of where to buy groceries because there are more grocery retailers that can provide the convenience of a comprehensive range of groceries at competitive pricing. For example, rural-based consumers, including Māori, may have shorter travel times if more stores in rural areas provide a grocery offering. Price-focused consumers in urban and peri-urban areas may benefit if existing at-scale retailers expand their offering into groceries.

The Government's expectation is that the wholesale offering by major grocery retailers – in terms of range and price – should be consistent with what would be expected in a workably competitive wholesale market.

298 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 190, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf; Note the Market Study did not explicitly recommend a wholesale regulatory regime.

299 Minister for Commerce and Consumer Affairs / MBIE "Regulatory Impact Statement: grocery sector regulatory backstop to the quasi-regulated wholesale access regime" (28 July 2022), at 7-10, <https://www.mbie.govt.nz/dmsdocument/25463-regulatory-impact-statement-addendum-grocery-sector-regulatory-backstop-to-the-quasi-regulated-wholesale-access-regime-proactiverelease-pdf>.

The wholesale regime came into force upon the commencement of the Act on 10 July 2023. The wholesale provisions of the Act are set out in Part 3 of the Act and promote the purpose of the Act by enabling wholesale customers to:

- Have reliable and cost-effective wholesale supplies of groceries (through RGRs, direct supply and/or any other channels); and
- Have reasonable access to the benefits of the scale and efficiency of operations of RGRs.³⁰⁰

The wholesale regime requires RGRs to establish wholesale grocery offerings and to consider all wholesale supply requests in good faith.³⁰¹ It is intended to address a lack of wholesale supply options in New Zealand to enable potential competitors to improve their retail offering and compete more vigorously with the RGRs.

In a competitive grocery wholesale market, we would expect the following:

- RGRs vigorously compete for wholesale customers;
- Wholesale customers have choices when buying products for resale;
- Wholesale pricing is based on RGRs' actual costs to provide products to wholesale customers;
- Wholesale pricing reflects a sufficient margin between wholesale and retail prices to enable wholesale customers to compete with RGRs on price;
- Over time, downward pressure on retail pricing; and
- Wholesale customers can obtain goods on similar non-price terms to RGRs' retail stores.

Establishment of wholesale regime by RGRs

The RGRs began developing their wholesale offerings ahead of the wholesale regime coming into force, as they anticipated the new regulatory regime.

The Act requires the RGRs to comply with requirements for facilitating commercial agreements for the wholesale supply of groceries.³⁰² This included requirements to establish:

- Rules, criteria and procedures;
- Standard terms and conditions and principles; and
- Systems and processes.

RGRs are also required to notify the Commission of wholesale requests, variations and cancellations, and to ensure that wholesale agreements are in writing, have transparent pricing, do not hinder or obstruct trading relationships, or prevent supplier rebates, discounts or payments (**RDP**) being passed on.³⁰³

The current wholesale regulatory requirements are light-handed. However, if these interventions are not working well, the Act gives the Commission the discretion to undertake an inquiry into the wholesale supply of groceries, and notes that the purpose of such an inquiry is to consider whether and what additional regulation should apply.³⁰⁴

As at June 2024, 510 potential wholesale customers had enquired to at least one of the three RGRs about entering into a wholesale agreement, and 49 wholesale customers had ordered groceries via the RGRs' offers.³⁰⁵

300 Section 21 of the Act.

301 Section 34 and 35 of the Act.

302 Subpart 2 of the Act.

303 Sections 40, 41, 42, 43, 45 and 46 of the Act.

304 Section 55(1)(b) gives the commission discretion to undertake an inquiry. Section 56(1) of the Act outlines the purpose of such an inquiry.

305 Commerce Commission analysis of industry information.

Monitoring wholesale regime

To monitor and assess the progress of the grocery wholesale regime, we have used a range of information, including:

- Information reported by and requested from RGRs;
- Engagement with a range of wholesale customers (including potential wholesale customers); and
- Engagement with suppliers and other industry participants.³⁰⁶

Based on the principles and requirements in Part 3 of the Act, we have determined that the following are the most relevant considerations to assess whether the wholesale regime is meeting its purpose:³⁰⁷

- Quantity and frequency of supply;³⁰⁸
- Wholesale pricing;³⁰⁹
- Range of products;³¹⁰
- Systems and processes;³¹¹ and
- Terms and conditions.³¹²

In this chapter we provide our assessment of the progress and current state of the wholesale regime based on these key considerations.

Quantity and frequency of supply – what has been supplied?

Wholesale volume across RGRs should reflect demand and service a diverse range of customers

The volume of sales through the wholesale regime is an indicator of whether the regime is achieving its purpose. If the regime is working as intended, the quantity of sales should reflect what is or is likely to be demanded by wholesale customers in a workably competitive market.³¹³

The Act also highlights the desirability of the grocery industry to include a diverse range of retailers.³¹⁴ The wholesale regime should facilitate competition for the main shop, the secondary shop and the top up shop by providing wholesale groceries to other retailers servicing these shopping missions.

306 Information reported by and requested from RGRs was done so under sections 40 and 41 of the Act.

307 Section 21 of the Act establishes that the purpose of the wholesale supply of groceries is to promote the purpose of the Act by enabling wholesale customers to have reliable and cost-effective wholesale supply, and to have reasonable access to the benefits of the scale, efficiency, and operations of the RGRs.

308 Section 24(1)(c) of the Act.

309 Section 24(1)(a) of the Act.

310 Section 24(1)(c) of the Act.

311 Section 44 of the Act.

312 Section 38 of the Act.

313 Section 24(1)(c) of the Act.

314 Section 24(1)(i) of the Act.

Main, secondary and top-up shops

FSNI's wholesale offering facilitates some supply to other retailers providing a range of shopping missions.³¹⁵ FSSI also appears to be facilitating a very small amount of supply to other retailers providing top-up and secondary shops (eg, specialty supermarkets).³¹⁶ However, compared to FSNI and WWNZ, the volume of FSSI's wholesale sales has been very low.

More than half of FSNI's wholesale customers are smaller retailers with a convenience offering alongside specialist online retailers and independent supermarkets.³¹⁷ The sales category information that we have received up to February 2024 indicates confectionery items are the largest category of FSNI's wholesale sales.³¹⁸ This may suggest FSNI's wholesale customers use the regime to service top up shopping missions, targeting a narrower range of fast-moving product lines.

In contrast, WWNZ has the largest number of wholesale customers and by far the highest sales through its wholesale offering.³¹⁹ Its customer base ranges from national franchises to small convenience retailers.³²⁰

Many of WWNZ's customers have stores that cater to the secondary shop.³²¹ Sales category information that we received up to February 2024 indicates WWNZ customers order a wide range of groceries across different categories, suggesting they are using the regime to compete on a range of shopping missions.³²²

RGRs have begun to supply a small number of wholesale customers, but total sales are low

The number of wholesale customers is small and the conversion rate from enquiries to orders is low. Between July 2023 and June 2024, the RGRs received 510 enquiries from potential customers for wholesale supply and 88 signed wholesale agreements. Of these 88 signed agreements, 49 customers are actively making orders.³²³ Total sales through the RGRs' wholesale offers between July 2023 and June 2024 was approximately \$7.4m, which represents around 0.03% of total supermarket and grocery retail sales in New Zealand.³²⁴

Around 10 retailers account for most of the total wholesale sales, and they appear to be integrating the RGRs' wholesale offers into their business strategies, eg, to source new product lines.³²⁵ Overall, the quantity of sales to these customers is small, but they demonstrate the benefits the wholesale regime can provide to other retailers.

315 Commerce Commission analysis of industry information.

316 Commerce Commission analysis of industry information.

317 Commerce Commission analysis of industry information.

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323 Commerce Commission analysis of industry information.

324 Total revenues of supermarket and grocery sector were reported as \$25 billion in the 12 months to 30 June 2023. Statistics New Zealand "Retail trade survey: June 2023 quarter" at table 1 <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2023-quarter/Download-data/retail-trade-survey-June-2023-quarter.xlsx>.

325 Commerce Commission analysis of industry information.

However, the current volume of sales and the number of customers utilising the RGRs' wholesale offers does not reflect the level of activity we would expect in a competitive wholesale market. Many potential customers, including some large ones, have enquired about the RGRs' wholesale offers but have not signed wholesale agreements, and 39 who have signed wholesale agreements have not ordered any goods.³²⁶ In addition, not all RGRs have promoted their wholesale offers as vigorously as was expected when the Act was being developed.

Considering the low number of actively ordering wholesale customers and low level of overall wholesale sales, the impact of the RGRs' wholesale offers on competition to date is negligible.

We are also aware of some wholesale arrangements with RGRs that occur outside of the wholesale regulatory regime. For example, FSSI has been supplying a group of "non-banner members", including some grocery retailers. These members were recently transitioned from being trading members in FSSI to wholesale customers of Trents.

We are continuing to seek information about the other forms of wholesale supply that are occurring outside of the wholesale regime, and the extent that the RGRs' wholesale offerings are being promoted as a choice for other grocery retailers.

Wholesale pricing

In a competitive wholesale market, we expect a sufficient margin between wholesale and retail prices, to allow wholesale customers to compete at the retail level. We would also expect the benefits of the RGRs' scale and efficiency of operations to be passed through to wholesale customers.³²⁷

RGRs' wholesale grocery prices are higher than RGRs' retail prices for many products

It appears that in many cases, the RGRs' wholesale pricing does not leave sufficient margin for competition at retail. We have heard from some wholesale customers and access seekers that retail pricing at Pak'nSave could be more competitive than the RGRs' wholesale offers, resulting in retailers supplying their stores 'off the retail shelf'.

In our analysis we found that as many as 54% of the products offered by RGRs in wholesale could be purchased cheaper at retail. This situation worsens when the additional costs to wholesale customers of retailing the products are taken into account, which could be equivalent to at least 15% of the price of the goods.³²⁸

For example, if a margin of 15% between retail and wholesale prices is required to cover downstream costs of retailing, our analysis indicated that up to 89% of products offered by the RGRs would not allow for the recovery of retail costs (if the retailers priced the goods consistently with the RGR's retail price). We understand that a margin of 15% is likely to be conservative and intend to explore this further.

The RGRs have indicated the cost of the goods from suppliers and the other transactions (for example, the pass-through of RDP between the suppliers and RGRs, which is discussed further below) limit the RGRs' ability to provide competitive wholesale pricing.

326 Commerce Commission analysis of industry information.

327 Section 24(1)(a) of the Act.

328 Commerce Commission analysis of industry information.

RDPs from suppliers enable RGRs to price cheaper in retail than competitors

The Market Study found that major grocery retailers enjoy scale and efficiency advantages accessing grocery supply, due to the efficiencies of vertical integration and economies of scale, both in terms of buying volume and spreading costs across a large retail network.³²⁹

We have also assessed the extent to which RDP benefits (including promotional spend) are passed on to wholesale customers through pricing. There are many types of RDPs in active use between RGRs and suppliers and these represent a significant proportion of supplier invoice list price and/or turnover for each RGR. This means that RDPs significantly reduce the final prices paid by RGRs to suppliers, which subsequently impacts other retailers' ability to compete on price with the RGRs if they do not receive the same level of RDPs from suppliers.

The Act requires that the RGRs give their wholesale customers reasonable access to the benefits of scale and efficiency that their operations offer, including RDPs.³³⁰ However, it is not clear whether these are being appropriately passed on by RGRs, or whether wholesale customers have access to RDPs via direct supply. We intend to explore the impact RDPs have on the grocery supply chain further.

Range – what range of products is available to wholesale customers?

We expect the available wholesale range must reasonably meet the demands of consumers and their shopping missions (main, secondary and top-up shops).

The RGRs appear to have limited the range of products they offer via wholesale to products that go through their distribution centres, and to suppliers who have agreed to participate/'opt in'.

When assessing the range in the RGRs' wholesale offerings, we have considered whether wholesale customers can purchase substitute items and the availability of alternative channels of supply, including direct supply arrangements with suppliers. For other retailers to compete with RGRs for consumers' main shop, we anticipate wholesale offerings would include a high proportion of top-selling retail products like milk, bread and eggs, and notable branded products. Our analysis of wholesale range excludes alcohol and tobacco as they are outside of the definition of groceries under s 5 of the Act. We acknowledge that FSNI and FSSI offer alcohol at wholesale and FSSI also offers tobacco products.

329 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at pp. 223-227, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

330 Section 21(b) of the Act.

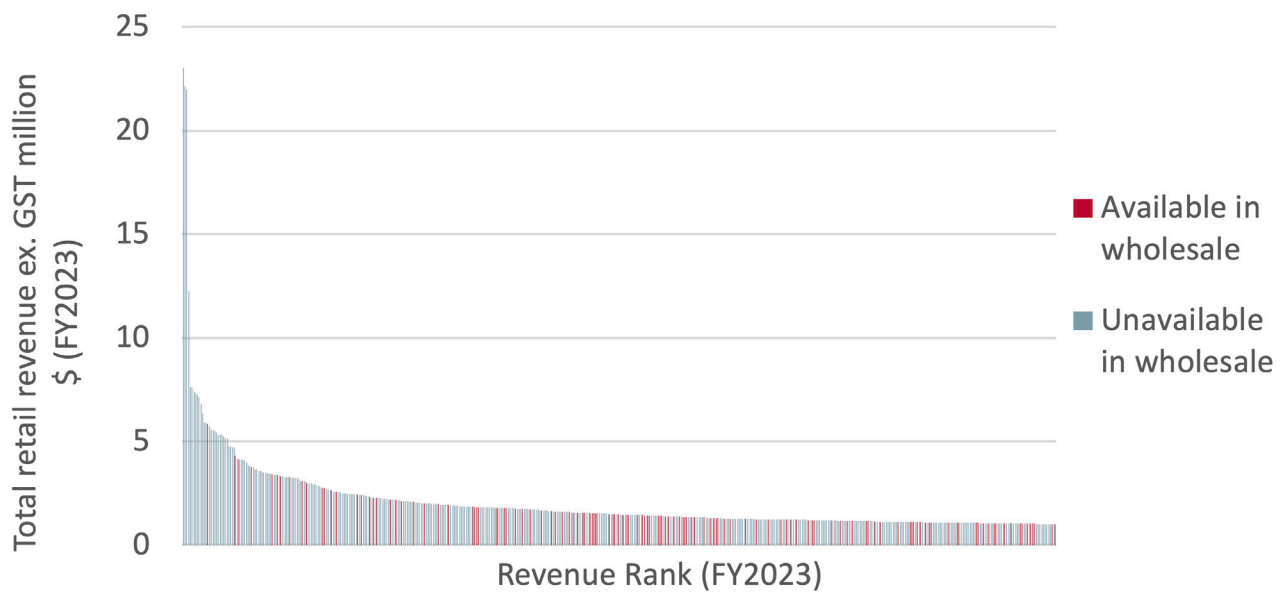
Across RGRs’ wholesale offerings, many of the top selling products are unavailable

The current range available in each wholesale offer does not meet our expectations of an offering in a competitive wholesale market. Figures 23–25 show that the availability of the RGRs’ top 500 selling products in FY2023 is limited.³³¹ Within this limited range, many of the items that are the highest revenue earners for RGRs are not currently included in the RGRs’ wholesale

offerings, eg milk, bread and bananas.^{332,333} As a result, wholesale customers cannot use the RGRs’ wholesale offers to stock a range that would enable them to compete with RGRs on a broad range of products.

As shown in Figure 23, of the top 100 selling products for FSNI at Pak’nSave, only 14% are available through FSNI’s wholesale offer. Of the top 500 selling products, 25.6% are available.

Figure 23: Distribution of wholesale products among top-selling retail products FSNI



Source: Commission analysis of industry information³³⁴

331 Note liquor and tobacco departments have been excluded from these figures.

332 FSSI includes most, but not all bananas from their top 500 highest revenue earning retail products.

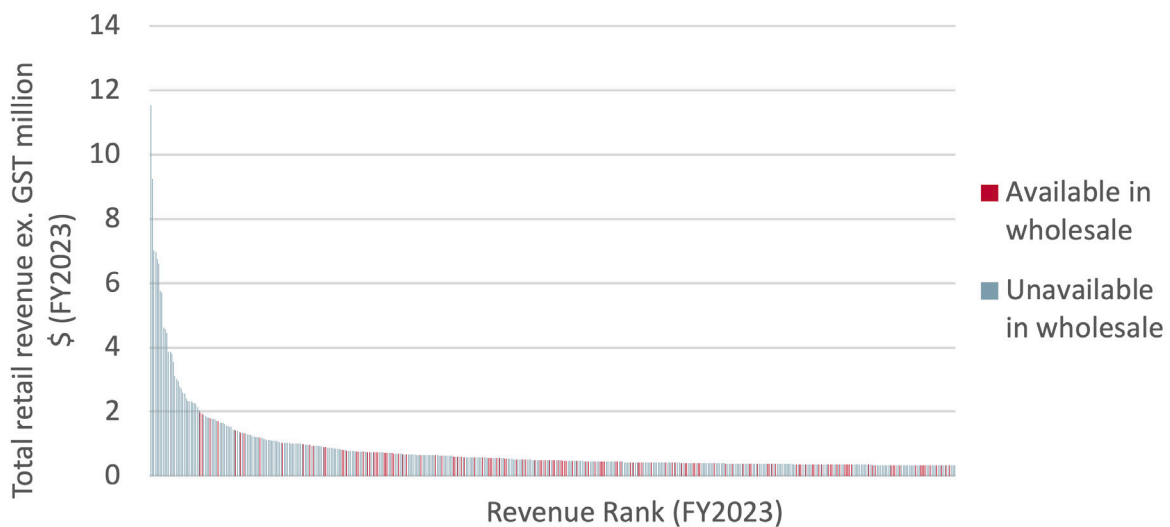
333 Commerce Commission analysis of industry information.

334 This analysis excludes alcohol and tobacco products

As shown in Figure 24, of the top 100 selling products for FSSI at Pak'nSave, only 11% are available through FSSI's wholesale offer. Of the top 500 selling products, 27.8% are available.

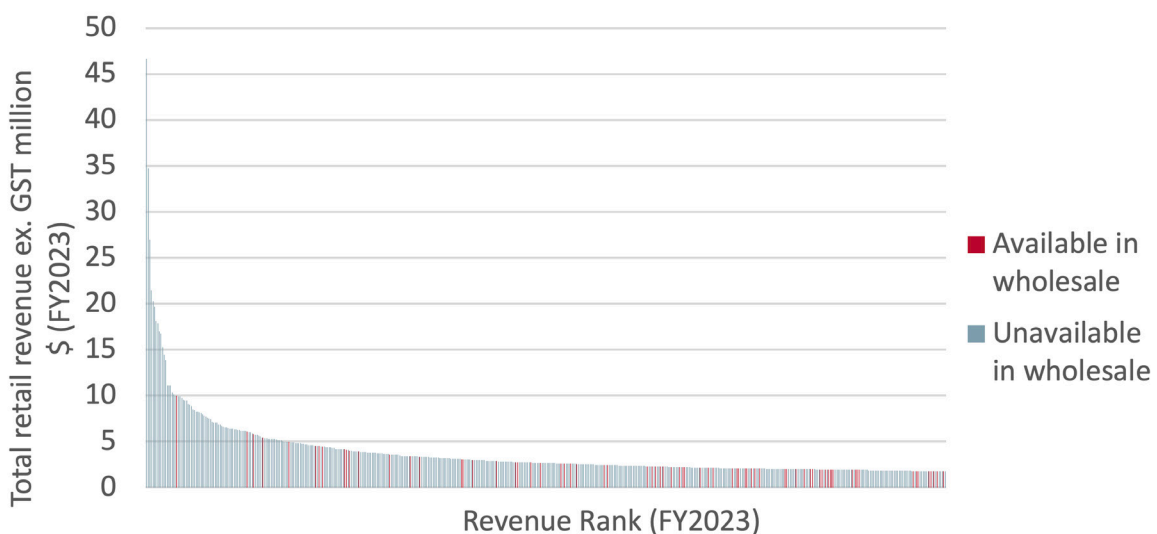
As shown in Figure 25, of the top 100 selling products for WWNZ at Woolworths, only 5% are available through WWNZ's wholesale offer. Of the top 500 selling products, 14.8% are available.

Figure 24: Distribution of wholesale products among top-selling retail products FSSI



Source: Commission analysis of industry information³³⁵

Figure 25: Distribution of wholesale products among top-selling retail products WWNZ



Source: Commission analysis of industry information³³⁶

335 This analysis excludes alcohol and tobacco products.

336 This analysis excludes alcohol and tobacco products.

Supplier opt outs limit the availability of some top selling products

As at February 2024 there were at least 155 suppliers that had actively opted to take their products out of at least one RGR's wholesale regime.³³⁷ Supplier opt outs have a material impact on product availability, especially among top selling products we would expect to be available via a main shop.

When products are opted out, other retailers do not have access to the product ranges that RGRs do at prices that reflect RGRs' scale and efficiency. Several suppliers of top-selling products have opted out across all RGRs. In many cases, opted out products are available through alternative channels (including direct supply), although the terms offered may not allow retailers to compete on price with RGRs.³³⁸

Private label exclusions limit availability of top-selling retail products

RGRs have mostly excluded their own private label products from their wholesale offerings, which is effectively a supplier opt out. FSNI and FSSI do not include their private labels in their wholesale offering, while WWNZ includes a limited range of private label products, and notably excludes all Woolworths branded products.

Engagement with wholesale customers highlighted high demand for private label products because these are generally cheaper products.³³⁹ Private label products make up a substantial proportion of the top-selling retail products and are offered by grocery wholesalers, such as Metcash in Australia, and by food service providers.^{340,341}

The exclusion of some fresh products reduces the availability of many top selling retail products

Products in fresh categories, especially fresh produce, make up a significant number of top selling products for all RGRs. FSNI and WWNZ do not currently offer fresh produce at wholesale, while FSSI offers some fresh products including fresh produce, meat and seafood.³⁴²

Products in fresh categories are often available through specialty wholesalers (eg, T&G Fresh) and other alternative channels of supply. However, we believe that these products are a crucial part of the range we would expect in a competitive wholesale offer, based on their inclusion in a main shop and the availability of fresh products via other wholesalers (such as Metcash in Australia and Bidfood in New Zealand).³⁴³

Engagement with wholesale customers showed mixed demand for products in fresh categories. Some retailers inquired about fresh produce through RGRs' wholesale offerings, but found it was not available. At least one of these retailers is now sourcing fresh produce another way. Smaller and specialty retailers who stock fresh categories generally preferred their current channels of supply.³⁴⁴ This aligns with Metcash's experience in Australia, where independent retailers source 50-90% of products in fresh categories from alternative suppliers.³⁴⁵

337 Additionally, eight suppliers have opted out a portion of products or for specific wholesale customers.

338 Commerce Commission engagement with RGRs, wholesale customers and other retailers.

339 Commerce Commission engagement with RGRs, wholesale customers and other retailers.

340 Metcash "Submission to ACCC Supermarkets Inquiry 2024-25 Issues Paper" (19 April, 2024) at p. 11, <https://www.accc.gov.au/system/files/Metcash.pdf?ref=0&download=y>. Metcash is an Australian wholesaler with a significant grocery wholesale division. They currently supply 1,600 independently owned grocery stores including the IGA and Foodland banners.

341 Commission analysis of industry information

342 Commission analysis of industry information.

343 Bidfood, "Fresh fruit and vegetables" <https://www.bidfood.co.nz/fresh-fruit-and-vegetables>. Metcash "Submission to ACCC Supermarkets Inquiry 2024-25 Issues Paper" (19 April, 2024) at p. 13 <https://www.accc.gov.au/system/files/Metcash.pdf?ref=0&download=y>.

344 Commerce Commission engagement with wholesale customers and other retailers.

345 Metcash "Submission to ACCC Supermarkets Inquiry 2024-25 Issues Paper" (19 April, 2024) at p. 11, <https://www.accc.gov.au/system/files/Metcash.pdf?ref=0&download=y>.

Substitutes for unavailable products appear limited via RGR wholesale offers

Engagement with wholesale customers and other retailers indicated that consumers value specific recognised brands. This reiterated the Market Study's observation that other retailers struggle to access specific desirable products.³⁴⁶ One RGR indicated they work to substitute unavailable products for their wholesale customers, however, we have only seen one example of a substituted product.³⁴⁷ We would like to better understand the extent to which suitable substitute products are available.

Alternative channels remain unable to provide competitive supply to other retailers

Alternative channels of grocery supply include: wholesalers for specific grocery products (general grocery/food service, fresh produce, fresh meat, foodservice providers); direct supply; and 'off the retail shelf'.

Our engagement with actual and potential wholesale customers indicates that food service wholesalers are open to catering for grocery retailers. For example, some wholesale customers indicated they purchase from Bidfood and other food services wholesalers to supplement their range.

However, in general there appears to be little change to the benefits these alternative channels provide since the Market Study found that existing wholesalers do not enable existing retailers or potential new entrants to compete effectively with RGRs.³⁴⁸

Power imbalances between other retailers and suppliers

The Market Study also reported that smaller retailers are impacted by a power imbalance with suppliers, and we have no indication this has changed.³⁴⁹ However, RGR wholesale offerings appear to mitigate these power imbalances with large suppliers. For example, the RGRs' wholesale offerings have enabled access to some products other retailers could not negotiate for directly due to their small scale. Wholesale customers found it especially beneficial when the RGRs' wholesale offerings allowed access to recognised brands with high consumer demand.³⁵⁰

However, wholesale customers also identified some benefits in direct supply. Advantages included equipment installation and volume-based discounts, and access to products that are unavailable through the RGR wholesale offerings.³⁵¹ Some other retailers also cultivate direct supply with smaller and local suppliers, to provide a point of difference. Some suppliers also use, or require, direct supply as a way of managing potential product safety and quality issues.

346 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 239, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

347 Commerce Commission engagement with RGRs, wholesale customers and other retailers.

348 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at p. 234, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

349 Commerce Commission "Market study into the retail grocery sector – final report" (8 March 2022) at pp. 395-396, https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

350 Commission engagement with wholesale customers.

351 Commerce Commission engagement with convenience retailers.

Systems and processes for wholesale supply

The RGRs must have effective systems and processes in place to enable the supply of groceries to wholesale customers.³⁵²

Within six months of the Act being in place, all RGRs had delivered some groceries to wholesale customers. The volume of sales and number of wholesale customers purchasing groceries each month differed significantly between the RGRs.

RGRs' systems and processes do not appear to be functioning effectively

Based on the information we currently have, it appears that improvements to the RGRs' systems and processes are required for wholesale supply to operate effectively.

In particular, our engagement with actual and potential wholesale customers highlighted the need for better ordering portals and pricing. From what we have seen to date, improvements to ordering processes (portals), developments to delivery systems and processes, developments in prepayment options, and access to a greater range of products and more competitive prices will be required before the RGRs' systems and processes are consistent with a competitive wholesale offering.

The WWNZ wholesale card can be seen as a positive step from a convenience perspective (as it has allowed for a store collection option, rather than delivery).³⁵³ However, given the relatively low value of the wholesale discount it does not appear to present a cost-effective option for most wholesale customers. Similarly, the development of systems and processes that enable wholesale customers to have appropriate access to the RDPs that the RGRs currently benefit from would also be an improvement.

We will continue to consider and monitor the effectiveness of the RGRs' systems and processes.

Terms and conditions for wholesale supply

RGRs have implemented standard terms and conditions for wholesale supply.

The Act requires RGRs to establish and implement standard terms and conditions and principles for wholesale supply.³⁵⁴ These terms and conditions are accessible on the RGRs' websites and include:

- Minimum order requirements;
- Delivery requirements;
- Non-exclusivity agreements;
- Pricing methodologies; and
- Payment terms.³⁵⁵

Our engagement with wholesale customers indicates that the minimum order requirements and delivery requirements are reducing the viability of the offerings for smaller retailers.

We will continue to assess and monitor implementation of terms and conditions of supply

We will continue to engage with wholesale customers and seek feedback on the implementation of the RGRs' terms and conditions. An independent dispute resolution scheme for wholesale customers is currently in the process of being established.³⁵⁶ We will be working with the scheme's provider to promote the scheme and gain insights on any disputes raised.

352 Section 44 of the Act.

353 More information on the Wholesale card can be found here: <https://www.nzgrocerywholesalers.co.nz/wholesale-card-application>.

354 Sections 38-39 of the Act.

355 New Zealand Grocery Wholesalers, "DRAFT Wholesale Agreement", https://nzgrocerywholesalers.co.nz/supply_agreement.pdf; Foodstuffs North Island, "Wholesale terms of trade" <https://www.foodstuffs.co.nz/-/media/Project/Sitecore/Corporate/Corporate-North-Island/100th-birthday/SONIFSWholesaleLegaltermsofTrade.pdf>; Foodstuffs South Island, "Non-Member Wholesale Customer Pack", https://www.foodstuffs-si.co.nz/-/media/Project/Sitecore/Corporate/Corporate-South-Island/wholesale/Non-Member-Wholesale-Customer-Information-Pack_0124.pdf.

356 This scheme also covers the Grocery Supply Code and is discussed in Chapter 8.

SUMMARY AND NEXT STEPS

WHAKARĀPOPOTONGA ME NGĀ MAHI Ā MURI NEI

Our review and assessment of the RGRs' wholesale offerings has identified that, while the wholesale regime may be working well for a small group of grocery retailers, there are several fundamental issues with the wholesale offerings that have emerged under the regime's current settings.

At a high level, these relate to:

- The low volume of sales through the wholesale regime;
- The RGRs' wholesale pricing models;
- Other retailers' access to RDPs (via RGRs' offers and direct supply);
- Other retailers' access to products; and
- The effectiveness of RGRs' systems and processes for wholesale supply.

Based on this, we are concerned that in its current form the wholesale regime is not working well for the broader grocery industry and is unlikely to be promoting the purpose of the Act by fulfilling the purpose of Part 3 of the Act. This is because:

- Wholesale offerings by RGRs do not appear to be consistent with a competitive wholesale market;
- Wholesale customers do not appear to have reasonable access to the benefits of the scale and efficiency of the RGRs; and
- Wholesale customers do not appear to have reliable and cost-effective access to wholesale supplies of groceries from RGRs.

Overall, the wholesale regime does not seem to be helping to improve competition and efficiency in the grocery industry for the long-term benefit of New Zealand consumers, and in its current form seems unlikely to do so even with more time.

This means that further intervention may be necessary to achieve the intended benefits of the wholesale regime, for both the wider grocery industry and New Zealand consumers. This could include measures to enable other grocery retailers to improve their offerings and compete more effectively with the RGRs, and measures to support new entrants. These types of measures would be likely to benefit New Zealand consumers through greater choice and more competitive prices.

An inquiry is an appropriate next step

In response to the findings of this progress assessment, including that wholesale offerings by RGRs do not appear to be consistent with a competitive wholesale market, we have decided to launch an inquiry under s55 of the Act.

Under s56 of the Act the purpose of an inquiry is for the Commission to consider whether the wholesale supply of groceries and any ancillary services should be subject to additional regulation and, if so, what additional regulation (eg, wholesale framework and/or wholesale code) should apply. It also allows the Commission to consider whether any other regulation or action (eg, non-discriminatory terms and/or specified access terms) may be necessary or desirable to promote the purpose of this Act. An output of an inquiry could be recommendations for the Minister to consider.

The next step in the inquiry process will be the publication of an issues paper in October 2024. The issues paper will provide more details about the areas of the wholesale regime we have particular concerns about and will provide an opportunity for the grocery industry and the public to provide feedback on these matters. We then expect a draft inquiry report would be released for public consultation in early 2025.

ACQUISITION OF GROCERIES BY RETAILERS

Ā NGĀ KAIHOKO WHIWHINGA KI TE KAI

In Chapter 8 we summarise how competition is working for the acquisition of groceries by retailers from suppliers. We also discuss notable changes to the dynamic between RGRs and suppliers, including the recently introduced Grocery Supply Code.

Observations:

- **Approximately 13% of grocery suppliers generate 90% of revenue for RGRs**
- **RGRs hold 82% market share and are a significant channel for suppliers' products to reach consumers**
- **The Grocery Supply Code, which seeks to balance RGR and supplier negotiations, is now in place**
- **A new Anonymous Reporting Tool is available for suppliers who have concerns about their dealings with RGRs**
- **The Commission is calling for feedback from suppliers to monitor compliance**

Suppliers in the grocery industry

The RGRs and other retailers obtain groceries to on-sell from a wide and diverse range of New Zealand and overseas based suppliers. They range from small local growers and craft food producers, iwi and other New Zealand owned businesses, to large multinational businesses.

The RGRs are the largest buyers of grocery products in New Zealand and are a key route to market for many suppliers, and suppliers seek access to and compete for the RGRs' limited in-store shelf space. RGRs take several factors into consideration when choosing which suppliers to purchase from, including product range meeting the needs of consumers, availability of supply, the RGRs' target margins, operational ease, and product substitutability.

Most ranging decisions are made centrally through the RGR head offices; however, some decisions are made at store level, particularly under Foodstuffs' operating model. Often, a supplier initiates contact with the RGR's category management teams, and they will aim to reach an agreement for a supply contract.

In 2023, each RGR had between 1,800 and 2,500 suppliers providing grocery products.³⁵⁷ A small group of large suppliers provide a high proportion of products stocked by RGRs, with a much larger number of small suppliers providing the rest. Approximately 13% of suppliers generated approximately 90% of all revenue for RGRs in 2023 (up slightly from 12% in 2019).³⁵⁸

While many suppliers will provide products to all RGRs, some suppliers may exclusively supply to only one.³⁵⁹

RGR use of private label products

Private labels or "store brands", such as Pams, Woolworths, and Macro, are products manufactured or provided by a supplier for sale under a retailer's brand. Private label products are generally produced by existing suppliers, who win the private label contract through a tender process.

A supplier of private label products usually produces products under its own brand (supplier-branded products) in competition with private labels. This can potentially lead to competition concerns where grocery retailers selling private label products possess market power by being both a customer and competitor of branded suppliers.

While private label products could increase consumer choice and lower prices in the short term, there is a risk that growth of private labels could crowd out supplier-branded products. The Market Study noted that such growth may lead to a loss of consumer choice and higher prices over the longer term.³⁶⁰ The Market Study also found that private label sales in New Zealand are growing but are relatively low compared to overseas markets.³⁶¹

As covered in Chapter 7, RGRs are not providing access to private label products through their wholesale offer, except for a very limited range in the WWNZ offering. We intend to monitor the RGRs' use of private label products over time as part of our ongoing monitoring of dynamics between RGRs and suppliers.

357 Commerce Commission analysis of industry information provided via the Market Study and subsequent information requests.

358 Commerce Commission analysis of industry information.

359 Commerce Commission analysis of industry information.

360 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 324, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

361 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 365, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

Competition for the purchase of suppliers' products

As noted in Chapter 4, the RGRs' combined grocery market share in 2023 was 82% and they are therefore a significant route to market for suppliers to get their product to consumers. Many suppliers have limited alternative options available to sell their products other than to the RGRs, so having products stocked by an RGR is an important way for suppliers to drive sales and to be viable commercially.

The Market Study found that competition wasn't working well for suppliers, with many suppliers having limited ability to negotiate with the RGRs. Large suppliers have a relatively strong position to negotiate terms of supply with RGRs compared to smaller suppliers.³⁶² However, suppliers are typically significantly more dependent on retailers than the retailers are on suppliers. This can lead to a bargaining power imbalance in many cases, and this continues to be the case.

The Market Study also concluded that if competition is not working well for suppliers, their incentives to innovate and invest are likely to be affected in ways that disadvantage consumers. For example, bargaining power imbalances between the RGRs and suppliers could lead to reduced production or capacity, lower product quality and fewer new product offerings.³⁶³ Other grocery retailers may face reduced access to the supply of groceries, affecting their ability to enter or expand within the sector. If some suppliers exit the market, there is a risk of price increases and a reduction of competition between remaining suppliers.

Grocery Supply Code in place

Grocery Supply Code seeks to balance RGR and supplier negotiations

The Market Study recommended the introduction of a mandatory grocery code of conduct to address the bargaining power imbalance between suppliers and RGRs.³⁶⁴ The Grocery Supply Code (the **Code**) is a set of regulations made under the Act and is currently included within the Grocery Industry Competition Regulations 2023.³⁶⁵ The Ministry of Business, Innovation and Employment (**MBIE**) consulted on a draft of the Code between June and July 2023, largely modelled on the Australian Food and Grocery Code of Conduct.³⁶⁶ While the Australian Code of Conduct is currently voluntary, the Australian government has recently committed to making the Code mandatory for supermarkets with an annual revenue above \$5 billion, following their recent independent review of the Code.³⁶⁷

The New Zealand Code was made by Order in Council on 28 August 2023 and came into force on 28 September 2023. The Code included a six-month grace period for RGRs to offer existing suppliers new agreements that comply with the Code (discussed later in this chapter).³⁶⁸

362 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 324, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

363 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 324, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

364 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 378, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

365 Section 8 of the Regulations.

366 Ministry of Business, Innovation and Employment "Grocery Code of Conduct", <https://www.mbie.govt.nz/have-your-say/grocery-code-of-conduct>

367 Australian Treasury "Independent Review of the Food and Grocery Code of Conduct Final Report" (June 2024), <https://treasury.gov.au/sites/default/files/2024-06/p2024-534717-final-report.pdf>.

368 Refer clause 5 of the Code.

The Act sets the purpose of the Code, which is to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand by:³⁶⁹

- Promoting fair conduct, and prohibiting unfair conduct, between RGRs and their suppliers;
- Promoting transparency and certainty about the terms of agreements between RGRs and suppliers;
- Contributing to a trading environment that includes a diverse range of suppliers and in which businesses compete effectively; and
- Contributing to a grocery industry that consumers and businesses participate in confidently.

The Code imposes requirements on the RGRs. A fundamental requirement is that the RGRs must at all times deal with suppliers in good faith.³⁷⁰

Other requirements include:

- All agreements are written, in plain language, provided to the supplier, and kept by the RGRs for seven years after the agreement ends;³⁷¹
- RGRs must respect supplier intellectual property rights, and not infringe on these including during the development of any private label products;³⁷²
- For products purchased at a promotional price, the retailer must be transparent about how the quantity of goods required was calculated, and what will happen with unsold goods at the end of the promotion period;³⁷³
- Payments must be made in reasonable timeframes from receiving an invoice and within the timeframe set out in the agreement.³⁷⁴

Under the Code there are also clauses that prohibit certain behaviours by RGRs completely. Examples of these clauses that must be complied with, regardless of any wording within supply agreements, are:

- Agreements cannot be changed with retrospective effect;³⁷⁵
- RGRs cannot require suppliers to use specific transport or logistics services;³⁷⁶
- RGRs cannot require suppliers to pay for shrinkage (the loss of grocery products once an RGR has taken possession of them due to factors such as theft, damage, expiry, or admin errors);³⁷⁷
- RGRs cannot threaten suppliers with business disruption or termination without reasonable grounds;³⁷⁸
- RGRs cannot engage in conduct that could unduly hinder or obstruct a supplier from supplying grocery items to any other party.³⁷⁹

369 Section 16 of the Act.

370 Refer clause 6 of the Code.

371 Refer clause 7 of the Code.

372 Refer clause 25 of the Code.

373 Refer clause 20 of the Code.

374 Refer clause 12 of the Code.

375 Refer clause 10 of the Code.

376 Refer clause 11 of the Code.

377 Refer clause 13 of the Code.

378 Refer clause 23 of the Code.

379 Refer clause 22 of the Code.

While some clauses are prohibited and cannot be removed from an agreement, there are items in the Code for supplier protection, which can be negotiated and contracted out of any agreement. For example, retailers are prohibited from requiring suppliers to pay for costs of their ordinary business activities, unless the supplier agreed and the payment is reasonable.³⁸⁰ Examples of business activities include, but are not limited to:

- A buyer's visit to the supplier;
- Artwork or packaging design;
- Merchandising (for example, stocking shelves and setting up displays);
- Consumer or market research.

The key point is whether the payment is for an activity undertaken by the retailer in the ordinary course of carrying out its business.

A dispute resolution scheme is being established

The Market Study also recommended that, to further support negotiating relationships between RGRs and suppliers, a dispute resolution mechanism should be provided and that it should be independent, affordable, timely, confidential, and informed by specialist expertise.³⁸¹

The dispute resolution scheme, which has been provided for under the Act, can be used for disputes between grocery suppliers and RGRs in relation to the Code up to a claimed amount not exceeding \$5 million.³⁸² All RGRs are required to comply with the scheme rules.³⁸³ On 11 October 2023, the Minister approved New Zealand Dispute Resolution Centre Limited (**NZDRC**) to provide the scheme.³⁸⁴ NZDRC led consultation on draft rules for the scheme, with proposals released for comment between December 2023 and February 2024.³⁸⁵ The scheme is currently in the process of being established. We will be working with the scheme's provider to promote awareness and understanding about the scheme.

The Commission will be working with NZDRC to make further information available to suppliers about the scheme and how it can be accessed.

380 Refer clause 16 of the Code.

381 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 381, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

382 Refer section 153 of the Act.

383 Refer section 156 of the Act.

384 Scoop Business "New Zealand Dispute Resolution Centre appointed to deliver the grocery industry Dispute Resolution Scheme" (8 November 2023), <https://www.scoop.co.nz/stories/BU2311/S00125/new-zealand-dispute-resolution-centre-appointed-to-deliver-the-grocery-industry-dispute-resolution-scheme.htm>.

385 New Zealand Dispute Resolution Centre "Grocery Industry Dispute Resolution Scheme rules" (2023), <https://nzdrc.co.nz/wp-content/uploads/2023/12/NZDRC-Grocery-Industry-Dispute-Resolution-Scheme-Proposed-Rules-ID-405436-ID-405733.pdf>.

Information for Suppliers



The Commission has published a Code factsheet at https://comcom.govt.nz/_data/assets/pdf_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf.

In this factsheet you can find an overview of the Code, as well as information on the Code's background, key features, and where to find more information.

With this factsheet, there is also a Code checklist found at https://comcom.govt.nz/_data/assets/pdf_file/0025/344950/Grocery-Supply-Code-Checklist-for-Suppliers-29-Feb-2024.pdf. This checklist is for suppliers of RGRs to guide their review of new or amended agreements, and to assess retailers ongoing conduct against provisions within the Code.

Commission's role in enforcing the Code

The Commission is responsible for enforcing the Code, including investigating and taking enforcement action in relation to breaches of the Code.

Two weeks before the Code came into force, the Commission published an open letter to the grocery sector which outlined expectations for the RGRs.³⁸⁶ The letter stated that RGRs were expected to actively work to comply with the Code and demonstrate their progress through such examples as:

- public commitment to the Code and its objectives; and
- communicating the Code to suppliers, including changes they can expect and how to raise issues setting up systems and processes to capture supplier feedback, including potential Code breaches.

The overarching obligation is to deal with suppliers in good faith.³⁸⁷ Whilst requirements for new agreements to comply with all provisions of the Code came into force immediately, the Code provided a "grace period" of six months, until 28 March 2024, for RGRs to offer amendments to existing agreements to ensure compliance with the new requirements.³⁸⁸ Each RGR confirmed to us that they would be offering new agreements to all existing suppliers during the grace period.

386 Commerce Commission "Open letter to grocery sector – Introduction of the Grocery the Supply Code" (14 September 2023), https://comcom.govt.nz/_data/assets/pdf_file/0026/328355/Open-letter-to-the-grocery-sector-Introduction-of-the-Grocery-Supply-Code-14-September-2023.pdf.

387 Refer clause 6 of the Code.

388 Refer clause 5 of the Code.

The Commission completed a preliminary assessment of the grocery supply agreements that each RGR was planning to use (or in some cases had used) to make suppliers offers. In February 2024, a letter was issued to each RGR that highlighted our areas of concern.³⁸⁹ The RGRs took steps to address our feedback and reissued their supply agreements.

There was no requirement for suppliers to accept the offers made in the grace period, and we are aware that many have not. Having supply agreements in writing is a key element of how the Code is intended to operate, so we will be seeking to better understand the reasons why agreements haven't been reached, whether terms have been negotiated, how supply is occurring in the absence of those agreements, and what the implications are for the Code.

As the regulator, we will also continue to monitor the RGRs' conduct and compliance with the Code in relation to supplier agreement negotiations. This includes seeking to understand what has been occurring in practice and whether parties have a shared understanding of what good faith means.

We encourage suppliers to contact the Commission with any concerns regarding the conduct of RGRs. Information we receive from suppliers and the sector supports the Commission in assessing the RGRs' compliance with their Code obligations, the effectiveness of the Code's interventions, and the performance of the grocery industry more generally.

Review of the Code

While the Code was made by Order in Council, the Commission has ongoing powers to revoke, re-make or amend the Code in the future. There is also a requirement under the Act for the Commission to undertake reviews of the effectiveness of the Code, with the first review to be completed within two years of the date the Code came into force, meaning that a review must be completed prior to 28 September 2025.³⁹⁰

Our review seeks to identify any unintended consequences of the Code, in addition to understanding the Code's effectiveness in meeting its purpose.

Regarding unintended consequences, we are aware of concerns about administration related to the Code and the work required to document details of agreements that are often dynamic and different between stores. We are also aware of concerns that the Code could chill negotiations with suppliers and make RGRs more hesitant to engage with new suppliers.

389 Commission "Letter to Woolworths on grocery supply agreements" (28 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0034/349594/Commerce-Commission-letter-to-Woolworths-New-Zealand-on-grocery-supply-agreements-28-February-2024.pdf; Commerce Commission "Letter to Foodstuffs North Island on grocery supply agreements" (9 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0032/349592/Commerce-Commission-letter-to-Foodstuffs-North-Island-on-grocery-supply-agreements-9-February-2024.pdf; Commerce Commission, "Letter to Foodstuffs South Island on grocery supply agreements" (28 February 2024), https://comcom.govt.nz/_data/assets/pdf_file/0033/349593/Commerce-Commission-letter-to-Foodstuffs-South-Island-on-grocery-supply-agreements-28-February-2024.pdf.

390 Section 20 of the Act.

Regarding the effectiveness of the Code, areas that have been raised to date include clauses that allow parties to “contract out” of protections, and whether in practice this is providing the right balance of protection and flexibility to negotiate. We have also had examples of suppliers being required to purchase services from specific providers raised with us as potential areas to be considered under the Code.

Given the close alignment with the Australian Grocery Code of Conduct, we will also be considering their recent review and any learnings or implications for the New Zealand Code.

On 1 August 2024, we published a request for views paper for our first review, with submissions due 16 September 2024.³⁹¹ It is important for suppliers to have input into the Grocery Supply Code review process so that we can better understand what matters most to suppliers and where we should focus our attention.

Improving our understanding of suppliers

We want to hear from suppliers

In addition to the review process, we are seeking information from suppliers to monitor compliance under the Act and to inform any analysis that may be conducted in this context. One of the areas we intend to look at closely is the RGRs’ category review process, ensuring any decisions are made for genuine commercial reasons and in line with their obligations under the Grocery Supply Code.³⁹²

We know that suppliers may be hesitant about getting in touch for fear of retribution in the sector. This is why we have the new Anonymous Reporting Tool, to help provide a secure channel for suppliers to raise concerns about potential breaches of the Code or anti-competitive behaviour.

Anonymous Reporting Tool

The Anonymous Reporting Tool is a confidential tool which enables people to remain anonymous, removing risk of retaliation when coming forward to the Commission with information about concerning or inappropriate behaviour.



More information about this tool can be found at <https://comcom.govt.nz/report-a-concern>.

391 Commerce Commission “ComCom testing if supply code ‘rule book’ is helping fix power imbalance in groceries (1 August 2024), <https://comcom.govt.nz/news-and-media/media-releases/2024/comcom-testing-if-supply-code-rule-book-is-helping-fix-power-imbalance-in-groceries>.

392 Commerce Commission “‘Whistleblowing’ could help focus Grocery Commissioner’s work” (8 February 2024), <https://comcom.govt.nz/news-and-media/media-releases/2024/whistleblowing-could-help-focus-grocery-commissioners-work>.

More generally, we are seeking to improve our knowledge about grocery suppliers and gain better insights into the views and experiences of suppliers, including those not directly covered by the Code. We have heard concerns from suppliers that are not included within the definition of grocery, eg, suppliers of alcohol, that they do not receive protection from the Code. We are interested to understand their experiences of how the Code is operating.

To support improved understanding of suppliers and their experiences, we are planning to undertake surveys. These surveys are intended to complement any direct engagement we have, including with representative bodies such as New Zealand Food & Grocery Council and Horticulture New Zealand.

RGRs regularly commission surveys of suppliers to track sentiment over time and areas for improvement. Recent survey results show some decline in supplier sentiments, in particular regarding collaboration, smaller suppliers, and communication channels.³⁹³

Better understanding of costs in the supply chain

While the Market Study focused on the grocery retailers, we intend to use our monitoring role to look broadly, including to other parties in the supply chain, to better understand pricing and costs that may be beyond the control of the RGRs. We note that other regulators are currently looking at parts of the supply chain beyond grocery retailers.³⁹⁴

A deeper understanding of the dynamics of the supply chains in the grocery industry will enable us to better understand the potential barriers to entry and what interventions could be implemented to facilitate entry and expansion, including through the regulated wholesale access regime.

Better understanding of the impacts of rebates, discounts and payments

RGRs and suppliers negotiate and agree on an RDP as part of supply arrangements. These include, for example, supplier funded retail promotions, merchandising, wastage and prompt payment discounts. These RDPs can be administratively and contractually complex, and may decrease transparency and increase inefficiencies in the grocery industry. We intend to collect further information to better understand and monitor the impact RDPs may be having on the industry.

³⁹³ Commerce Commission analysis of industry information.

³⁹⁴ For example, the supermarkets inquiry currently being undertaken in Australia: Australian Competition & Consumer Commission "ACCC Supermarkets Inquiry: Issues paper" (29 February 2024), https://www.accc.gov.au/system/files/supermarkets-inquiry-issues-paper_0.pdf?ref=0&download=y.

Other regulatory changes to improve conditions for suppliers

The Market Study recommended further changes to facilitate better conditions for suppliers negotiating with RGRs. These have been included as part of the new grocery regulatory regime under the Act.³⁹⁵

Exemption for agreements for collective negotiation

We noted in the Market Study that in the retail grocery industry, collective bargaining by suppliers could have benefits in situations such as where an RGR intends to modify non-price terms and conditions that are common to many suppliers.³⁹⁶ The Act allows for a process for suppliers to seek an exemption by the Minister from sections 27 and 30 of the Commerce Act.³⁹⁷

To date no suppliers have sought exemptions under this provision.

Unfair contracts terms regime strengthened

We raised a concern in the Market Study that it was the smallest suppliers who may face the most significant imbalance in terms of bargaining power with an inability to negotiate departure from standard form terms and conditions.³⁹⁸ We noted that negotiations with small suppliers were presented on a 'take it or leave it' basis, and that the unfair contract terms regime (as referred to in Chapter 3) was limited to trading relationships with an annual value of less than \$250,000 (including GST).³⁹⁹ Many suppliers to the RGRs would have trading relationships in excess of \$250,000.

The Act amended the Fair Trading Act to increase the threshold for unfair contract terms assessment to \$1 million for grocery supply contracts.⁴⁰⁰ We will continue to monitor the impact of standard form contracts on smaller suppliers.

395 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 378, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

396 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 423, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

397 Section 184 of the Act.

398 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 341, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

399 Commerce Commission NZ "Market Study into the retail grocery sector – final report" (8 March 2022) at p. 344, https://comcom.govt.nz/_data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf.

400 Refer section 26D of the Fair Trading Act.

LOOKING AHEAD

TE TIRO WHAKAMUA

Chapter 9 looks ahead to how we anticipate competition might develop under the current settings, and the Commission's upcoming grocery work programme.



EFFECTIVE COMPETITION MAY EMERGE – BUT IT WILL TAKE TIME TĒRĀ E HUA MAI TE WHAKATAETAETANGA TIKA, HEOI MĀ TE WĀ TONU E TOHU

The entry and expansion of competing grocery retailers could take a number of different forms – as set out below.

The common factor in all these scenarios is that their impact on competition would take time to eventuate.

New entry in the form of a third major party

Entry of a third major player with a national network of stores who can compete for consumers' one-stop shop would exert serious competitive pressure on the RGRs. Entry of a third major player with a national network of stores who can compete for consumers' one-stop shop would exert serious competitive pressure on the RGRs.

A third player with bricks and mortar stores would take time to set up. Establishing a network of suitable sites and distribution links is a time and resource intensive process, and there may be further delays if the owners are overseas investors.

The most likely scenario is that a third entrant would start operations in a major centre or geographic area before exploring further expansion.

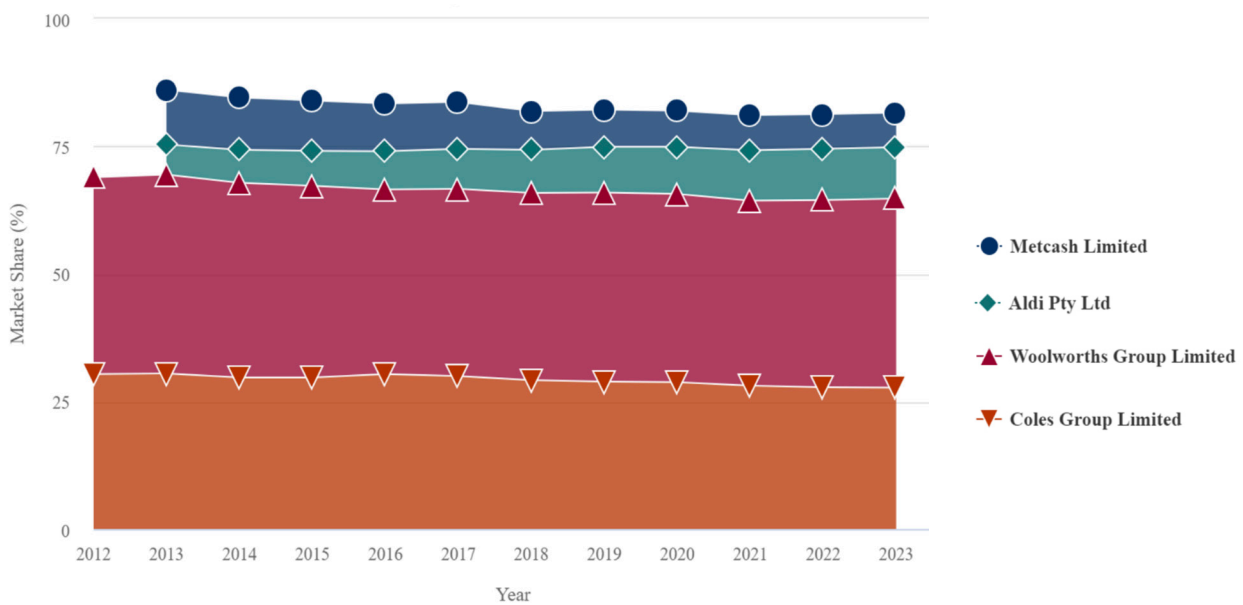
Costco is unlikely to fill this role due to its anticipated limited physical footprint.

Third entrants overseas have had an impact, but it's a slow process

In overseas markets, large-scale supermarket entrants have often taken the form of 'hard discounters' such as Aldi and Lidl. Aldi and Lidl have a narrow range of products and a high percentage of private label products compared to incumbents.⁴⁰¹ They compete primarily on price.

We observe from Aldi's entry in Australia that a new entrant can progressively grow its market share. However, as shown in Figure 26, it is a slow process on the national level and market share might be taken from other smaller retailers rather than the major incumbents.

Figure 26: National market shares of Australian supermarkets and grocery stores



Source: IBISWorld via Hunt Export Advice⁴⁰²

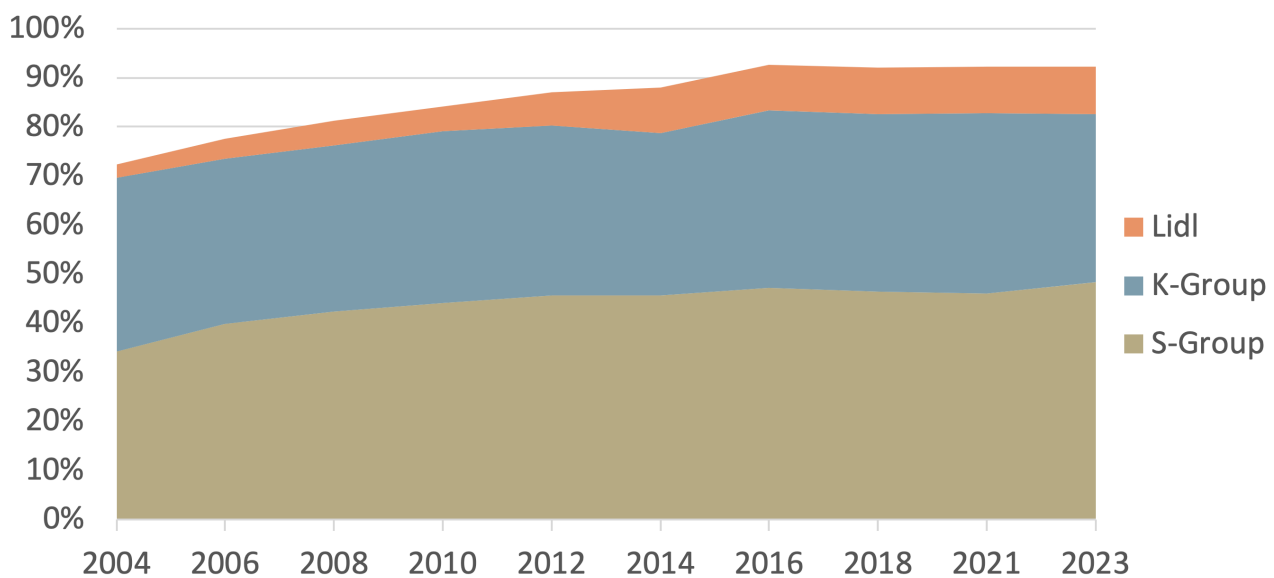
401 For instance, private label accounts for roughly 90% of Aldi's products. Supermarket News "Aldi leads in private-label volume, growth" (2 August 2022), <https://www.supermarketnews.com/private-label/aldi-leads-private-label-volume-growth>.

402 Hunt Export Advice "Australia Market Overview" (accessed 30 May 2024), <https://www.huntexportadvice.com/post/australia-market-overview-2021>.

Although Aldi’s market share in Australia remains low relative to the major retail chains, it does provide a low cost option for consumers. Australian consumer group Choice found that Aldi was the cheapest supermarket in Australia and that consumers who have access to Aldi save on groceries.⁴⁰³ Consumers in Tasmania and the Northern Territory are paying more for their groceries because they do not have a local Aldi.

We can also reference the experience of Lidl entering Finland as the third grocery retailer in 2002. By 2003, Lidl had gained a 1.8% market share, which grew to 2.8% in 2004.⁴⁰⁴ It continued to expand, reaching a market share of 6.7% in 2012 and 9.8% in 2022.⁴⁰⁵ Lidl’s growth path is similar to Aldi’s: both retailers gained market share slowly over their first decade.

Figure 27: Market shares of Finland supermarkets and grocery stores



Source: Finnish Grocery Trade Association⁴⁰⁶

403 Choice “Which supermarket has the cheapest groceries?” (20 June 2024), <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/cheapest-groceries-australia>.
 404 School of Business and Economics, University of Jyväskylä “The impacts of competitive entry on pricing in the Finnish retail grocery market” (27 February 2007), <https://doi.org/10.1108/09590550710728084>.
 405 Finnish Grocery Trade Association “Finnish Grocery Trade” (2013), <https://www.pty.fi/wp-content/uploads/2021/08/Finnish-Grocery-trade-2013.pdf>. Finnish Grocery Trade Association “Finnish Grocery Trade” (2023), https://www.pty.fi/wp-content/uploads/2023/06/Paivittaistavaraakauppa-ry-2023_EN.pdf.
 406 Commerce Commission analysis of Finnish Grocery Trade Association “Finnish Grocery Trade” (2005–2024).

Growth in existing competitors

Another potential scenario is that existing smaller competitors utilise their existing stores, distribution networks and relationships with suppliers to expand their range of grocery goods and/or open new stores.

Competitors in this scenario currently compete for consumers' secondary shops, and would need to expand their range if they are to compete for consumers' main shop.

The Warehouse is potentially an example of this, with its existing nationwide store network and expanding grocery range. Despite this, The Warehouse stated publicly in 2023 that it had no intention to raise the capital required to try and compete at the same level as the RGRs in the grocery industry.⁴⁰⁷

The Warehouse has also expressed dissatisfaction with the regulatory environment, especially due to the challenges they have faced achieving access to competitive prices through the wholesale regime.⁴⁰⁸ Trade spend discounts for the RGRs were noted as a barrier to achieving equitable wholesale pricing which would allow them to compete with the RGRs. The Warehouse has also suggested that for the wholesale regime to be effective, regulatory obligations need to extend to suppliers.

New business models and offerings

A third scenario is that new types of competitors emerge to respond to changing consumer demands and preferences. This could take the form of online-only offerings, convenience-focused offerings, or different shopping missions/competition for selected categories.

For alternative business models to work, there needs to be enough consumers with preferences that can be met outside the traditional one-stop shop at a bricks-and-mortar store.

An online-only operation likely will not be as reliant on accessing land as it only requires warehouses rather than retail stores, so the barrier to entry is smaller. However, as noted in this report, several online grocery businesses have closed in recent years.

407 The Post "The Warehouse says it can't break up the supermarket duopoly" (25 November 2023), <https://www.thepost.co.nz/business/350117839/warehouse-says-it-cant-break-supermarket-duopoly>.

408 Radio New Zealand "Two major operators still stifling competition in grocery sector, The Warehouse says" (24 March 2023), <https://www.rnz.co.nz/news/business/486611/two-major-operators-still-stifling-competition-in-grocery-sector-the-warehouse-says>.

THE COMMISSION'S UPCOMING WORK PROGRAMME TĀ TE KOMIHANA MAHI E HAERE AKE NEI

Acknowledging the ongoing issues in the grocery industry, the Commission will assess how the establishment of a Wholesale Code could improve the range and price of wholesale offers, including supplier opt out and the inclusion of private label products. We are also launching a wholesale inquiry to enable us to recommend unlocking the stronger regulatory backstop powers in the Act, and bringing forward our review of the Grocery Supply Code. We also continue to focus on the grocery sector compliance with all Acts we enforce. In particular, we will take enforcement action against anyone placing pressure on suppliers in respect of their dealings with other parties.

Wholesale access inquiry under s55 of the Act

As laid out in Chapter 7, in its current form, the wholesale regime is not helping to improve competition and efficiency in the New Zealand grocery industry. It appears that there are fundamental issues with the current form of the wholesale regime which mean that it is unlikely to improve competition even with the passage of more time.

The Act provides a range of regulatory backstops that can be invoked if the wholesale offerings provided by the RGRs are not consistent with the wholesale offerings provided in a competitive wholesale market.

We are launching an inquiry under s55 of the Act to assess what further action, including any potential further regulation, is required to ensure rival grocery retailers have reliable and cost-effective wholesale supply of groceries and reasonable access to the scale and efficiency of the RGRs.

The inquiry is the best option available to us under the Act to seek to encourage stronger competition. It also allows the Commission to impose or recommend the imposition of further regulation under the Act, make recommendations that industry participants change their behaviour, and make recommendations to Government to change legislation to more effectively address the underlying issues.⁴⁰⁹

The inquiry will involve consultation with stakeholders about the key issues and potential solutions and will result in a report to the Minister. We have outlined the key process steps below. We are aiming to complete the inquiry by mid-2025. However, these dates may change as our understanding of the key issues evolve. To the extent we can act to resolve issues raised in the inquiry sooner, we will endeavour to do so.

The establishment of a Wholesale Code is not dependent on this inquiry being completed, and while it is underway we will also be swiftly introducing a Wholesale Code where it can address the issues raised in this report.

Process step	Indicative date
Issues paper published for consultation	October 2024
Submissions due	November 2024
Draft inquiry report	First quarter 2025
Final inquiry report	Mid-2025

409 Section 58 of the Act.

Grocery Supply Code review under s20(1) of the Act

As mentioned in Chapter 8, the RGRs are a key route to market for many suppliers and all three have a large tail of smaller suppliers who they purchase goods from. A mandatory Code was introduced in 2023 to address the bargaining power imbalance between suppliers and the RGRs and set rules about RGR conduct and grocery supply agreements.

We have heard concerns that the Code is not providing effective protection for all suppliers so have brought forward our first review of the Code and changed our enforcement strategy.⁴¹⁰ We are currently seeking stakeholder feedback on the Code, including issues and opportunities for improvements, to consider within our review.⁴¹¹ Where feedback identifies opportunities to make the Code more effective, we can update the Code.

We have outlined the key process steps below. We are aiming to complete the review by mid-2025.

Process step	Indicative date
Request for views paper published for consultation	1 August 2024
Submissions due	16 September 2024
Cross-submissions due	30 September 2024
Draft review conclusions published for consultation ⁴¹²	First quarter 2025
Final review conclusions published ⁴¹³	Mid-2025

Improving market structure

We have asked ourselves what success looks like in this industry and concluded that it requires a third major network of supermarkets, offering a full range of groceries nationwide. We will be engaging with potential new entrants and investors to better understand their view on how we can remove remaining barriers to enable this to happen.

Disclosure Standards

The Act empowers the Commission to issue Disclosure Standards which require industry participants to make information available to the Commission, and/or publicly, to improve transparency.⁴¹⁴ We will shortly be introducing Disclosure Standards to require the RGRs to regularly disclose information about consumer complaints and margins.

410 The Commission is required to review and report on the Code under s20(1) of the Act.

411 Commerce Commission "Review of the Grocery Supply Code: Request for views on issues and opportunities to consider within the review" (1 August 2024). https://comcom.govt.nz/_data/assets/pdf_file/0021/360282/Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-1-August-2024.pdf.

412 If we propose changes to the Code, a draft revised Code will be published alongside a reasons paper.

413 If the Code is revised, the final Code will be published alongside a reasons paper.

414 Sections 190 – 195 of the Act.

Annual grocery report 2025

As noted in Chapter 1, the Act requires the Commission to publish a report on the state of competition in the grocery industry on an annual basis. We are aiming to publish our second annual report in mid-2025 and will start issuing requests for information to key stakeholders, including the RGRs, in the coming months to inform our second report.

Our second report will include analysis of key sector developments during 2024 and update the key metrics we have included in this report such as market share, margin analysis and outcomes for consumers. We plan to include the outcomes of our further investigation into margins across the supply chain and the issue of land banking. In addition, we will be able to provide greater commentary on the impact of legislative and regulatory changes in our second report as the relevant provisions would have been effective or operational for a year at that point.

Over time our reports will track how competition and efficiency in the grocery sector is evolving, evaluate the effectiveness of regulatory interventions, and provide an evidence base for and inform the use of further regulatory tools and interventions.

Ongoing monitoring of the grocery industry will help keep pressure on grocery industry participants, including by calling out where competition improvements could be made.

Ongoing work under the Act, and Fair Trading and Commerce Acts

In addition to these key projects for the year, we will also be continuing to focus on our responsibilities for monitoring and regulating the grocery sector, including robust enforcement using all of our powers under the Act, the Commerce Act and the Fair Trading Act.

We are also working with MBIE on potential legislative amendments to these Acts with the aim of enhancing our ability to promote competition and protect consumers in both the grocery sector and other sectors. It is too early to be specific about what changes might emerge from this process, and any proposals will be subject to the scrutiny of Parliament. However, the Commission has a strong interest in ensuring that penalties available through the courts provide a real deterrent to well-resourced firms.

Ultimately, the market structure needs to change

The existing policy settings are aimed at changing the structure of the retail grocery industry by promoting competition against the RGRs. We believe that a third nationwide network competing to consumer's main grocery shop is an appropriate target at this point. That outcome would be materially better for competition and for consumers.

Having a clear target helps us to prioritise our efforts and we hope it will also help New Zealanders to better understand what we are doing and why.

Recognising the Commission is merely an agent for change, we will be regularly engaging with stakeholders on how this target could be pursued.

Staying up to date and contacting the Grocery team



More information will be available on our work on the grocery sector at <https://comcom.govt.nz/regulated-industries/grocery> and updates will be published through our social channels. Links to our social channels can be found on the website.



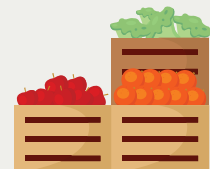
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You can make an enquiry or complaint on our website or contact us directly at contact@comcom.govt.nz.



If you are at all concerned about revealing your identity, our Anonymous Reporting Tool provides a secure channel for people to remain anonymous when coming forward to the Commission. Find out more about our Anonymous Reporting Tool on our website <https://comcom.govt.nz/make-a-complaint>



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