



10 November 2024

Submission to the Commerce Commission on its Wholesale Supply Inquiry, Preliminary Issues Paper (**PIP**)

The Grocery Action Group (**GAG**) was set up to bring down the prices of groceries for all New Zealanders. A significant reason why New Zealanders are paying some of the highest prices on the planet for groceries is due to the opaque world of Wholesale Supply arrangements. The PIP has clearly detailed the problems with wholesale supply, which largely mirror the problems with the whole industry being in duopoly control. In effect, Part 3 of the Grocery Industry Competition Act 2023 (**the Act**), intended to enable wholesale customers to have “reliable and cost effective supplies of groceries” is being defeated in multiple ways by both the duopoly supermarket owners and large suppliers who do not use the wholesale system.

Among our GAG board membership is direct market knowledge of wholesale pricing arrangements and the impact of those on the success or otherwise of her business. GAG strongly supports intervention at the highest level in an attempt to right this market.

1. Recommendations

- 1.1 Establish an entirely independent wholesale market to which all retailers have access. Such a wholesale arrangement could include:
 - a. Allowing price structures that reward bulk orders
 - b. Allowing for food producers supplying to one wholesaler to then distribute to many retailers, producing efficiency benefits to all those retailers
 - c. Allowing food producers to supply to retailers across the country in an efficient way
 - d. The Commission further its inquiries into why suppliers opt out of the wholesale regime; and
- 1.2 Consider making it mandatory for all suppliers to go through a wholesale regime if that achieves more competition at the retail end of the market

2. The Wholesale Regime
 - 2.1 The Wholesale Supply Regime entrenches the market power of the existing supermarket duopoly because retailers of all sizes become reliant on them for supply. Once in that position, retailers find it hard to broaden their range and numbers to other suppliers.
 - 2.2 The PIP makes clear the Commission's concern with the Wholesale Regime, which GAG endorses particularly at [30], [57-61]. This means there is ample evidence to invoke the Act's ss 65 and 82 which provide for additional regulation.
 - 2.3 GAG does not believe the Commission's request for all players in the industry to support the intent of the new legislation is being heeded.
 - 2.4 Regulated Grocery Retailers (**RGRs**) offer token products, while avoiding their best sellers, private labels and direct delivery. RGR pricing fails to pass on the major benefits received through rebates, discounts and payment arrangements (**RDPs**).
 - 2.5 The Commission's PIP suggests the RGRs are resisting participating in the development of the wholesale regime, let alone contributing to it.
 - 2.6 The question needs to be asked as to why the duopoly would turn away potentially new business, if they believed in the wholesale regime.
3. Wholesale suppliers' dependence on the duopoly
 - 3.1 Grocery producers and suppliers become dependent on the duopoly for distributing their products to other retailers. For example, should a supplier choose to no longer supply direct to retailers other than the duopoly, they can find their products remain supplied via the duopoly but at higher prices. GAG knows of one example where a direct relationship with a supplier was scuppered, forcing the new retailer to use the wholesale regime. This then forces other retailers to use a wholesale regime which is neither transparent nor independent.
 - 3.2 Practices like these also force some suppliers to deal with the duopoly at both retail and wholesale level. This can result in suppliers losing their direct customers, who are then forced to be supplied by the duopoly, even though they may rightly feel the duopoly has not treated them fairly in the past.
 - 3.3 As retailers become more reliant on the duopoly wholesale regime, they also become reliant on the limitations of what's on offer. If the duopoly is not stocking it, they can't either. The result of this is a lack of innovation and the ability for suppliers and producers to develop new lines and varieties.
4. Duopoly controls retail and wholesale margins

- 4.1 The market price for the consumer is driven by the duopoly. It sets the wholesale price, thereby controlling the margins that other retailers can obtain. If the margin allowed by the duopoly proves inadequate for operating a retail business, then no new competition can successfully enter the market. There is no transparency that allows existing or new retailers to know the wholesale prices they pay, are being paid by everyone else.
 - 4.2 GAG has heard from suppliers who say it is no longer possible (at least in the North Island) for individual Foodstuffs stores to stock products from preferred suppliers. Smaller suppliers have no power to do anything about that.
 - 4.3 The duopoly can push hidden costs on to suppliers, such as paying for promotions. If suppliers don't like it, they don't get a chance to supply. Those costs are not priced as a percentage of the wholesale price but at the retail level, slicing further into supplier/wholesaler margins.
5. Opting out
- 5.1 Allowing producers and suppliers to opt out of the wholesale regime means new retailers have an impossible task accessing wholesale supply on a range of products, including, for example dairy products from suppliers such as Fonterra, which has opted out.
 - 5.2 If a supplier is not servicing the duopoly, but is supplying other retailers, they become even more locked out of the wholesale regime, which means the duopoly holds all the power – at both wholesale and retail levels.
 - 5.2.1 New entrant, online supermarket prospect Supie, for example, spent years building up supplier relationships before the development of the wholesale regime. In fact Supie was itself acting as a wholesaler to other independent retailers. It took months, in one case, to get a large supplier on board because of the power of the duopoly.
 - 5.2.2 Costco, as another new entrant, has not required access to the wholesale regime because of its size.
 - 5.2.3 If seeking wholesale supply from the duopoly is to gain access to lower prices, retailers should also be able to ask suppliers to provide comparative pricing. In that way, evidence would be provided of whether the duopoly's wholesale pricing was genuine.
 - 5.2.4 The wholesale regime clearly does not work for the likes of dairies, which find prices for supply cheaper at places like Pak'nSave, which

demonstrates a hidden layer of retail margin, undisclosed by the duopoly.

6. Access to value brands

6.1 For any new retailer to succeed they must have access to value or house brands. Foodstuffs prides itself on the fact that its house brand, Pams, is the most popular brand instore. Woolworths runs a similar scheme. But none of these items is accessible through the wholesale regime.

6.2 An independent wholesaler could create such house brand products, giving new retailers a chance to compete

7 Independent wholesale regime

7.1 An entirely independent wholesale market to which all retailers had access would alleviate many of the uncompetitive issues faced by smaller retailers and potential new entrants.

7.2 Such a wholesale arrangement would include, for example, allowing for pricing structures that rewarded bulk orders.

7.3 It could allow for food producers supplying to one wholesaler which could then distribute to many retailers, providing efficiencies to all retailers

7.4 Such a regime would enable smaller suppliers to reach new markets in an efficient way

7.5 Ensuring suppliers both big and small had to supply the independent wholesale regime would ensure the duopoly could not negotiate separate, secret agreements with large suppliers, effectively shutting out new entrants.

7.6 The regime would effectively mean all players in the retail sector, such as corner stores, Night and Day, and The Warehouse, had equal access to a fair wholesale market.

8 Conclusion

8.1 As the Commission has found, there are fundamental problems in the wholesale grocery market including uncompetitive wholesale prices and limited range. These are unlikely to be addressed under the current settings.

8.2 GAG, along with others, firmly believes divestment across retail and wholesale are the levers the Commission must be able to pull to bring more competition and fair prices to Kiwi consumers and suppliers.

8.3 The supermarket industry has been on notice since the Supermarket Study was released in 2022, that its practices are harming suppliers and consumers. The Commission's own review of the new regime released

earlier this year, found the sector was still uncompetitive and consumers were still paying some of the highest prices on the planet for groceries.

- 8.4 The failed wholesale regime is just another example of this failed market. Tinkering with a wholesale framework or a code would do nothing to change the basic unfair structures.
- 8.5 GAG strongly supports the introduction of a more independent wholesaler, providing fair access to the incumbent duopoly, smaller players and importantly new-comers.

GAG is happy to share further information with the Commission if required.

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GAG chair

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