

### APPENDIX 3: ANALYSIS OF PAPER GOODS CATEGORY

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

Topic	Detail
<b>A. Description of category</b>	
Products that fall in this category	<ul style="list-style-type: none"> <li>• Toilet paper</li> <li>• Paper towels</li> <li>• Facial tissues</li> </ul>
Key considerations for customers and customer trends	<ul style="list-style-type: none"> <li>• [REDACTED] are the most important attributes to customers.</li> <li>• Customers are divided into two segments: [REDACTED].</li> <li>• 'Must have' products are [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Role of innovation	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Market dynamics	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> <li>• Products in this category are bulky, making it unattractive to ship these products into New Zealand. In addition, the high cost of production discourages market entry.</li> </ul>
<b>B. Information about the specific suppliers of the relevant product(s) in this category</b>	
Makeup of suppliers	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> <li>• [REDACTED] supply to both FSNI and FSSI.</li> <li>• In addition, [REDACTED].</li> <li>• FSSI [REDACTED].</li> </ul>
Role of non-direct channels	<ul style="list-style-type: none"> <li>• None.</li> </ul>
<b>C. FSNI and FSSI category reviews completed for this category</b>	
FSNI category review(s)	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>

Topic	Detail
FSSI category review(s)	<ul style="list-style-type: none"> <li>[REDACTED].</li> </ul>
<b>D. Other buyers for the products in this category</b>	
Other key retailers	<ul style="list-style-type: none"> <li>Woolworths</li> <li>Dairies</li> <li>Costco</li> <li>Mitre 10</li> <li>Bunnings</li> <li>Service stations</li> <li>Chemist Warehouse</li> <li>Bargain Chemist</li> </ul>
Role of exports	<ul style="list-style-type: none"> <li>FSNI and FSSI understand that products in this category are not currently exported.</li> </ul>
Role of imports	<ul style="list-style-type: none"> <li>Production is mostly local. [REDACTED] imports into New Zealand.</li> <li>As mentioned above, there are cost-related challenges associated with importing products in this category.</li> </ul>
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> <li>Products in this category are sold by non-retail channels in different formats and specifications.</li> <li>[REDACTED]</li> </ul>

**There will not be a substantial lessening of competition in relation to the acquisition of paper goods**

- 3 The paper goods category is characterised by a small number of suppliers, [REDACTED]– see figure 1, below.

**Figure 1: FSNI sales of paper goods by supplier  
(across a 13-week period to 30 June 2024)**

[REDACTED]

- 4 [REDACTED], as removing popular brands could lead to customer dissatisfaction and lost sales. [REDACTED].
- 5 The acquisition market for this product category is likely to [REDACTED] for the foreseeable future because:
- 5.1 products in this category face high transportation, production and import costs, and
- 5.2 [REDACTED].
- 6 [REDACTED], the Merged Entity would have no ability (or incentive) to suppress competition in any acquisition market associated with this category.
- 7 Suppliers of paper goods products face an abundance of potential buyers. In addition to grocery retailers, suppliers supply to Bunnings, Mitre 10, Costco, service stations, chemist shops and dairies. [REDACTED].
- 8 In short, the Proposed Transaction is unlikely to lead to a material change in bargaining outcomes relative to the status quo. [REDACTED]. In particular:

8.1 [REDACTED], and

8.2 [REDACTED]. [REDACTED].

**APPENDIX 4: ANALYSIS OF DISHWASHING CATEGORY**

9 This appendix sets out:

9.1 background information about the dishwashing category (refer to the table below), and

9.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 11 to 15 below).

10 [REDACTED].

Topic	Detail
<b>A. Description of category</b>	
Products that fall in this category	<ul style="list-style-type: none"> <li>• Rinse aids</li> <li>• Dishwash cleaners</li> <li>• Dishwash powders</li> <li>• Dishwash tablets</li> <li>• Dishwash liquids</li> </ul>
Key considerations for customers and customer trends	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED], FSSI considers [REDACTED].</li> <li>• [REDACTED]. For example, [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Role of innovation	<ul style="list-style-type: none"> <li>• FSSI considers that [REDACTED].</li> <li>• FSNI considers that [REDACTED].</li> </ul>
Market dynamics	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• FSNI considers there [REDACTED].</li> <li>• [REDACTED]</li> <li>• [REDACTED].</li> </ul>
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
<b>B. Information about the specific suppliers of the relevant product(s) in this category</b>	
Makeup of suppliers	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
Role of non-direct channels	<ul style="list-style-type: none"> <li>• [REDACTED] uses DKSH as its New Zealand distributor.</li> <li>• [REDACTED] uses Diplomat.</li> <li>• [REDACTED] uses Twin Agencies.</li> </ul>

Topic	Detail
	<ul style="list-style-type: none"> <li>[REDACTED] uses PAVÉ.</li> </ul>
<b>C. FSNI and FSSI category reviews completed for this category</b>	
FSNI category review(s)	<ul style="list-style-type: none"> <li>[REDACTED].</li> </ul>
FSSI category review(s)	<ul style="list-style-type: none"> <li>[REDACTED].</li> <li>[REDACTED].</li> <li>[REDACTED].</li> <li>[REDACTED].</li> </ul>
<b>D. Other buyers for the products in this category</b>	
Other key retailers	<ul style="list-style-type: none"> <li>Woolworths</li> <li>The Warehouse</li> <li>Costco</li> <li>Bargain Chemist and Chemist Warehouse</li> <li>Mitre 10 / Bunnings</li> <li>Other independent retailers (e.g., dairies, Farro for eco products)</li> <li>Ecostore sells its branded products directly through its stores</li> </ul>
Role of exports	<ul style="list-style-type: none"> <li>[REDACTED].</li> <li>Ecostore has also been expanding the export of its products.<sup>1</sup></li> </ul>
Role of imports	<ul style="list-style-type: none"> <li>Imports play an important role in this category given [REDACTED] are supplied by multinationals that manufacture products offshore.</li> </ul>
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> <li>[REDACTED].</li> </ul>

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

- 11 The [REDACTED] are multinationals for which New Zealand represents a relatively small market. In particular, [REDACTED]. This significant bargaining power arises because the suppliers could credibly threaten to stop supplying the Parties altogether, and [REDACTED], stop supplying “must have” products. It follows that the Proposed Transaction cannot materially increase the Parties’ buyer power in relation to these suppliers.
- 12 In relation to import agents such as DKSH, which typically represent a portfolio of multi-national suppliers, the appropriate way of characterising the bargaining relationship between Foodstuffs and the supplier/agent is that any outside options or countervailing supplier power (or supplier market power) are best understood as those of the *supplier*, not the agent, as discussed in the Parties’ submission and HoustonKemp report on the SOUI. For example, the outside options in such a relationship would not be limited to that agent negotiating with New Zealand buyers of that supplier’s products, but also by reference to the supplier having the ability to deploy its resources (and capital) in other markets. In that regard it is also worth noting that such agents represent brands with material countervailing power.<sup>2</sup>

<sup>1</sup> <https://www.asb.co.nz/blog/2018/06/china-ecostore-and-finding-your-gap-in-an-overseas-market.html>

<sup>2</sup> In and of themselves these agents operate in a different market (i.e. the market for import agency services, rather than the wholesale supply of a particular product), which cannot be affected by the Proposed Transaction.

- 13 In relation to larger national suppliers, [REDACTED], which currently supply both cooperatives, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to these suppliers on the basis that:
  - 13.1 they already face significant competition from the import of dishwashing products from the multinational suppliers [REDACTED] and should therefore not be expected to be materially affected by the Proposed Transaction,
  - 13.2 [REDACTED], and
  - 13.3 [REDACTED] export their products overseas. Accordingly, flexing the extent of their exporting is likely to be another material option for these suppliers.
- 14 In the case of [REDACTED], following the Proposed Transaction, the Parties expect that these suppliers would negotiate with one Foodstuffs entity rather than individually with FSNI and FSSI. It follows that there cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation).
- 15 To the extent there are any small/local suppliers of dishwashing products that currently only supply one co-operative, this is likely due to capacity constraints. There will be no change for these suppliers, which are likely to continue to negotiate with one or a small number of stores directly.

**APPENDIX 5: ANALYSIS OF LAUNDRY CATEGORY**

- 16 This appendix sets out:
- 16.1 background information about the laundry category (refer to the table below), and
- 16.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 18 to 23 below).
- 17 [REDACTED]:
- 17.1 [REDACTED], and
- 17.2 [REDACTED].

Topic	Detail
<b>A. Description of category</b>	
Products that fall in this category	<ul style="list-style-type: none"> <li>• Laundry powders</li> <li>• Laundry liquids</li> <li>• Laundry capsules</li> <li>• Stain removers</li> <li>• Fabric softeners &amp; fragrances</li> <li>• Accessories (e.g., pegs)</li> <li>• Washing machine cleaners</li> </ul>
Key considerations for customers and customer trends	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED]. FSNI notes that [REDACTED].</li> <li>• [REDACTED].</li> <li>• FSNI notes that [REDACTED].</li> </ul>
Role of innovation	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
Market dynamics	<ul style="list-style-type: none"> <li>• [REDACTED], is dominant in the [REDACTED], is dominant in the [REDACTED] segment.</li> <li>• [REDACTED].</li> <li>• There have been some new entrants to the category, [REDACTED]. FSNI notes that [REDACTED].</li> <li>• [REDACTED]. [REDACTED].</li> <li>• FSSI notes that [REDACTED].</li> </ul>
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
<b>B. Information about the specific suppliers of the relevant product(s) in this category</b>	
Makeup of suppliers	<ul style="list-style-type: none"> <li>• Multi-national suppliers play a significant role in this category, [REDACTED]. These suppliers include: <ul style="list-style-type: none"> <li>◦ [REDACTED].</li> </ul> </li> <li>• In addition, there are large domestic suppliers in this category that [REDACTED]</li> <li>• As above, [REDACTED] have also recently entered.</li> </ul>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>

Topic	Detail
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> <li>[REDACTED].</li> </ul>
Role of non-direct channels	<ul style="list-style-type: none"> <li>[REDACTED] is represented by Twin Agencies.</li> </ul>
<b>C. FSNI and FSSI category reviews completed for this category</b>	
FSNI category review(s)	<ul style="list-style-type: none"> <li>[REDACTED]: <ul style="list-style-type: none"> <li>[REDACTED],</li> <li>[REDACTED], and</li> <li>[REDACTED].</li> </ul> </li> <li>[REDACTED]: <ul style="list-style-type: none"> <li>[REDACTED].</li> <li>[REDACTED].</li> <li>[REDACTED].</li> </ul> </li> <li>[REDACTED]: <ul style="list-style-type: none"> <li>[REDACTED], and</li> <li>[REDACTED].</li> </ul> </li> </ul>
FSSI category review(s)	<ul style="list-style-type: none"> <li>[REDACTED]: <ul style="list-style-type: none"> <li>[REDACTED], and</li> <li>[REDACTED].</li> </ul> </li> <li>[REDACTED]</li> <li>[REDACTED].</li> </ul>
<b>D. Other buyers for the products in this category</b>	
Other key retailers	<ul style="list-style-type: none"> <li>Woolworths</li> <li>The Warehouse, Costco, Bunnings, Mitre 10</li> <li>Pharmacies including Chemist Warehouse and Bargain Chemist</li> <li>Independent retailers (e.g., dairies) and speciality grocers (e.g., Bin Inn, Bulk Barn etc)</li> </ul>
Role of exports	<ul style="list-style-type: none"> <li>[REDACTED] exports to Australia.</li> </ul>
Role of imports	<ul style="list-style-type: none"> <li>Importing plays a significant role in this category given the category is [REDACTED] by multi-nationals that manufacture their products offshore.</li> </ul>
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> <li>The Parties are not aware of these types of other buyers being significant purchasers of products in this category.</li> </ul>

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

- 18 As set out in the table above, all key suppliers in this category are multi-nationals, with almost all products being manufactured offshore and imported into New Zealand. In particular, [REDACTED]. These businesses command an international presence and are many times the size of the Parties. The suppliers have access to buyers across the globe and can credibly threaten to stop supplying must-have products to FSNI and FSSI.
- 19 Given the significant countervailing power of the suppliers in this category, as a result of their must-have products, the Merged Entity would have no ability (or incentive) to suppress competition in any acquisition marked associated with this category.

- 20 Further, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to *smaller* suppliers of laundry products. In particular,
- 20.1 [REDACTED],
- 20.2 [REDACTED]. [REDACTED].
- 20.3 smaller suppliers already face significant competition from large suppliers such as [REDACTED] and should not be expected to be materially affected by the Proposed Transaction, and
- 20.4 [REDACTED] already exports its products to Australia. Accordingly, other smaller suppliers could follow suit, and/or [REDACTED] could continue exporting products further afield.
- 21 The Commission considered the market for laundry detergent in 2023 and noted that there were several competitors of these products, with low barriers to suppliers expanding the volume of products they currently supply.<sup>3</sup> If the suppression of competition in these markets by grocery retailers were a risk, it might be expected that that dynamic would be raised and considered as a feature of the clearance. Instead, as is typically the case for merger clearances where grocery retailers are customers of the merging parties' products, the clearance determination analyses competitive effects on the basis that the "demand" is effectively retail customer demand, *channelled* through grocery retailers. The "countervailing power" of grocery retailers is only considered as a factor that could *reduce* the likelihood of a substantial lessening of competition.
- 22 [REDACTED]. Following the Proposed Transaction, the Parties expect that these suppliers would negotiate with one Foodstuffs entity rather than individually with FSNI and FSSI (which will also save costs for those suppliers). It follows that there cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation).
- 23 Finally, there are several other domestic buyers of laundry products in addition to the major grocery retailers, including hardware stores such as Bunnings / Mitre 10, large pharmacy chains such as Bargain Chemist and Chemist Warehouse, other independent retailers such as dairies, and other retailers such as The Warehouse. Accordingly, it would be inappropriate to characterise the effect of the Proposed Transaction as being a "three to two" merger of buyers in relation to laundry products.

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<sup>3</sup> Commerce Commission, *Henkel New Zealand Limited and Earthwise Group Limited* [2013] NZCC 11.

## APPENDIX 6: ANALYSIS OF SPECIALITY CHEESE CATEGORY

- 24 This appendix sets out:
- 24.1 background information about the specialty cheese category (refer to the table below), and
- 24.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 26 to 33 below).
- 25 [REDACTED].

Topic	Detail
<b>A. Description of category</b>	
Products that fall in this category	<ul style="list-style-type: none"> <li>• Speciality cheeses (e.g., blue, brie, gouda, parmesan, goat, mozzarella, feta, haloumi, camembert etc.).</li> <li>• Note that this category excludes: <ul style="list-style-type: none"> <li>○ mainstream cheeses (such as block cheese, grated cheese, cheese slides),</li> <li>○ cultured (e.g., sour cream, cottage cheese etc.), and</li> <li>○ variable weight cheeses (hand cut in store and sold via the deli counter).</li> </ul> </li> </ul>
Key considerations for customers and customer trends	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• There is a range of [REDACTED].</li> <li>• [REDACTED].</li> <li>• Substitutability [REDACTED].</li> <li>• FSSI observes [REDACTED]</li> <li>• [REDACTED].</li> <li>• FSNI notes that: <ul style="list-style-type: none"> <li>○ [REDACTED], and</li> <li>○ [REDACTED].</li> </ul> </li> </ul>
Role of innovation	<ul style="list-style-type: none"> <li>• FSSI notes that [REDACTED].</li> <li>• FSNI notes that [REDACTED].</li> </ul>
Market dynamics	<ul style="list-style-type: none"> <li>• Competition in this category [REDACTED]</li> <li>• Given [REDACTED]. For example, [REDACTED] [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED]</li> <li>• FSSI notes that [REDACTED].</li> </ul>
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
<b>B. Information about the specific suppliers of the relevant product(s) in this category</b>	
Makeup of suppliers	<ul style="list-style-type: none"> <li>• This category [REDACTED].</li> <li>• Suppliers in this category range from multinationals to small New Zealand owned cheesemakers.</li> <li>• [REDACTED]. [REDACTED]</li> <li>• The supply of [REDACTED].</li> <li>• The supply of [REDACTED]. FSNI notes that [REDACTED].</li> </ul>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED]. <ul style="list-style-type: none"> <li>○ [REDACTED].</li> </ul> </li> </ul>

Topic	Detail
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED]. FSNI notes [REDACTED].</li> </ul>
Role of non-direct channels	<ul style="list-style-type: none"> <li>• Importers such as [REDACTED] are active in this category, supplying particular brands and products.</li> <li>• Some [REDACTED] use distributors. For example, [REDACTED].</li> </ul>
<b>C. FSNI and FSSI category reviews completed for this category</b>	
FSNI category review(s)	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSSI category review(s)	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
<b>D. Other buyers for the products in this category</b>	
Other key retailers	<ul style="list-style-type: none"> <li>• Woolworths</li> <li>• Specialty retailers (e.g., Farro, Moore Wilsons, Sabato), independent grocers and delicatessens.</li> <li>• Some suppliers also sell directly (e.g., from their websites or production sites)</li> </ul>
Role of exports	<ul style="list-style-type: none"> <li>• A number of suppliers export their products e.g., [REDACTED].</li> </ul>
Role of imports	<ul style="list-style-type: none"> <li>• As above, importers play an important role in this category. FSSI notes that [REDACTED]. FSNI notes [REDACTED].</li> </ul>
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> <li>• Food service and hospitality are important buyers in this category, noting that these buyers may purchase different SKUs (e.g., large pack formats and whole wheels) as opposed to the SKUs sold in retail. [REDACTED].</li> <li>• Wholesalers such as Bidfood and Kaans.</li> </ul>

**There will not be a substantial lessening of competition in relation to the acquisition of specialty cheese products**

26 As described above, there are a range of suppliers active in this category. The different types of suppliers are addressed as follows.

**Large suppliers**

27 Large suppliers [REDACTED]. The importance of these suppliers' products in this category is evidenced by [REDACTED]. That is, [REDACTED]. The importance of [REDACTED] products afford them strong countervailing bargaining power in relation to the Parties. Given their size, the fact that [REDACTED] and in light of their export activities, [REDACTED].

28 Correspondingly, the popularity of these suppliers' products, and the important contribution they make to the Parties' range [REDACTED] mean the Parties could not credibly threaten to stop working with them.

**Importers**

29 As mentioned previously, importers such as [REDACTED] represent portfolios of multi-national suppliers. As noted in the submission and HoustonKemp report

responding to the SOUI, the correct way of characterising the bargaining relationship between Foodstuffs and the supplier/importer is that any outside options or countervailing supplier power (or supplier market power) are best understood as those of the supplier, not the importer. That is, the outside options in such a relationship would not be limited to that agent negotiating with New Zealand buyers of that supplier's products, but also by reference to the supplier also having the ability to deploy its resources (and capital) in other markets. Therefore, the Proposed Transaction cannot materially increase the Parties' buyer power in relation to suppliers whose products are sold through importers.

### **Medium national suppliers**

30 In the case of medium sized, national suppliers in this category such as [REDACTED] it is clear from [REDACTED] ([REDACTED] and [REDACTED]), [REDACTED], that the Parties' acquisition conduct in relation to the products in this category is strongly influenced by customer demand, [REDACTED], and the Parties' desire to present an attractive offering to customers that meets all need states given shelf/fridge space constraints i.e. retail market considerations. As the Proposed Transaction would not give rise to any change in retail market competitive dynamics, the evidence is that the same factors would drive the Merged Entity's conduct. That is, the Merged Entity would have no incentive to suppress competition in any acquisition market associated with this product category and would continue to be incentivised to [REDACTED].

31 Further:

31.1 given the role of imported products in this category, domestic suppliers of specialty cheese already face significant competition and should not be expected to be materially affected by the Proposed Transaction,

31.2 there are many other buyers of specialty cheese products including specialty retailers, independent grocers, wholesalers and foodservice businesses, and

31.3 it is clear that at least some domestic suppliers of specialty cheeses are exported overseas (e.g., [REDACTED]). Accordingly, flexing the extent of their exporting is likely to be another material option for certain domestic suppliers.

### **Smaller suppliers**

32 The Proposed Transaction cannot materially increase the Parties' buyer power in relation to smaller suppliers of specialty cheese products either. In particular:

32.1 [REDACTED],

32.2 smaller suppliers' products often fulfil the "premium" need state in this category. Premium brands [REDACTED]. FSNI notes [REDACTED],

32.3 smaller suppliers already face significant competition from large and medium suppliers and should not be expected to be materially affected by the Proposed Transaction, and

32.4 to the extent that smaller suppliers currently only supply one co-operative due to capacity constraints, there will be no change for these suppliers, which are likely to continue to negotiate with one or a small number of stores directly.

***Suppliers that supply both co-operatives***

- 33 Where suppliers currently supply both co-operatives, following the Proposed Transaction, the Parties expect that these suppliers would negotiate with one Foodstuffs entity rather than individually with FSNI and FSSI (which will also save costs for those suppliers). The Parties' retail market considerations will not change with the Proposed Transaction, and so it follows that there cannot be a structural or systematic difference in bargaining outcomes where the Parties are merged compared with where they bargain separately (let alone in a way that could anti-competitively suppress price or reduce innovation).

## APPENDIX 7: ANALYSIS OF ORAL CARE CATEGORY

34 This appendix sets out:

34.1 background information about the oral care category (refer to the table below), and

34.2 an analysis of why the Proposed Transaction will not lead to a substantial lessening of competition in relation to the products in this category (refer to paragraphs 36 to 41 below).

35 [REDACTED].

Topic	Detail
<b>A. Description of category</b>	
Products that fall in this category	<ul style="list-style-type: none"> <li>• Toothbrushes and refill heads (e.g., manual, battery, and electric)</li> <li>• Toothpaste</li> <li>• Mouthwash</li> <li>• Tooth whitening products</li> <li>• Dental floss</li> <li>• Denture products (e.g., adhesive cream, and cleanser)</li> </ul>
Key considerations for customers and customer trends	<ul style="list-style-type: none"> <li>• [REDACTED] are important to customers shopping this category.</li> <li>• [REDACTED] are important to all customers. Products such as [REDACTED] have lower customer engagement.</li> <li>• [REDACTED]. [REDACTED].</li> <li>• [REDACTED]. FSSI notes [REDACTED].</li> <li>• [REDACTED].</li> <li>• FSSI notes [REDACTED].</li> <li>• FSNI notes [REDACTED].</li> <li>• FSNI notes [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Role of innovation	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• Innovation [REDACTED]. FSNI notes that innovation [REDACTED].</li> </ul>
Market dynamics	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• FSSI notes [REDACTED].</li> <li>• FSNI notes that private label [REDACTED]. FSSI notes that it [REDACTED].</li> </ul>
Challenges faced by suppliers and/or buyers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
<b>B. Information about the specific suppliers of the relevant product(s) in this category</b>	
Makeup of suppliers	<ul style="list-style-type: none"> <li>• Multi-national suppliers including [REDACTED]. <ul style="list-style-type: none"> <li>◦ [REDACTED].</li> </ul> </li> <li>• There are [REDACTED].</li> </ul>
FSNI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
FSSI's engagement with suppliers in this category	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>

Topic	Detail
Degree of existing alignment between suppliers that supply to FSNI and FSSI	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
Role of non-direct channels	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
<b>C. FSNI and FSSI category reviews completed for this category</b>	
FSNI category review(s)	<ul style="list-style-type: none"> <li>• [REDACTED].</li> </ul>
FSSI category review(s)	<ul style="list-style-type: none"> <li>• [REDACTED].</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
<b>D. Other buyers for the products in this category</b>	
Other key retailers	<ul style="list-style-type: none"> <li>• Woolworths and other grocery retailers</li> <li>• Pharmacies such as Chemist Warehouse and Bargain Chemist, Unichem, Life Pharmacy etc.</li> <li>• Other retailers such as the Warehouse, Kmart, Costco.</li> <li>• Dairies, retail fuel channel.</li> <li>• Dental practices.</li> <li>• Appliance stores such as Farmers, Harvey Norman, Noel Leeming which sell electric toothbrushes.</li> <li>• [REDACTED].</li> <li>• [REDACTED].</li> </ul>
Role of exports	<ul style="list-style-type: none"> <li>• Exports do not play a role in this category.</li> </ul>
Role of imports	<ul style="list-style-type: none"> <li>• Imports play a significant role in this category given the category is [REDACTED] by multi-nationals that manufacture their products offshore.</li> <li>• [REDACTED] products are produced domestically.</li> </ul>
Other buyers (including food service, wholesale, food manufacture or meal kit providers)	<ul style="list-style-type: none"> <li>• Other buyers are unlikely to be significant purchasers of oral care products.</li> </ul>

**There will not be a substantial lessening of competition in relation to the acquisition of oral care products**

- 36 This category is [REDACTED]. These suppliers command an international presence and are many times the size of the Parties. The suppliers have access to buyers across the globe and can credibly threaten to stop supplying must-have products to the Parties.
- 37 Further, [REDACTED]. It follows that the Parties are [REDACTED]. Given the significant countervailing power of the suppliers in this category, as a result of their must-have products, the Merged Entity would have no ability (or incentive) to suppress competition in any acquisition market associated with this category.
- 38 There are also a large number of other buyers of oral care products in addition to the major grocery retailers, including other retailers (e.g., The Warehouse, Kmart, Costco), pharmacies, dairies, dental practices and appliance stores (in relation to electric toothbrushes and accessories). This, coupled with the Parties' strong reliance on imported products that can also be sold to overseas *buyers*, suggests that suppliers have access to more alternative buyers than retailers have access to alternative *suppliers*.

- 39 In relation to [REDACTED], the appropriate way of characterising the bargaining relationship between Foodstuffs and the supplier/agent is that any outside options or countervailing supplier power (or supplier market power) are best understood as those of the supplier, not the agent, as discussed in the Parties' submission and HoustonKemp report on the SOUI. For example, the outside options in such a relationship would not be limited to that agent negotiating with New Zealand buyers of that supplier's products, but also by reference to the supplier having the ability to deploy its resources (and capital) in other markets. [REDACTED].
- 40 As with other product categories, [REDACTED]. There is no evidence to suggest that the Proposed Transaction will impose any structural or systematic changes to bargaining outcomes in this category. Suppliers which previously negotiated with FSNI and FSSI separately will simply negotiate with the Merged Entity following the Proposed Transaction (which will also save costs for those suppliers), with no material effect on downstream quantity sold (save for any enhanced ability for the Parties to compete harder at the retail level, which may increase market output).
- 41 There are a small number of smaller, local suppliers in this category, that only supply one co-operative [REDACTED]. There will be no change for these suppliers, which are likely to continue to negotiate with a small number of stores directly.