8 November 2024

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Tēnā koutou

Wholesale Supply Inquiry

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the "***Wholesale Supply Inquiry Under section 55 of the Grocery industry Competition Act 2023 – Preliminary Issues Paper***" released on 24 September 2024.

We would welcome the further opportunity to comment.

Ngā mihi nui

[redacted]

COMMERCE COMMISSION WHOLESALE SUPPLY INQUIRY

Preliminary Issues Paper

Submission by the New Zealand Food & Grocery Council

8 November 2024

NEW ZEALAND FOOD & GROCERY COUNCIL

1. INTRODUCTION

1.1 The New Zealand Food & Grocery Council (**NZFGC**) welcomes the opportunity to comment on the Commerce Commission's (**Commission**) *Wholesale Supply Inquiry under section 55 of the Grocery Industry Competition Act 2023: Preliminary Issues Paper* (**Preliminary Issues Paper**).[1]

1.2 The Commission's Preliminary Issues Paper identifies a range of issues that may affect wholesale supply and competition in the grocery industry and summarises the additional regulatory measures the Commission and/or Minister could impose under the Grocery Industry Competition Act 2023 (**GICA**). The Commission is considering, among other matters, issues related to the wholesale supply by the regulated grocery retailers (**RGRs**) including pricing and product range, and the direct supply of groceries by suppliers to non-RGR retailers.

1.3 NZFGC acknowledges the Commission's desire to move quickly to address perceived issues with the wholesale regime and to ensure it is meeting the purpose of Part 3 of GICA, but NZFGC considers the Wholesale Inquiry to be premature and that many of the regulatory measures under consideration are, in any event, unlikely to increase competition and efficiency for the long-term benefit of consumers in New Zealand.

1.4 The wholesale regime under GICA has only been in operation for just over 12 months. It takes time for new regulatory regimes to deliver demonstrable benefits. The regulatory tools under Part 3 of GICA are novel and unprecedented[2] and carry significant risks of unintended consequences. Accordingly, the Commission should be cautious about recommending or implementing further regulation before the existing measures have had sufficient time to take effect.

1.5 Further, many of the additional regulatory measures that are under consideration would, if engaged, divert wholesale supply through the RGRs at the expense of alternative channels to market. This has the potential to:

(a) increase the RGRs' existing buyer power which is likely to lead to worsening terms of trade for suppliers and impact suppliers' ability and incentives to invest and innovate. It could also result in suppliers exiting the market or, alternatively, increased prices (if suppliers are able to increase their wholesale prices despite the RGRs' buyer power); and

(b) negatively impact competition in upstream wholesale and distribution markets.

1.6 It is NZFGC's view that any further regulation of the wholesale supply of groceries should:

(a) not directly or indirectly incentivise non-RGR retailers to acquire groceries through the RGRs' wholesale businesses instead of other channels to market;

(b) continue to allow suppliers the right to choose their channels to market, and not remove their right to opt-out of the RGRs' wholesale offerings;

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[1] Commerce Commission *Wholesale Supply Inquiry under section 55 of the Grocery Industry Competition Act 2023: Preliminary Issues Paper* (24 September 2024) (**Preliminary Issues Paper**).

[2] Office of the Minister of Commerce and Consumer Affairs "Grocery sector reform: regulation of access to grocery wholesale and collective bargaining exemption" (August 2022) (**Cabinet Paper**) at [8].

(c) not require that the RGRs pass through any rebates, discounts and payments (**RDPs**) that are conditional on the RGRs taking particular actions or providing particular benefits to the supplier, or which are not solely related to the RGRs' scale and efficiency (if any); and

(d) not impose disclosure standards on suppliers.

1.7 The Commission has indicated that some of the regulatory measures it will be considering (e.g. a wholesale code or a wholesale framework) can be implemented prior to the completion of the Inquiry if necessary.[3] It would be inappropriate for the Commission to implement any measures without further consultation. NZFGC considers that further specific consultation is required before any additional regulation is proposed or recommended, including in any draft determination published in accordance with s 67(1)(a) of GICA, and NZFGC welcomes the opportunity to participate in any such further consultation.

1.8 The views expressed in this submission are based on NZFGC's current understanding of the potential consequences of the regulatory intervention the Commission is considering. There may be additional impacts or consequences that come to light during further consultation.

2. THE COMMISSION'S INQUIRY IS PREMATURE

2.1 NZFGC shares the Commission's commitment to improving competition in the grocery industry in New Zealand but considers that the Wholesale Inquiry is premature. The current (voluntary) wholesale regime has only been in force for a short period of time and any changes to the regulatory landscape could impact any improvement in competition that is already underway.

2.2 The Preliminary Issues Paper indicates the Commission will consider recommending or implementing additional regulatory tools if the wholesale regime is not "*achieving the outcome [the Commission expects] to see*".[4] NZFGC considers it is unrealistic to expect the new regime to have delivered demonstratable benefits in just over 12 months. New regulatory regimes typically require a period of time for market participants to adjust their behaviour and implement changes. Attempting to evaluate the overall effectiveness of new regulation before it has had sufficient time to take effect is likely to lead to premature conclusions that undermine the regulation's goals. Amending or introducing additional regulation before a new regime has taken full effect is inconsistent with the principle of regulatory certainty: regulatory intervention must be predictable and understandable for both Government and market participants.[5]

2.3 Government officials recognised the risks of imposing access regulation if improvement was not seen in the first 12 months of GICA when the wholesale regime was introduced. The Ministry of Business, Innovation and Employment (**MBIE**) considered two different options when initially considering the most appropriate regulatory response to incentivise the RGRs to make competitive wholesale offerings under GICA: the automatic imposition of access at regulated prices if a competitive wholesale offering was not provided within 12 months; or a flexible "toolkit" of potential regulatory responses available to the Commission or Minister. MBIE preferred the "flexible toolkit" (which was ultimately adopted in GICA) as it agreed with the Commission that mandatory wholesale access

[3] Commerce Commission *Wholesale Supply Inquiry Under section 55 of the Grocery Industry Competition Act - Terms of Reference* (4 September 2024) at [13].

[4] Preliminary Issues Paper at [87].

[5] Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Government response to the Commerce Commission Grocery Sector Market Study – Policy decision* (5 July 2022) (**Regulatory Impact Statement**), at pg. 31.

regulation was unprecedented and involved considerable risks, including possible harm to consumers.[6]

2.4 NZFGC agrees with MBIE and the Commission that imposing access regulation in the grocery sector would be unprecedented, carry significant risk of unintended consequences (discussed further in this submission) and could not be justified after just over 12 months of the wholesale regime's operation.

2.5 Additional regulation of the wholesale supply of groceries could also inadvertently impact the effectiveness of the Commission's concurrent review of the Grocery Supply Code (**Supply Code**). Additional wholesale regulation could cut across protections for suppliers under the current Supply Code or any amended Code the Commission may publish as part of its review. NZFGC considers that the Commission's Supply Code review must be concluded before any further wholesale regulation can be considered in order to understand its full impact.

3. FURTHER REGULATORY INTERVENTION RISKS CREATING A WHOLESALE DUOPOLY AND LESSENING COMPETITION IN GROCERY ACQUISITION MARKETS

3.1 The Preliminary Issues Paper states that the Commission has identified "*several fundamental issues with the RGRs' wholesale offerings*"[7] and that "*[f]urther intervention may be necessary to achieve the intended benefits of the wholesale regime, for both the wider grocery industry and New Zealand consumers*."[8]

3.2 NZFGC considers that further regulatory intervention in wholesale grocery markets is unlikely to achieve the purpose of GICA but is instead likely to have the opposite effect. Mandatory access regulation or other regulation which has the effect of diverting supply from other channels to market to the RGRs' wholesale distribution network is likely to increase the RGRs' already substantial market power in grocery acquisition markets, extend the current retail duopoly into the wholesale level of the market and negatively affect other related markets (such as logistics markets). Any regulatory intervention which has these effects cannot be for the long-term benefit of consumers. Further, there is a risk that encouraging supply through the RGRs' wholesale distribution network may reduce competition at the retail level of the market.

3.3 The Preliminary Issues Paper identifies, as one of the issues the Commission is considering, the low volume of sales through the RGRs' wholesale offerings. A low volume of sales through the RGRs' wholesale offerings is not however, of itself, evidence of market failure which would justify regulatory intervention. To the contrary, the wholesale distribution of groceries is characterised by a large number of service providers; it is not clear why any regulatory preference should be given to the RGRs to expand in that market at the expense of the existing market participants.

3.4 The key issue that needs to be addressed in the grocery industry is the lack of competition in grocery retail (and acquisition) markets. NZFGC considers wholesale regulation is not an appropriate mechanism to address this issue given the risks of unintended consequences outlined in this submission. There is also no guarantee that any form of wholesale access regulation would encourage entry or expansion by an alternative, major grocery retailer which could operate as a realistic competitor to the RGRs, or otherwise improve retail competition.

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[6] Ministry of Business, Innovation and Employment *Regulatory Impact Statement Addendum: grocery sector regulatory backstop to the quasi-regulated wholesale access regime* (August 2022) (**Regulatory Impact Statement Addendum**), at pg. 3.

[7] Preliminary Issues Paper at [30].

[8] Preliminary Issues Paper, Foreword from the Grocery Commissioner, at pg. 5.

Competition in grocery acquisition markets

3.5 It is widely recognised that there is a lack of competition in grocery acquisition markets in New Zealand. The RGRs are estimated to have a combined share of 73% of the retail supply of groceries in New Zealand,[9] and their combined shares are likely to be higher in some categories,[10] evidencing substantial market power. As the Commission found during the market study into the retail grocery sector, suppliers are often dependent on RGRs as their main route to market[11] and alternative channels are unlikely to generate sufficient sales for most suppliers to operate profitably.[12] The Commission also acknowledged in its recent consideration of the proposed merger of Foodstuffs North Island and Foodstuffs South Island (**Foodstuffs merger**), that "*there is already widespread concern about the existing degree of buyer power in the bilateral negotiations between major grocery retailers and suppliers*."[13]

3.6 Any additional regulation that results in retailers acquiring grocery products through the RGRs' wholesale distribution network at the expense of alternative supply channels is likely to exacerbate the lack of competition and further increase the RGRs' already substantial market power in grocery acquisition markets, by reducing (and potentially removing altogether) the alternative routes to market for suppliers. This could result in the RGRs extracting even lower prices from suppliers (prices which the Commission recognises are already likely to be at the minimum that suppliers are willing to accept[14]) or terms which are even less favourable to suppliers. During the market study, the Commission heard evidence about the downward pressure on supplier margins and that the RGRs were using their market power to transfer retail costs and risks onto suppliers, reduce transparency and certainty over terms of supply and limit suppliers' ability or incentive to provide favourable supply terms to other retailers.[15]

3.7 Simply put, such regulation will shift the risk and cost of regulating wholesale access onto suppliers and there is no guarantee that it would ultimately improve competition at the retail level by encouraging entry or expansion by an alternative, major grocery retailer which could provide an effective competitive constraint on the RGRs. Relevant factors for effective competition in the grocery retail market include size of premises, location, amenities, product range and number of retail outlets. The additional regulation the Commission is considering would not address the significant capital investment that would be required to enter/expand into grocery retail to compete with the RGRs or address the other factors that a potential new entrant (or existing participant) would need to consider when making investment decisions (such as risk). For example, existing smaller independent retailers may need to invest in larger premises and amenities such as carpark spaces to be considered by consumers to be a viable alternative to the RGRs for their main shop.

3.8 The Commission has recognised that reduced margins/profitability affects suppliers' incentives to invest and innovate.[16] As the Commission concluded in relation to the Foodstuffs merger, "*any*

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[9] Australian Competition and Consumer Commission, *Supermarkets Inquiry – Interim Report* (August 2024), at pg. 149, Figure 7.4.

[10] Commerce Commission *Market study into the retail grocery sector: Final report (8 March 2022)* (**Market Study Report**). As the Commission found in its market study, while there are some alternative channels available for some suppliers, these alternative channels are likely to be more viable for some suppliers than others. See Market Study Report at [8.53]. Further, in its recent consideration of the Foodstuffs merger, the Commission identified a number of acquisition markets in which WWNZ, FSSI and FSNI were the only major grocery buyers. See Commerce Commission *Determination –Foodstuffs North Island Limited and Foodstuffs South Island Limited* [2024] NZCC 22 (**Foodstuffs Determination**) at [86].

[11] Market Study Report at [8.50].

[12] Market Study Report at [8.55].

[13] Foodstuffs Determination at [83].

[14] Foodstuffs Determination at [83].

[15] Market Study Report at [8.95].

[16] Market Study Report at [8.97].

increase in buyer power … may reduce suppliers' ability and incentives to invest in new and innovative products, due to reduced profitability and lower expected returns from investments in innovation"[17] which may lead to "*fewer products, lower quality products, and/or the slower introduction of new products on retail grocery shelves for consumers, reducing consumers' choice of grocery products. It may also result in fewer efficient suppliers entering the market*."[18] Accordingly, the Commission should not contemplate new regulation which has the potential to increase the RGRs' already substantial buyer power; doing so will ultimately harm consumers.

3.9 This increase in RGRs' substantial buyer power will not be mitigated by the Supply Code. As the Commission has recognised, suppliers "*may not be benefitting from the full protections of the Code*"[19] and NZFGC considers that the Supply Code does not go far enough to address the current imbalance in bargaining power between RGRs and suppliers, in part given the manner in which the RGRs can contract out of important obligations under the Code through their grocery supply agreements.[20] If the Code cannot currently protect suppliers in their dealings with RGRs, and may be amended or revoked in the near future, then it is difficult to see how it could appropriately mitigate the consequences of any additional increase in the RGRs' bargaining power as a result of encouraging supply through the RGRs' wholesale offerings at the expense of alternative channels. Further, the Grocery Supply Code (even if it is strengthened) could not adequately protect suppliers (and ultimately consumers) from unintended consequences of further wholesale regulation.

Competition in wholesale markets

3.10 Suppliers have various routes to market, depending on the nature of the product supplied, the supplier's strategy, and the supplier's capabilities (including size, capital etc). For example, suppliers may:

(a) supply to the RGRs, who provide the logistics and supply chain capability to deliver the products to their own stores/franchisees and other retailers;

(b) supply to independent wholesalers, such as fresh produce wholesalers, foodservice wholesalers and international wholesalers, who then on-supply the products to the RGRs and other retailers;

(c) invest in their own logistics and supply chain capability to deliver their products direct to store, either by utilising third party distribution centres, warehousing and logistics services, investing in their own distribution centres, warehousing and logistics, or a combination of these; and/or

(d) supply direct to consumers, such as through their own website and utilising third party delivery providers.

3.11 Regulation which results in retailers using the RGRs' wholesale distribution network instead of acquiring direct from suppliers or independent wholesalers will shift volume away from independent wholesalers and/or suppliers' own distribution networks, undermining their economic viability. Supply chain efficiencies are achieved through economies of scale, and therefore as volumes reduce, the per-unit costs of (for example) warehousing, transportation and other distribution expenses increase,

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[17] Foodstuffs Determination at [389] and [401].

[18] Foodstuffs Determination at [389] and [401].

[19] Commerce Commission "ComCom testing if supply code 'rule book' is helping fix power imbalance in groceries" (press release, 1 August 2024) < https://comcom.govt.nz/regulated-industries/grocery/review-of-the-grocery-supply-code/media-releases/comcom-testing-if-supply-coderule-book-is-helping-fix-power-imbalance-in-groceries>.

[20] NZFGC *Commerce Commission review of the grocery supply code Request for views on issues and opportunities to consider within the review – Submission by the New Zealand Food & Grocery Council* (16 September 2024) at [3.1].

making it more difficult to operate profitably, which could ultimately cause suppliers to exit the market.

3.12 In addition, regulatory intervention to encourage the RGRs to invest in systems to support extended wholesale operations (such as distribution centres, logistics, IT systems etc) is likely to result in inefficient duplication of investment in infrastructure where such investments have already been made by independent wholesalers and/or suppliers, and result in stranding of wholesalers'/suppliers' assets. The RGRs will also look to recoup their investment by either seeking to reduce the prices they pay to suppliers or by passing these costs on to their wholesale or retail customers.

3.13 The Commission should not therefore deploy regulatory tools, or recommend further regulation to address the competition issues it has identified at the retail level, at the expense of competition in the upstream acquisition and wholesale distribution markets. This will not promote competition for the long-term benefit of consumers in New Zealand and is likely to have significant unintended consequences in the wholesale and retail markets, along with related markets involved in the grocery supply chain.

Competition in retail markets

3.14 Regulation that encourages wholesale supply through the RGRs at the expense of other routes to market may also reduce the limited competition that exists in retail markets.

3.15 In particular, the RGRs will have access to sensitive information about their wholesale customers, including their purchasing demands and patterns, which the RGRs could use to their competitive advantage and could also facilitate coordination between the RGRs and their wholesale customers. For example, purchasing patterns could be used by the RGRs to predict and respond to promotional activity. Encouraging supply through the RGRs' wholesale offerings will only increase the risk of this incurring.

4. SUPPLIERS SHOULD MAINTAIN THE ABILITY TO CHOOSE THEIR CHANNELS TO MARKET

4.1 The Preliminary Issues Paper states that many top-selling retail products appear to be unavailable through the RGRs' wholesale offers.[21] The Commission has identified three key factors that it considers limits the availability of these top-selling retail products: suppliers opting out of the RGRs' wholesale offerings, private label and fresh product exclusions,[22] and is considering whether it should implement or impose additional regulation to improve the range of grocery products available through the RGRs' wholesale offers.[23]

4.2 Suppliers of grocery products adopt the distribution model that best suits their commercial objectives. Many have invested in their own wholesale distribution channels to better serve their retail customers. It is unclear why it would be appropriate to remove suppliers' commercial freedom to determine their channels to market. Regulation that, directly or indirectly, deprives suppliers of their freedom to make commercial decisions about the distribution of their products would be completely novel, unprecedented and inappropriate. NZFGC is not aware of any other jurisdiction in which grocery suppliers are required by law to use a particular channel to market or sell their products to a specified wholesaler. Further, there is no other market (at least in New Zealand) in which a person who does not have substantial market power has been subjected to access regulation.

[21] Preliminary Issues Paper at [58].

[22] Preliminary Issues Paper at [61].

[23] Preliminary Issues Paper at [98.1].

4.3 The significant regulatory intervention the Commission is considering as part of the Wholesale Inquiry could potentially have a chilling effect on supplier investment in the New Zealand grocery market and create a "*master servant*" type relationship between the Commission decision-makers and grocery suppliers.[24]

The importance of allowing suppliers to choose their channels to market

4.4 It is a fundamental principle of market economies that, absent substantial market power and subject to anti-discrimination laws, a supplier is free to choose to whom it sells its goods or services. This principle is recognised in the GICA wholesale regime, which provides that suppliers should retain "reasonable control" over the channels for the retail sale of their own products and brands.[25]

4.5 The principle that suppliers should be able to choose their channels to market was emphasised when the GICA wholesale regime was originally proposed and was upheld throughout the legislative drafting process. The original proposal for the regulatory back-stop regime noted that there were risks the regime would strengthen the position of the RGRs as a "*key logistical conduit*" to connect suppliers with retailers and entrench the RGRs' duopoly position.[26] However, the then-Minister of Commerce considered the risk was appropriately mitigated if, among other things, suppliers were allowed to "*retain control over the supply of their products*".[27]

4.6 There are a range of reasons why a particular supplier may choose to supply or not supply a particular retailer, including:

(a) Brand strategies and positioning

Suppliers invest considerable time and resources in developing 'go-to-market' strategies for their products by engaging in market research and analysis to understand consumer preferences, defining brand values and elements (including recommended pricing and packaging) and developing marketing strategies to build brand awareness and loyalty. As part of this process, suppliers consider which retail distribution channels align with their brands' positioning in the market. For example, suppliers may consider their brands are more aligned with high end 'specialty' stores, while others may consider their brands are better aligned with retail stores that are positioned at the lower end of the market. Go-to-market strategies also allow suppliers to manage risk by ensuring their products are sold across a spread of retail stores/retailers. If suppliers have no choice over where and how their products are sold in the retail market, this is likely to negate any supplier investment into their go-to-market strategies and risks the gradual decline in the value and strength of their brands.

(b) Some suppliers prefer direct relationships with retailers

Suppliers may prefer developing direct relationships with retailers as this allows them to more closely manage how their products are stocked and displayed and mitigate risks with any product safety issues. As the Commission identified in its Market Study Report, some suppliers prefer to have their own merchandisers (rather than using retailers' merchandising teams) to have "*greater control over how their products are stocked and displayed*".[28]

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[24] A "master servant" type relationship would involve one party specifically dictating how the other must act. The consequences of such relationships has been raised in other regulatory contexts.

[25] Grocery Industry Competition Act 2023 (**GICA**), s 24(1)(h).

[26] Cabinet Paper at [107] – [108].

[27] Cabinet Paper at [108.3].

[28] Market Study Report at [8.118].

Suppliers will also have various product safety needs, and for some suppliers being able to develop and manage direct relationships with their retailers is essential to ensuring they can adequately discharge their product safety obligations. If suppliers are deprived of their ability to choose where their products are sold, this will prevent them from developing direct relationships with their retailers and may make it more difficult to effectively manage product safety issues (e.g., recalls).

(c) Managing manufacturing capacity in response to demand

Some suppliers (in particular, smaller suppliers) are likely to be unable to quickly upscale their manufacturing capacity in response to increased demand. If these suppliers are unable to control where their products are sold, this will impact their ability to manage their manufacturing capacity. If a supplier's products are continually sold out, this is likely to reflect poorly on the supplier and could damage their commercial relationships with RGRs, which remain the most significant route to market, and their reputation with consumers.

(d) Managing quality control

As the Commission identified in the Preliminary Issues Paper, some suppliers also use direct supply as a way of managing quality issues.[29] For example, suppliers with direct relationships with their retailers may be able to monitor retailers' quality control processes (e.g., ensuring expired products are not sold to consumers). It will be more difficult for suppliers to have this same level of oversight if they are unable to manage their products' channels to market.

(e) Advertising and promotions

There is also often a need for suppliers to have direct relationships with retailers to ensure that any retailer advertising/promotions for the suppliers' products are consistent and appropriately managed (e.g. in terms of timing and representations made). Further, direct arrangements between suppliers and retailers relating to promotions allows suppliers to ensure that the promotional pricing is passed on to consumers. If the promotional discount provided from the supplier to the retailer is not passed on to consumers, the supplier does not receive the benefits of the promotion and it results in a margin transfer from the supplier to the retailer which discourages such investments and innovation by suppliers.

4.7 Removing suppliers' ability and commercial freedom to manage where their products and brands are sold would likely reduce incentives for suppliers to innovate and invest and may ultimately lead to suppliers exiting the market or choosing not to enter the New Zealand market. For example, suppliers may be reluctant to invest in bringing new products to market if they are unable to manage how that product is positioned in the market and presented to consumers. Similarly, if suppliers are required to supply products through the RGRs' wholesale offerings they may face greater costs (and potential risks to their ranging with the RGRs) if they are unable to manage the variable demand for their products that are on-sold to the RGRs' wholesale customers.

4.8 Regulation which removes the ability for suppliers to opt-out of the wholesale regime will also disincentivise multinational suppliers from supplying to New Zealand. Multinational suppliers often seek to align their brand strategies across multiple jurisdictions and may not be willing to risk undermining those strategies if they are unable to choose their channels to market in New Zealand.

[29] Preliminary Issues Paper at [66].

4.9 NZFGC also considers that there are likely to be unintended consequences if RGRs' private label products are required to be included in the RGRs' wholesale offerings. Requiring these products to be on-sold through the RGRs' wholesale offerings is likely to impact on commercial arrangements for these products and supplier incentives. NZFGC is also concerned that such regulation could disincentivise future entry and expansion by overseas grocery retailers if there is a risk that, in future, their private label products could be made available to any wholesale customer upon request.

Access regulation is inappropriate for the grocery sector

4.10 Access regulation generally involves a regulator setting the terms on which a dominant operator/monopoly provider must provide access to an essential input including the price of access and/or the access provider's allowable return on its investments.[30] As a result, access regulation is typically reserved for industries with "*natural monopoly characteristics where an infrastructure facility forms a bottleneck for firms operating in upstream or downstream markets*".[31] The decision to impose access regulation should only be made in order to address "*an enduring lack of effective competition, due to natural monopoly*",[32] for example, where a systemic abuse of market power may occur in the absence of such regulation.

4.11 The grocery sector does not have natural monopoly characteristics, nor is it characterised by bottleneck inputs or essential facilities. It is a very different market to other regulated industries, such as electricity transmission and distribution, and telecommunications, where access to the utilities is required to operate in downstream markets. While some grocery items may be argued by some participants to be 'must have' products,[33] there are differing opinions on the products that are perceived to be 'must haves' and, in any event, there is no significant concentration at a supplier level for most groceries[34] and grocery suppliers (including large multinational suppliers) do not have substantial market power.[35] Further, consumer preferences are constantly evolving and changing and therefore a perceived 'must have' product today may not be a 'must have' product tomorrow. The Commission has itself recognised that the grocery wholesale market lacks an "*essential facility or natural monopoly characteristic*", and there is no "*monopoly asset*" which means that "*grocery wholesaling is not the type of industry ordinarily regarded as potentially amenable to [access regulation]*".[36]

4.12 When introducing the proposed regulatory regime under GICA, the then-Minister of Commerce and Consumer Affairs acknowledged that *"[t]he regulation of access to grocery wholesale is unprecedented*".[37] However, it is not appropriate to use the grocery sector as a testing ground for a "*novel*" and "*unprecedented*" approach, and there is a substantial risk that doing so will have unintended consequences as discussed below.

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[30] Market Study Report at [9.116].

[31] Australian Government - Productivity Commission *National Access Regime Productivity Commission Inquiry Report* (25 October 2013) (**Productivity Commission Report**) at pg. 73 referenced ACCC's submission to the Productivity Commission's National Access Regime public inquiry.

[32] Productivity Commission Report, at pg. 2.

[33] Market Study Report at [8.66].

[34] Market Study Report at [6.164].

[35] The Commission has recognised that even large suppliers with strong brands are dependent on the RGRs as a route to market (see Market Study Report at [8.61] and may suffer a bargaining power imbalance (see Foodstuffs Merger Determination at [327]).

[36] Market Study Report at [9.118.1].

[37] Cabinet Paper at [37].

Access regulation will have unintended consequences

4.13 Access regulation carries the risk of significant unintended consequences, such as, in particular, entrenching the RGRs' market power and undermining competition in existing wholesale and grocery acquisition markets (as discussed in Section 3 above).

4.14 NZFGC's view is that directly or indirectly requiring suppliers to participate in the RGRs' wholesale offerings is likely to strengthen the RGRs' buyer power (as discussed in Section 3 above), reduce supplier profitability, reduce supplier incentives to invest and could lead to some suppliers exiting the market altogether.

4.15 The only way to effectively mitigate this risk would be to ensure that suppliers are not required to participate in the RGRs' wholesale offerings. This was recognised by the then-Minister of Commerce, Dr David Clark, in introducing the proposed wholesale regime to Cabinet. Dr Clark identified the key risk that regulation of access to grocery wholesale could strengthen the RGRs' position as a "*key logistical conduit to connect suppliers with retailers, effectively reinforcing the duopoly*" but considered this would be mitigated by, inter alia "*allowing suppliers to retain control over the supply of their products so that they can use direct supply channels where efficient and are encouraged to develop direct relationships with wholesale customers*".[38]

4.16 The Commission's Preliminary Issues Paper suggests the Commission could implement a Wholesale Code to address suppliers opting out of the RGRs' wholesale offerings.[39] However, it is inappropriate to use a Wholesale Code (or any other regulatory mechanism) to indirectly impose access obligations on suppliers. If such access regulation were to be proposed (which NZFGC considers would be inappropriate), it must first be subject to a careful and detailed cost-benefit analysis and proper consultation. This is of particular importance given that GICA was introduced under time constraints, and it was acknowledged at the time that there had been a lack of public consultation on the proposals.[40]

4.17 Finally, the wholesale regime has likely already had unintended consequences. For example, NZFGC is aware that one of the RGRs is supplying to wholesale customers in overseas markets, which was not the purpose or intent of the wholesale regime and could also impact export distributors or undermine the viability of suppliers' established export networks.

5. RGRS' WHOLESALE PRICES SHOULD NOT INCORPORATE ALL REBATES, DISCOUNTS AND PAYMENTS NEGOTIATED WITH SUPPLIERS

5.1 The Preliminary Issues Paper states that it is unclear whether the benefits of the RGRs' scale and efficiency (including trade and promotional spend) are being appropriately passed on to wholesale customers.[41] As a result, the Commission is considering whether it should impose or recommend additional regulation under the GICA regulatory 'back-stop' regime to regulate wholesale pricing and/or specify how RDPs (including trade and promotional spend) should be passed through to RGRs' wholesale customers.[42]

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[38] Cabinet Paper at [108.3].

[39] Preliminary Issues Paper at [98].

[40] Regulatory Impact Statement Addendum, at pg. 3.

[41] Preliminary Issues Paper at [52].

[42] Preliminary Issues Paper at [99] and [107] – [111]. See discussion on Specified access terms where the Commission noted that"[s]pecified access terms would ensure that a RGR supplies groceries at wholesale on regulated terms and conditions (whether relating to price, range, quantity, frequency, or any other matter)" and that the Commission's determination may deal with matters such as the "maximum prices, wholesale margins and/or revenues that RGRs may charge, recover and/or derive".

5.2 NZFGC considers that the Commission should not impose, or recommend imposing, any regulation which would directly or indirectly require the RGRs to pass through all RDPs to the RGRs' wholesale customers for the following reasons:

(a) it would be inconsistent with the key pricing principles in s 24(1) of GICA and Parliament's intentions;

(b) it will encourage non-RGR retailers to access groceries through the RGRs' wholesale offerings at the expense of other channels to market, which will negatively impact on suppliers' viability and may lead to some suppliers exiting the market, if suppliers are unable to increase their pricing; and

(c) it will remove supplier incentives to agree certain RDPs with the RGRs, as suppliers will have no visibility over whether (and to what extent) their products are being on-sold through the RGRs' wholesale regimes.

We address each of these points further below.

Requiring the pass through of all RGR-negotiated RDPs is inconsistent with GICA and Parliament's intention

5.3 The key principles relating to pricing that the Commission and the Minister must take into account when exercising their functions and powers under Part 3 of GICA are the desirability that the RGRs' wholesale prices reflect "efficient costs" and that RGRs' wholesale customers have reasonable access to any RDPs made available to the RGRs in connection with RGRs' scale and/or efficiency.[43]

5.4 There are various types of RDPs that may be agreed between a supplier and an RGR, including, for example: volume discounts and rebates for large quantity purchases, promotional discounts, shelf space payments, in-store advertising payments, product launch support payments, warehousing terms, distribution terms, wastage payments, settlement discounts, coupons/loyalty program payments, merchandising payments, payments/discounts for other forms of RGR advertising (e.g., online or in mailers) and payments for retailer data. Further, there are different factors that influence the prices (including RDPs) that an RGR receives from suppliers, including:

(a) **The benefits that the RGR may give to the supplier in exchange for the RDP**. RDPs may be conditional on the retailer taking on specific obligations (e.g. running a particular promotion or performing certain services for the supplier), and therefore it is important to consider any RDPs or pricing within the context of the terms and conditions agreed between an individual supplier and a retailer.

(b) **Buyer power**. The RGRs' substantial buyer power and the lack of competition in grocery acquisition markets means that the prices (and RDPs) that RGRs have been able to extract from suppliers are likely to be below the prices that suppliers would be able to negotiate in a more competitive market. As the Commission itself has identified, the "*existing buyer power that [the RGRs] enjoy suggests that current [wholesale prices] are already towards the minimum that suppliers are willing to accept*".[44] Further, the RGRs are able to use their buyer power to extract RDPs that suppliers would not otherwise agree to in competitive acquisition markets. For example, the Commission identified in the Market Study Report that there was a risk that suppliers were expected to fund a disproportionate share of promotional activity

[43] GICA, s 24(b).

[44] Foodstuffs Merger Determination at [83].

which ultimately led the Commission to recommend promotional funding be subject to additional restrictions through a supply code.[45]

(c) **The supplier's costs**. This includes all costs incurred by a supplier to manufacture their products and deliver their product to the end customer, such as manufacturing costs (raw materials, labour, overhead), import costs, packaging and labelling costs, distribution costs (transportation, warehousing, inventory management) and general overheads such as staffing.

(d) **The cost to serve particular customers**. Certain costs (such as distribution, logistics and transport costs) can change depending on the size and location of the retailer. For example, transporting groceries to rural areas is likely to be more expensive than transporting groceries in and amongst popular urban centres). There may also be different requirements for different categories of groceries which carry higher costs, for example groceries requiring refrigerated transport. Cost to serve is usually calculated as a per unit cost, and therefore costs to serve will increase or decrease depending on volumes supplied and any resulting efficiencies/inefficiencies.

(e) **Brand strategies and brand positioning**. Suppliers have a greater incentive to invest in their relationship with those retailers whose strategies/positions align with their own (as discussed above at [4.6(a)]). As a result, those retailers may be able to negotiate more competitive wholesale prices, or get access to more exclusive products or a broader range of products and more significant promotional investment from relevant suppliers.

5.5 Accordingly, not all RDPs that an RGR receives from a supplier are connected with an RGR's scale and efficiency, and indeed it is highly unlikely that the RGRs receive any RDPs that are solely connected to these matters, given the RGRs' substantial market power.

5.6 It would therefore be inconsistent with Parliament's intention if all RDPs were to be passed through to wholesale customers. The proposal that all RDPs should be passed through to RGRs' wholesale customers on a "net net" basis (i.e., incorporating all trade rebates and other payments received, including trade and advertising spend) was explicitly rejected by Officials during the passage of GICA through Parliament[46] and the Select Committee report only recommended that the "scale" benefits of RGRs should be passed through (for example, a discount offered on purchases of more than 10,000 units of a particular product).[47]

5.7 Further, consideration will need to be given to the extent to which RDPs are connected to an RGR's scale and efficiencies[48], as distinct from an RGR's market power. There is a difficulty (and a danger) in suggesting some RDPs are connected to the scale and efficiency of an RGR where the RDP (or the amount of the particular RDP) reflects a benefit the RGR has been able to extract by virtue of its

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[45] Market Study Report at [9.166.3] "As discussed in Chapter 8, promotional funding and payments for merchandising appear to be a relatively entrenched feature of the retail grocery sector, and they can be efficient in some circumstances. Prohibiting such payments entirely would likely simply result in suppliers being paid a lower list price for their products. However, as both retailers and suppliers can benefit from both promotional activity and fully-stocked shelves, there is a risk that suppliers are expected to fund a disproportionate share of retailers' benefits from such activities. Given this, we consider that such payments should only be permitted when they are reasonable in the circumstances, having regard to the benefits and costs to suppliers and retailers. We anticipate that guidance will be required as to when such payments are reasonable."

[46] Officials' Report, at pg. 48

[47] Economic Development, Science and Innovation Committee, Grocery Industry Competition Bill (22 March 2023) (**Select Committee Report**), at pgs. 9 – 10.

[48] NZFGC notes that the appropriateness of passing through scale and efficiency benefits enjoyed by the RGRs to retailers who do not have such scale and efficiencies also requires further consideration.

substantial market power. It would be inappropriate and contrary to Parliament's intent to require the RGRs to pass through pricing which is below competitive levels.

Requiring the pass through of all RGR-negotiated RDPs will encourage supply through the RGRs' wholesale offerings

5.8 The Commission is concerned that RDPs are not being passed through to RGRs' wholesale customers and that this subsequently impacts the ability of other retailers to compete with the RGRs on retail prices if they are unable to negotiate the same RDPs with suppliers.[49] However, any regulation which requires all RDPs to be passed through to the RGRs will:

(a) extend wholesale pricing which does not reflect competitive acquisition markets to non-RGR retailers, and will simply result in a margin transfer from suppliers to retailers; and

(b) incentivise supply through the RGRs' wholesale offerings at the expense of other existing channels to market.

5.9 There will no incentive for wholesale customers to negotiate direct supply relationships with suppliers if they can obtain below-competitive market pricing through the RGRs' wholesale offering. As explained in Section 3 above, regulation which incentivises supply through the RGRs at the expense of other channels will further increase the RGRs' buyer power, which is not in the long-term interests of consumers. There is also no guarantee that requiring the RGRs to pass on all RDPs to their wholesale customers would result in lower prices to end consumers (i.e. the RGRs' wholesale customers may choose not to pass on any pricing benefits to consumers through lower retail prices) or an improvement in competition in grocery retail markets (as explained above, there is no guarantee that regulating wholesale supply, including wholesale prices, will lead to an increase in retail competition given investment decisions are based on more complex considerations than price alone).

5.10 Requiring the pass through of all RDPs offered to RGRs to RGRs' wholesale customers is therefore not a sustainable, long-term solution to addressing the competition issues in grocery markets.

Net-net pricing will reduce supplier incentives to innovate and invest and could lead to supplier exit

5.11 There are likely to be significant adverse consequences for suppliers (and ultimately consumers) if all RDPs are required to be passed through to the RGRs' wholesale customers.

5.12 Requiring the pass through of all RDPs will likely reduce suppliers' margins and profitability, particularly if it results in all retailers/retail channels receiving below market pricing for suppliers' products. Reducing supplier profitability will adversely affect suppliers' ability and incentive to invest and innovate, and adversely affect suppliers' viability. This could result in some suppliers exiting the market or certain product categories, if suppliers are unable to increase their pricing to provide a sufficient return to continue to operate. One of the principles of the wholesale regime is that RGRs, suppliers and wholesale customers are able to invest and innovate for the long-term benefit of consumers.[50] Suppliers need to receive a reasonable return to encourage innovation and investment – supplier margins need to compensate suppliers for the risks of innovating and investing – and therefore requiring that the RGRs pass through all RDPs which would reduce supplier returns would be directly contrary to this principle. As the Commission identified in its decision to decline clearance for the Foodstuffs merger, any potential reduction in innovation by suppliers may lead to fewer products, lower quality products, and/or the slower introduction of new products on retail grocery

[49] Preliminary Issues Paper at [52].

[50] GICA, s 24(1)(f).

shelves for consumers, reducing consumers' choice of grocery products, and also may result in fewer efficient suppliers entering the market.[51]

5.13 Further, requiring the RGRs to pass through RDPs to wholesale customers who have not agreed to the conditions upon which the RDPs were agreed with suppliers is also likely to discourage supplier innovation and investment.

5.14 For example, a supplier may agree to fund a specific promotion to be undertaken by the RGR. There are many reasons why a supplier may wish to undertake a specific promotion: promotions may encourage consumers to trial a new product, increase product awareness or increase volume during a lower demand period (amongst other things). Requiring RGRs to pass through promotional discounts to wholesale customers who have not agreed to the parameters of the promotion, and who do not have any obligation to run the promotion, will reduce the benefit of running promotions for suppliers, as they will not receive a return on investment in relation to discounts passed through to wholesale customers.

5.15 If suppliers cannot be certain that promotional funding will be used to fund its desired marketing or promotional activity by RGRs in accordance with the conditions attached to that funding (but instead will be passed through to all wholesale customers) it will likely become uneconomic for suppliers to continue investing in that activity and could ultimately impact the extent to which suppliers invest and innovate in bringing new products to market.

5.16 For completeness, NZFGC notes that requiring wholesale customers to comply with the conditionality which attaches to the wholesale prices offered to RGRs would not reduce the risk of these unintended consequences. Determining RGR wholesale pricing is a complex, context-specific exercise and the wholesale prices agreed with RGRs are likely to be lower than those suppliers would be able to obtain in a competitive market given the RGRs' market power. Requiring wholesale customers to comply with the conditionality would still lock-in below competitive pricing, impact suppliers' incentives to invest and innovate and could still risk suppliers exiting the market.

6. DISCLOSURE STANDARDS SHOULD NOT BE IMPOSED ON SUPPLIERS

6.1 One of the "escalating tools" identified in the Preliminary Issues Paper is the establishment of disclosure standards. Under s 191 of GICA, the Commission may issue disclosure standards which apply to any or all grocery industry participants, including suppliers. A disclosure standard may require the disclosure of a broad range of information to the Commission including prices, terms and conditions, financial statements, costs, revenues, margins and total sales figures. Failure to comply with a disclosure standard would expose the relevant participants to civil liability under GICA.[52]

6.2 It would not be appropriate to require suppliers to comply with disclosure standards. Information disclosure regulation is used in certain markets where there is little or no competition (and little prospect of future competition) and is generally applied to suppliers of a bottleneck input or an operator of essential infrastructure (such as electricity distribution services or airports).[53] As explained earlier, the grocery industry is not characterised by bottleneck inputs or essential facilities.

6.3 Further, imposing disclosure standards on suppliers will significantly increase suppliers' costs, which will reduce supplier profitability. Complying with information disclosure requirements can require the provision of significant amounts of information to be disclosed in a very specific way.[54] Suppliers may

[51] Foodstuffs Merger Determination at [401].

[52] GICA, s 190.

[53] Commerce Commission Part 4 Information Disclosure Reviews: Framework Paper (14 December 2023) at [2] and [3].

[54] For example, the current Airport Services Information Disclosure Determination 2010 (consolidated) is 122 pages long.

not have sufficient expertise or resourcing to comply with information disclosure requirements and imposing this type of regulation will increase suppliers' costs and create additional complexity. This will have a chilling effect on supplier investment and could ultimately lead to suppliers exiting the New Zealand market, if the increased costs cannot be recouped (e.g. by increasing prices). It will also deter suppliers from entering the market, particularly multinational suppliers. Limiting disclosure standards to only a few select suppliers is unlikely to mitigate these effects. The Commission should not make assumptions about whether a supplier or class of supplier has the ability to bear the costs of compliance with disclosure standards based on measures such as a suppliers' size or revenues.

6.4 Further, requiring suppliers to disclose highly sensitive confidential information to the Commission and/or public (noting that any information provided to the Commission could still potentially be disclosed under the Official information Act 1982) is likely to disincentivise new entrants from entering the market and existing suppliers from continuing to supply to New Zealand retailers.

7. FURTHER CONSULTATION IS NEEDED IF THE COMMISSION CONSIDERS ADDITIONAL REGULATION SHOULD BE IMPLEMENTED

7.1 Before any further regulation is proposed, recommended or implemented by the Commission, specific consultation on the proposed regulation is necessary. The Commission's issues paper is a preliminary step to identify issues and, while it has indicated that some of the regulatory measures that it will be considering (e.g. a wholesale code or a wholesale framework), it is not of itself sufficient to elicit views on specific regulatory options that the Commission may consider as part of its inquiry.

7.2 As explained earlier in this submission, there is a risk of potentially serious adverse consequences (including unintended consequences) for suppliers (and ultimately consumers) if further wholesale regulation is imposed in the grocery industry. The risks of the regulatory tools available to the Commission and the Minister under GICA have not been fully tested (or identified) given the tools were not subject to extensive public consultation at the time GICA was introduced under urgency in November 2022.[55] This was noted by the current Minister of Commerce and Consumer Affairs (then in opposition) during the Hansard debates, where he raised concerns regarding the regulatory backstop under the Bill and that simply legislating or regulating the industry further if the wholesale aspects failed would not work.[56]

7.3 MBIE also acknowledged this issue when it noted that due to significant time constraints and lack of public consultation it was not confident it had identified all regulatory tools that could be suitable for inclusion in the Bill.[57] In addition, officials acknowledged there had been "*limited targeted consultation with major grocery retailers, and a very limited number of wholesale customers and suppliers*".[58] Accordingly, further consultation is required before any additional regulation is proposed, imposed or recommended. In particular, further specific consultation on the potential measures to address the issues identified by the Commission during these early stages of its inquiry

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[55] https://www.beehive.govt.nz/release/another-step-towards-improved-supermarket-competition

[56] Hansard debates, Grocery Industry Competition Bill (Second reading – 2 May 2023), Hon Andrew Bayly "[…] Finally, there is the issue of the regulatory backstop. The bill assumes that the only answer if these measures fail is more regulation. We don't think that's the case. We think that the bill should provide the Minister with other options to look at regulating the industry, and in fact maybe curtailing certain aspects of the grocery trade. We will support the bill, but we do have some concerns; Hansard debates, Grocery Industry Competition Bill (Third reading – 21 June 2023). Hon Andrew Bayly: "[…] But the last thing is, if it fails, the Minister said we're going to regulate more. That is not what National supports. This bill already has a significant amount of legislation. The prospect of just legislating more, in my view, will not work. We believe that there may be a need to look at restricting some activities of the supermarket, but if this does not work well in future, we'll keep an open mind on that. However, only time will tell whether this will deliver discernible benefits for hard-pressed families in New Zealand."

[57] Regulatory Impact Statement Addendum at pg. 3.

[58] Regulatory Impact Statement Addendum at pg. 4.

is required before publishing a draft determination under s 67(1)(a) of GICA (or other relevant provisions), and NZFGC welcomes the opportunity to participate in such further consultation.

7.4 The Commission has a well-established consultation process applying to regulatory changes in other regulated industries. Consultation is also generally accepted as good legislative practice, as consultation with the public or affected stakeholders on significant decisions improves the legitimacy and quality of decisions by ensuring that decision-makers take into account the perspectives of affected persons.[59] NZFGC considers there would be no basis for departing from the Commission's existing practices in this case.

8. COMMISSION'S QUESTIONS

8.1 The Preliminary Issues Paper identifies 21 questions for feedback from interested parties. Many of the questions are directed towards current or potential wholesale customers. NZFGC's responses to the questions most relevant to its members are set out in the Schedule to this submission.

[59] Legislation Design and Advisory Committee "Chapter 19: Requiring decision-makers to consult" *Legislation Guidelines* (2021) < https://www.lac.org.nz/guidelines/legislation-guidelines-2021-edition/new-powers-and-entities-2/chapter-19>.

SCHEDULE – QUESTIONS FROM PRELIMINARY ISSUES PAPER

Commerce Commission question	NZFGC Response
Who do you think the wholesale regime should service? For example, what types of customers and what market share?	NZFGC considers the wholesale regime under GICA should remain a voluntary, optional regime that any supplier and/or wholesale customer can choose to opt-in in their commercial discretion.
Please describe any experiences you have had regarding different forms of wholesale supply, inside or outside of the wholesale regime. We are interested in the experiences of both wholesale customers and suppliers.	NZFGC has explained in Section 3 of this submission that suppliers have various routes to market, including supplying the RGRs and alternative channels.
Please describe your experiences of wholesale pricing in the grocery industry.	NZFGC has described the complexity of wholesale pricing and the various factors that influence the prices that an RGR receives from suppliers in Section 5 of this submission. The Commission should exercise caution when comparing or analysing pricing given this complexity.
Please describe your experience and awareness of the types and value of RDPs. How does this affect you as a wholesale customer (eg, retail pricing) or supplier? For example, what types of RDP between suppliers and wholesale customers have you used, and what impact did this have on margins? Please provide evidence if available.	NZFGC has provided examples of the various types of RDPs that may be agreed between a supplier and an RGR in Section 5 of this submission.
What is your view on the types of RDP that should be passed on to wholesale customers to reflect the RGRs' benefits of scale and efficiency?	NZFGC considers that the Commission should not impose or recommend imposing, any regulation which would require RGRs to pass through all RDPs for the reasons explained in Section 5. The Commission should exercise caution in assessing whether an RDP reflects the RGRs' benefits of scale and efficiency. Not all RDPs that an RGR receives from a supplier are connected with an RGR's scale and efficiency, and indeed it is highly unlikely that the RGRs receive any RDPs that are solely connected to these matters, given the RGRs' substantial market power.
What is your opinion on the findings of this progress assessment? Is there anything we have not mentioned in this paper that you consider is relevant? Please explain.	The Commission has identified a number of perceived issues in relation to the RGRs' wholesale offerings, including the low volume of sales through the RGRs' wholesale offerings, the RGRs' pricing models, and non-RGR retailers' access to RDPs and top-selling retail products. NZFGC does not consider the low volume of sales through the RGRs' wholesale offerings to be an issue that requires regulatory intervention or suggests the wholesale regime is not working as intended. NZFGC considers it is too soon to make any assessment on the operation of the current form of the wholesale regime or to reach any conclusions on its effectiveness.

Commerce Commission question	NZFGC Response
	NZFGC otherwise refers the Commission to Sections 4 and 5 of this submission in relation to pricing and availability of products. The Commission should exercise caution when forming conclusions about a perceived lack of access to products or RDPs and ensure that it understands the full context in which suppliers make supply and pricing decisions.
Do you consider we have identified the most important issues affecting the RGRs' wholesale offers? Is there anything we have not mentioned in this paper? If yes, please identify and explain.	NZFGC considers that the key issue for the Commission is whether any form of regulatory intervention in grocery wholesale markets is likely to promote competition and efficiency in the grocery industry for the long-term benefit of consumers in New Zealand. NZFGC's view is that further regulatory intervention will not achieve this purpose.
Is there any information or analysis that we have not mentioned in this paper that you consider relevant? If yes, please identify and explain.	See above.
Do you consider we have identified the most important issues affecting the direct supply of wholesale groceries? Is there anything we have not mentioned in this paper? If yes, please identify and explain.	The factors identified at paragraph [83] of the Preliminary Issues Paper are relevant factors to consider in relation to the question of why other retailers may not have access to certain products at certain prices. However, as explained in the submission there are many reasons why suppliers may choose to supply or not supply products to particular retailers and many factors that influence the pricing that is offered. There are thousands of relevant suppliers[60] and each supplier will have its own unique strategies and approach for its supply and pricing decisions.
Please describe your views on the additional regulatory options.	NZFGC considers that further regulatory intervention is unlikely to achieve the purpose of GICA and the regulatory tools under Part 3 of GICA are novel, unprecedented and carry significant risks of unintended consequences.

[60] Foodstuffs Merger Determination at [128].