

Submission on the draft *Market study into the retail grocery sector*

Submission of: Andrew Gregory McCarthy, Businessman and Student, of Christchurch.

Background

I have an extensive business background, having first entered the world of business ownership in 2008 a few years after completing my MBA at University of Canterbury. The MBA stimulated my interest in competition regulation, and I now find myself studying for an LLB, again at Canterbury University. I make my submission in my capacity as a concerned private citizen.

Recommendations

I think the ComCom should:

1. Prosecute all breaches of the law to the fullest extent possible
2. Recommend to the Government that the wholesale and retail arms of the duopoly have their ownership separated, i.e. vertical separation.
3. Recommend to the Government that it preclude brands 'banding together' to exert pressure on suppliers. Any brands that have a combined market share of 15% or more should be prevented from co-operating in the purchase of supplies.
4. Recommend to the Government that it stays out of the market

Prosecution of Legal Breaches

The existing laws (Commerce Act 1986) make it clear that players with significant market power should tread carefully in matters relating to the exercise of that power. They haven't, because they have an economic incentive not to, and because the regulator has shown no teeth. This is shameful on the part of the ComCom. The players concerned are some of the most sophisticated retail operators in New Zealand, well aware of their legal obligations. They have snubbed their noses at the law and deserve to be punched on the nose in return.

The ComCom needs to aggressively investigate claims made by the Honest Grocer (and any others it is aware of) of pressure exerted by Foodstuffs or Woolworths (NZ) on suppliers to stop supplying their goods to competitors or potential competitors. The exertion of such power would constitute clear breaches of s36 (2)(b) and (c) of the Commerce Act 1986.

The ComCom should also prosecute covenants entered into restricting competition. The ComCom should ask for tenants and/or other business owners to come forth and describe instances of threats re covenants and/or the requiring of covenants. Threats regarding covenants would be a breach of s36 and s28 of the Commerce Act.

Overall, it is naïve to believe that without a series of serious legal slaps and the ongoing threat of further prosecution that the parties concerned will be likely to make substantive changes. They knew of the law and have chosen to ignore it at their risk. The chilling effect of prosecution on future illegal behaviour would likely be large, but in itself is unlikely to produce the competitive market New Zealanders deserve.

Vertical Separation

The ComCom should recommend to the Government that full separation of legal ownership between wholesale and retail operations should take place with a year of legislation passing. This would have the instant effect of introducing real competition into the retail market space *and* the wholesale space. The incentive to act contrary to competition's interest needs to be removed so that the imperative for competition is unequivocal. Shared ownership between retail and wholesale inevitably creates an incentive for tacit or overt collusion.

Anything less than vertical separation will not only leave anti-competitive incentives remaining but will require messy and unclear regulation. This will be costly, and as is shown by the Commerce Commission's performance in many market areas to date, unlikely to be achieved. Requiring vertical separation is the least-involved and simplest solution.

Concentration of Market Power

Western economies have seen increased concentration of ownership in many markets over the last generation with commensurate deleterious effects on competition and resulting extraction of super-profits by the beneficial owners.

The ComCom should recommend to the Government that no holder(s) of more than 15% market share be allowed to co-operate in seeking prices for goods or services.

Stay Out of the Market!

Competitive markets work just fine. There is no need for the long arm of the State to begin playing as a competitor in this space. Much better that the State do what it should: regulate.

There is no natural monopoly here and many potential players if the supply of goods and land is appropriately regulated and enforced. A general rule of thumb that works really, really well is that Governments should stay out of markets.

Submission Ends.