



NEW ZEALAND
**INFRASTRUCTURE
COMMISSION**
Te Waihanga

Submission on Commerce Commission's draft Market study into the grocery sector

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To the Commerce Commission,

Submission on draft Market study into the grocery sector

The New Zealand Infrastructure Commission, Te Waihangā, welcomes the opportunity to provide input on the Commerce Commission's draft *Market study into the grocery sector*, which sets out its preliminary findings about how competition is functioning in the sector.

Our purpose is to co-ordinate, develop, and promote an approach to infrastructure that improves the well-being of New Zealanders, including their economic wellbeing.

Our submission focuses on aspects of the draft *Market study* that relate to Te Waihangā's consultation document for our 30-year Infrastructure Strategy. These include the role of the planning system and the role of freight and supply chains. It notes but does not provide detailed commentary on broader competition questions that are further from our remit.

Overall feedback on draft Market study

We note the Commerce Commission's preliminary finding that "competition is not working well for consumers in the retail grocery sector". As Te Waihangā does not have a competition focus, we do not comment on the validity of this conclusion.

We also note, and appreciate, the structured and evidence-based approach that the draft *Market study* followed to reach this conclusion, including analysis of return on equity, grocery price benchmarking, analysis of competition at the store level, and analysis of entry barriers.

The role of the planning system

The Commerce Commission's preliminary finding is that difficulty obtaining planning permission for grocery store sites may impede competition in the sector. The Commission concluded RMA planning policies and processes continue to impose significant barriers to the development of new retail grocery stores, even though a 2009 amendment to the RMA prohibited objecting to new developments on the basis of trade competition.¹ These include zoning policies that limit the overall supply of sites for retail development and resource consent processes that generally make it costly and difficult to rezone other sites.

The Commerce Commission therefore recommends that new resource management legislation should include an explicit focus on competition considerations.

¹ <https://environment.govt.nz/assets/Publications/Files/Resource-management-amendment-act-2009-Fact-Sheet-2.pdf>

Our Infrastructure Strategy consultation document highlighted the importance of enabling a responsive planning system, both to ensure that we make optimal use of infrastructure and to deliver other social and economic benefits, such as increasing housing supply and affordability. Evidence cited in our consultation document demonstrates that inefficient planning policies can reduce competition in urban land markets and drive up house prices.

While our consultation document does not explicitly address it, we agree with the preliminary finding that the planning system can also affect competition, productivity, and prices in the grocery sector. This is supported by research on the competitive impacts of England's 'town centre first' planning policy, which is similar to policies adopted by some NZ councils.²

We support the recommendation that new resource management legislation include "mechanisms for ensuring the potential benefits of competition [for consumers] are a relevant consideration" when making planning decisions. We broadly support the options set out in paragraph 9.81 of the draft *Market study*.³

We would encourage the Commerce Commission to make specific recommendations about the design of legislation and the design of subsequent national direction to guide council planning activities. In doing so, the Commerce Commission should consider whether there is a risk that any such mechanisms are misused in practice to limit development.

We encourage the Commission to consider whether the planning system has appropriate capability and motivation to properly consider competition issues, and if not, how to address this. To this end, we note that:

- Few economists, let alone competition economists, are involved in the planning system – for instance, only ten out of 910 accredited RMA commissioners are listed as having any experience in economics⁴
- The 2020 National Policy Statement on Urban Development, and its 2016 predecessor policy, directed councils to consider competition metrics, such as price-cost markups for urban land and market concentration indices for vacant residential land.⁵ To date, councils have not seen these metrics as relevant for their planning activities and have made few changes to plans in response to them.
- District plan reviews seldom address competition issues directly – for example, decisions reports on the Auckland Unitary Plan urban growth and business zoning topics do not mention competition or related terms.⁶
- Planning processes typically consultation and submissions from affected (or interested) parties, but these can give more weight to 'incumbent' residents and businesses with the time and resources to engage in these processes.

² Cheshire, P.C., Hilber, C.A. and Kaplanis, I., 2015. Land use regulation and productivity—land matters: evidence from a UK supermarket chain. *Journal of Economic Geography*, 15(1), pp.43-73.

Sadun, R., 2015. Does planning regulation protect independent retailers? *Review of Economics and Statistics*, 97(5), pp.983-1001.

In making this comparison, we note that England's policies are mandated by central government, while different NZ councils have adopted different types of retail centre policies.

³ These are: (1) including competition as an environmental outcome to be promoted by the new National Planning Framework; (2) including preservation and promotion of competition as an implementation principle for the National Planning Framework; and (3) listing the benefits of preserving and promoting competition as a matter to be included in natural and built environment plans or a consideration relevant to planning decisions.

⁴ <https://environment.govt.nz/what-government-is-doing/areas-of-work/rma/about-the-making-good-decisions-programme-certification-for-rma-decision-makers/certificate-holders-non-local-body-elected-members/>

⁵ <https://www.hud.govt.nz/urban-development/urban-development-dashboard/>

⁶ However, the Independent Hearings Panel's overview of recommendations does refer to 'creating alternative and competitive development opportunities' as a desirable outcome.

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-by-laws/our-plans-strategies/unitary-plan/history-unitary-plan/ihp-designations-reports-recommendations/Pages/ihrs-reports-recommendations.aspx>

<https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-by-laws/our-plans-strategies/unitary-plan/history-unitary-plan/decisions-report-and-plan/Pages/decisions-report.aspx>

While it is beyond the scope of the current *Market study*, we would also welcome the Commerce Commission's advice on whether and how to address competition considerations in other areas of land use planning, including whether there is a need to undertake a market study in the area.

Supply chains and freight infrastructure

The Commerce Commission's draft *Market study* considers supply chain linkages between wholesale and retail activities, with a preliminary finding that a lack of competitively priced wholesale supply is a barrier to market entry.

Regarding the performance of supply chains, our Infrastructure Strategy consultation document includes a proposed recommendation for a national supply chain strategy that would be aimed at improving the efficiency and sustainability of New Zealand's freight system.

The draft *Market study* did not note any issues with public infrastructure, such as transport infrastructure, that would act as a barrier to competition in grocery supply chains. Notwithstanding this, we would welcome any (brief) commentary the Commerce Commission could offer on:

- The role of public infrastructure in shaping competition in the grocery sector, whether positive, negative, or neutral
- Whether there are any issues with how freight infrastructure, like ports, rail, and road networks, is managed that would limit competition in the grocery sector
- Whether and how to consider impacts on competition in freight-using sectors when scoping a national supply chain strategy.

Thank you for the opportunity to make our submission.

Yours sincerely,

Ross Copland

Chief Executive