



FIRST Union submission

To the

Commerce Commission

Regarding

Market study into the grocery industry



1. Introduction

- 1.1 FIRST Union is a private sector trade union with 30,000 members in the retail, finance, commerce, transport, logistics and manufacturing sectors.
- 1.2 FIRST Union includes members from across the food and grocery supply chain, from the hothouse to checkout. That includes more than 10,000 members in the supermarket and grocery sector, more than 2000 members in food harvesting, processing and manufacturing, and thousands of members in the food transport and logistics industries.
- 1.3 The Commerce Commission draft study highlights a lack of competition in the grocery sector, noting that this is driving high prices for consumers and excessive profits. The Commerce Act sees competition as inherently valuable because it constrains excessive profits. However it is not the only method of constraint, and not necessarily the best one either.
- 1.4 The study explicitly notes that other factors affecting grocery prices – like the cost of labour – have been excluded. We think that view is too narrow and ultimately promotes excessive competition, to the detriment of workers throughout the supply chain (see [3]). The purpose of this submission is to provide an alternative labour-movement perspective on how to approach issues related to the cost of food and the profitability of the supermarket and grocery sector. Our experience shows that organised labour has effectively acted to constrain the profitability of the industry (see [4]), despite the duopoly¹ structure. Generally speaking, the more collective bargaining is centralised and consolidated in any industry, the more returns to labour can be maximised.
- 1.5 What the duopoly does ensure, however, is a significant advantage for the supermarkets when bargaining commercial arrangements with suppliers, since each player represents roughly half of the market. This invariably leads to an effective cap on returns to suppliers and, in turn, to labour throughout the food manufacturing, harvesting, transport and logistics supply chains.
- 1.6 In this light, we would like to highlight two current union campaigns that focus on maximising returns to labour both in the grocery retail sector and its supply chains:
 - 1.6.1 In January 2021 FIRST Union launched the Healthy Staffing, Healthy Stores campaign, which advocated for safe staffing levels in retail chains, including the supermarket duopoly. We believe that regulating safe staffing levels can play a key role in addressing excessive profitability in the grocery sector (See [6]).
 - 1.6.2 In August 2021 FIRST Union launched the Food Made Fair campaign, that advocates for living wages, secure hours and local sourcing across Aotearoa's

¹ The Commerce Commission is reluctant to refer to a duopoly model, more regularly referring to “three grocery retailers”, with the second and third retailers being Foodstuffs North Island and Foodstuffs South Island.



food supply chains. Through this work, we hope to amplify the voices of workers victimised by the underhanded tactics of the supermarket duopoly (See [7]).

2. Key Commission findings on excessive profitability in the supermarket sector

- 2.1 The Commission's study is undertaken under Section 51(1) of the Commerce Act, looking at factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand. In line with the Act, the report is focused on "competition that works well for consumers," presuming that the effective regulation of competition will deliver lower prices for consumers.
- 2.2 The draft report notes that in the year to December 2020, New Zealanders spent \$22 billion at supermarkets and grocery stores.
- 2.3 The report focuses on the years 2015 to 2019, relying primarily on the return on average capital employed (ROACE) measure, which is compared with longer term returns in the industry. The Commission's analysis suggests an average estimate for the duopoly of between 21.6 – 23.8% over the period.
- 2.4 The Commission also looked at other measures, including gross profit, earnings before interest and tax (EBIT), and net profit after tax (NPAT). On these measures, the duopoly is shown to be around 1 – 2% higher than an international sample of retailers from other supermarket and grocery markets. The Commission therefore notes that:

...our analysis of profitability and our analysis of competition ... leads to our preliminary view that a lack of effective competition is contributing to higher grocery prices in New Zealand than we would expect in a workably competitive market.²

3. The response to excessive profitability need not be excessive competition

- 3.1 While the union supports the Commission's concern over excessive profitability and high grocery prices, we do not necessarily think that more competition is the solution. Indeed, we think that proposing more competition into the market is unrealistic: in chapter 6 of the report the Commission notes the high barrier to entry for any new player into market, and suggests that the entry of a single new competitor into the market would not be sufficient to materially enhance competition.
- 3.2 More competition is a solution that looks solely at the concerns of the individual as a consumer, without acknowledging their identity as a worker. In doing so, it depresses the value or cost of a worker's labour to a static factor in profit generation, rather than a dynamic actor that, through collective action, can impact firm profitability. In our view,

² Commerce Commission "Market study into the retail grocery sector: draft report" (29 July 2021) p51. Available at: https://comcom.govt.nz/_data/assets/pdf_file/0025/260377/Market-study-into-the-retail-grocery-sector-Draft-report-29-July-2021.pdf



excessive competition can depress returns to labour in an equally damaging way. Rather than redistributing profits through lowering prices (which gives a greater material benefit to consumers who spend more), the union sees stronger collective bargaining as the appropriate way of redistributing excessive industry profits in a way that doesn't put further pressure on supplier firms.

- 3.3 Ironically in this regard, it is the arguably more monopolistic player – Woolworths – that generates higher returns to labour, through higher hourly wages and more secure hours for workers. This is because Woolworths' corporate structure more easily enables centralised bargaining, whereas the fragmentation of Foodstuffs is a major obstacle to the consolidation of collective agreement coverage.

4. Collective bargaining constrains excessive profits in the supermarket industry

- 4.1 The ability to set the price of labour has been crucial to the long-term profitability of the supermarket and grocery industry in Aotearoa. The post-war Keynesian period lent itself to the establishment of modern supermarkets like Foodtown and New World in the 1960s. During this period, the price of labour was primarily determined by a centralised award system, which set a floor price for labour.
- 4.2 Globalisation and the finance-led expansion of the industry saw the establishment of larger supermarkets like Three Guys, Big Fresh and Pak'nSave.³ In 1991, the Employment Contracts Act abandoned the award system, replacing it with a decentralised system of enterprise bargaining that dramatically increased the union movement's workload and its ability to serve its membership. Fragmentation allowed the price of labour to stagnate and, in some cases, backslide.
- 4.3 The replacement of the ECA with the Employment Relations Act in 2000 rebalanced the hand of labour in some instances but not others. As a result, the union has negotiated significantly better outcomes for working people in Woolworths than Foodstuffs, as a result of their different structures.

5 Models of labour management in the Aotearoa supermarket duopoly

- 5.1 The two sides of the duopoly – Woolworths and Foodstuffs – have radically different models of wage bargaining. This section looks at how those models result in radically different returns to labour.
- 5.2 Woolworths currently has 184 Countdown stores across the country, as well as 40 SuperValue and 30 FreshChoice stores. It is publicly listed on the Australian Stock Exchange, reporting financial data on their New Zealand operations. FIRST Union has a

³ In 1985 following a trip by a group of Foodstuffs executives to the United States, Pak'nSave was created, based on Safeway's Pak N Save chain in Northern California.



national collective agreement with Countdown that sets the floor price of labour across the chain.

5.3 Foodstuffs, on the other hand, is a corporate cooperative that has a centralised system of marketing, transport and logistics owned by the hundreds of individual franchisees that operate its 140 New World, 57 Pak'nSave and dozens of Four Square stores across the country. Foodstuffs collective bargaining takes place on a piecemeal site-by-site basis. FIRST Union currently has x agreements with Foodstuffs supermarkets, all of which are in the North Island. The union has not yet secured collective agreements in the South Island.

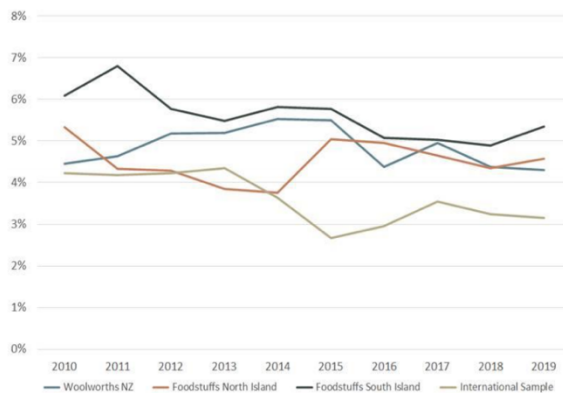
5.3.1 The union believes there is a case to be made that Foodstuffs meets the test outlined in the Commerce Act for anti-competitive behaviour.

5.3.2 Foodstuffs began as a grocers' buying group in the 1920s and retains centralised control over purchasing, pricing and marketing, as well as transport and logistics. Foodstuffs' shareholders are its franchisees, who own its roughly 200 supermarkets and groceries across the country.

5.3.3 The union believes that this arrangement has the effect of "substantially lessening competition in a market" (a restrictive trade practice under Section 27 of the Commerce Act). However, given this competition is over the price of labour, it is not enforceable under the Act. The ability to more easily avoid centralised wage bargaining gives Foodstuffs a competitive benefit over workers (and, arguably, Woolworths).

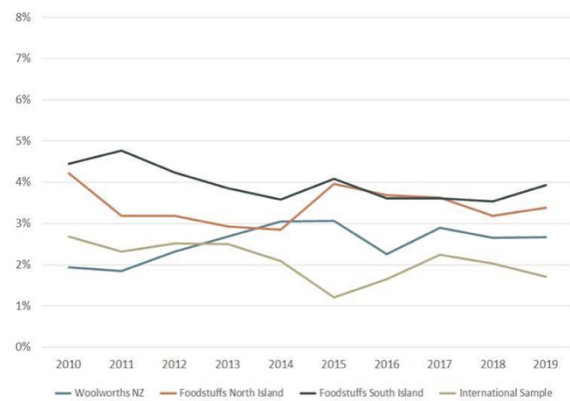
5.4 The Commission's data supports this analysis. At Woolworths, centralised bargaining has enabled the union to constrain excess profitability by distributing greater returns to labour, while at Foodstuffs, the profits remain with the franchisees. This is shown in the Commission's profitability data, in which Woolworths generally has the lower profits of the duopoly players, in terms of both NPAT and EBIT measures (see Figure 1). This

Figure 3.4 EBIT Profit Margin for the three major New Zealand grocery retailers relative to international grocery retailers (2010 to 2019)



Source: Commerce Commission profitability analysis.⁸⁸

Figure 3.5 NPAT Profit Margin: New Zealand retailers versus International retailers



Source: Commerce Commission profitability analysis.⁸⁹

Figure 1

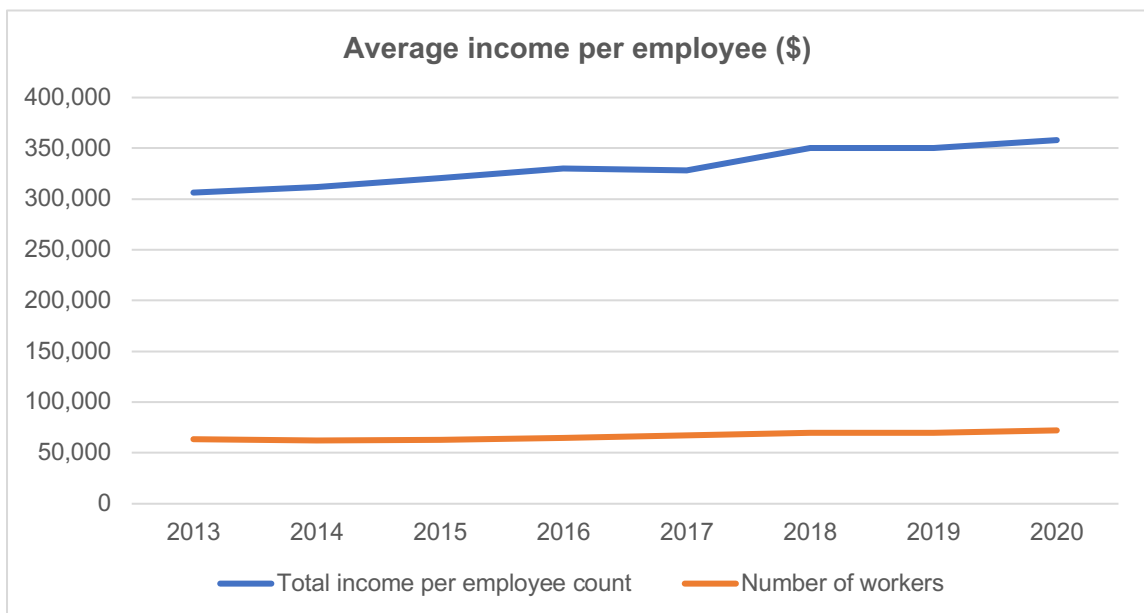
picture is complicated somewhat by Foodstuffs' dual corporate structure, however the fact that no Foodstuffs stores in the South Island have collective agreements is reflected in Foodstuffs SI's relatively higher profitability on these measures.

5.5 The Labour Party Manifesto supports the implementation of legislation to re-establish centralised industry bargaining, called 'fair pay agreements'. The supermarket industry has been consistently highlighted as one of the first industries where fair pay agreements are required, due to the disparities in wages that exist between Countdown and Foodstuffs workers. The union strongly supports this centralisation of bargaining, which would constrain excess profitability across the industry.

6. Understaffing further driving returns to capital

6.1 In February 2021, FIRST Union launched its *Healthy Staffing Healthy Stores* campaign, which highlights the role of understaffing in a number of areas, including security of hours, safe work and decent incomes.

6.2 Progressively reducing staffing numbers in the retail industry lowers an employer's wage bill, however it also increases work intensity and puts workers at greater risk. This trend is happening slowly, however data from the Annual Enterprise Survey indicates that while the average income generated per employee has increased 17% from 2013 to 2020, the workforce has only increased 14% (Figure 2). While this change is incremental, it does provide some indication that returns to labour are being limited through understaffing.



6.3 Again, centralised bargaining is the appropriate response to this. Retail worker surveying from December 2020 indicate that workers at Countdown stores (where collective bargaining is national) tend to have more guaranteed secure hours than workers in Foodstuffs stores. It is our position that safe staffing needs to be addressed at the



industry-level and that this would further constrain supermarket profitability. We are currently exploring the possibility of developing safe staffing guidelines for the retail sector (including the supermarket and grocery sector), similar to rules developed in other industries like healthcare, child care and aged care.

7. Coercive power over suppliers

- 7.1 Chapter 8 of the Commission’s report highlights the coercive power the duopoly exercises over supplier firms in the food harvesting and manufacturing industries. The bottleneck market structure of the supermarket duopoly means that upsetting one of the duopolist firms puts at risk access to roughly half of the possible market. This is wielded as a threat, usually veiled but sometimes more explicitly, in commercial negotiations. Even relatively large firms that are oligopolists in their respective food harvesting or manufacturing market must rely on supermarkets’ distribution networks, and therefore accept their terms and conditions.⁴
- 7.2 In November 2020, the Food and Grocery Council spoke out about how supermarkets were threatening to “delete” suppliers who spoke out about supermarkets’ bullying tactics, that included 45 percent margins and billing thefts.⁵ In July 2021, they followed up with the claim that an unnamed Foodstuffs store had been trying to “break people”, observing a “general culture of bullying, intimidation, or penalising suppliers for non-cooperation”.⁶
- 7.3 This disproportionate bargaining power down the food harvesting, manufacturing, transport and logistics supply chains imposes an effective cap on returns to supplier firms. This also operates as an effective cap for returns to labour and sets the boundaries under which industrial relations and collective bargaining throughout those industries take place.
- 7.4 The oligopolistic nature of supermarkets is not unique to Aotearoa; supermarkets’ bottleneck market position has made them popular with investors, centralising the accumulation of surplus from the efforts of workers throughout the food supply chain. In response, food manufacturers have increasingly become subject to leveraged private-

⁴ We have heard anecdotal evidence from a major biscuit manufacturer who were approached by a supermarket with the request they manufacture an own-brand version of a popular-selling product. The company agreed, provided the product was a lower-spec version of their own product, so as to preserve part of their existing market. In subsequent years, the supermarket requested changes to bring the product closer to the original, using their superior market power to threaten their market access if the changes are not agreed to. The supermarket subsequently requested own-brand versions of additional product lines, using similar bargaining tactics.

⁵ “Suppliers fear bullying from some supermarkets, Food and Grocery Council CEO says” (17 November 2020) *Stuff.co.nz*. Available at: <https://www.stuff.co.nz/business/300161141/suppliers-fear-bullying-from-some-supermarkets-food-and-grocery-council-ceo-says>

⁶ Tom Pullar-Strecker “New World store owner spoke of trying to ‘break’ people, says suppliers’ body” (27 July 2021) *Stuff.co.nz*. Available at: <https://www.stuff.co.nz/business/125882108/new-world-store-owner-spoke-of-trying-to-break-people-says-suppliers-body>



equity buyouts, where competition is rationalised and (where possible) production centralised. These trends exacerbate pressure on labour.

- 7.4 FIRST Union also represents more than 2,000 workers throughout these supply chains. We suffer the effects of the supermarket duopoly's disproportionate bargaining power on suppliers in collective bargaining. We have dozens of collective agreements across the sector, however the effective cap on returns to labour have meant, in recent years at least, that bargaining successes are soon surpassed by minimum wages. We can cite numerous examples of the impacts this has had on FIRST Union members:

7.4.1 The baking industry and the \$1.00 loaf

Supermarkets were long focused on the \$1 loaf of bread as a 'loss leader' that actually generates a loss but bring consumers into the store.⁷ However, supermarkets' bargaining power was such that they were able to shift those losses onto producers themselves. With tight margins, baking firms were forced to recoup these costs by raising the costs of higher quality loaves, meaning that the purchase of higher quality bread was required to ensure they could still deliver \$1.00 loaves. While inflation has now effectively made the \$1 loaf unachievable, baking firms that supply supermarkets are still producing low-cost loaves that sells for \$1.40.

The baking industry is largely duopolistic as well, with George Weston Foods and Goodman Fielder dominating the market. FIRST Union has members at both of these firms, and is currently in collective bargaining with George Weston Foods. George Weston Foods (which also owns Mauri ANZ, a national network of millers across Australasia), is owned by private equity fund Associated British Funds. In late 2019, more than 70 Tip Top workers took strike action over pay negotiations, and further strike action is possible this year. As it stands, the current lowest rate in the agreement is \$20.12 per hour, just cents above the minimum wage.

Bread is a staple and these strikes have a major impact on working people across Aotearoa, leaving shelves empty for days at a time.

- 7.4.2 Turners & Growers, one of the main tomato suppliers for Aotearoa's supermarkets, highlight in their submission how the considerable market position of supermarkets means that the increased costs of production are not fully reflected in increased costs. Given the seasonal nature of tomatoes and their popularity amongst suburban gardeners, there often comes a point in the tomato season where prices collapse. In March 2021, buoyed on by reduced access to offshore markets, prices fell to 8 cents a kg. As Dr Jacqueline Rowarth wrote:

Consumers benefitted from the surplus while supermarkets and growers took the economic hit from shortage of freight space. Supermarkets, however, were able

⁷ See Nicholas Jones "\$1 loaves put bakers 'under siege'" (22 December 2014) *NZ Herald*. Available at: <https://www.nzherald.co.nz/nz/1-loaves-put-bakers-under-siege/OX3VFENIXFRMDEGVG3USGBN7TQ/>



to use the tomatoes as a loss leader – encouraging people to visit the store and ‘while they were there’ they might buy other things.⁸

FIRST Union has members at Turners & Growers, where workers are paid the minimum wage of \$20.00.

- 7.4.3 In the food transport industry, supermarkets have increasingly pushed drivers into accepting the owner-driver model, which loads risk (both financial and physical) onto the drivers themselves. Competitive tendering between owner-drivers for these contracts pushes down the price of labour significantly, particularly in contrast to the supermarket’s outsized bargaining position. For transport operators to survive, pay, conditions and safety are all cut, including truck maintenance and fatigue management. It results in transport workers pressured to work harder, longer and faster to make ends meet.
- 7.4.4 In the logistics sector supermarkets have relied on the use of temporary labour-hire workers employed by third-party labour-supply firms, to reduce bargaining power and shift risk onto other parties. FIRST Union organises these distribution centres and has been successful at converting workers from temps into directly employed workers. However, further down the supply chain, the use of agency workers remains an issue that limits returns to labour.
- 7.5 Small firms trying to break into food manufacturing markets, particularly firms that are aspiring to do ethical work focusing on social and environmental sustainability, face significant hurdles as a result of the bargaining power of the duopoly and the pricing structures they impose. Yum NZ granola founder Sarah Hedger has reported extreme pressure to lower prices, as well as a range of other damaging bargaining tactics.⁹ While consumers are increasingly demanding these products, it is difficult for these firms to withstand this pressure. Often the end result is that established oligopolistic firms from core markets will establish additional product lines that reflect these consumer demands.

8. Recommendations

- 8.1 We share the Commission’s concerns about excess profits in the supermarket sector, however the position that we have advanced in this submission is that more competition is an unrealistic and not necessarily helpful response to this situation. We believe that a more appropriate response is to centralise collective bargaining in the supermarket industry to ensure that excess profits are redistributed to labour through wage increases. As we have noted, this requirement is more crucial in Foodstuffs, where collective

⁸ Dr Jacqueline Rowarth “The problem with cheap tomatoes” (16 March 2021). *NZ Herald*. Available at: <https://www.nzherald.co.nz/the-country/news/dr-jacqueline-rowarth-the-problem-with-cheap-tomatoes/AY5LOG5KAZSGG2KLQ7XSBOLOY/>

⁹ Jonathan Milne “Small muesli maker blows whistle on big supermarkets” (29 July 2021) *Newsroom.co.nz*. Available at: <https://www.newsroom.co.nz/little-muesli-maker-blows-whistle-on-big-supermarkets>.



bargaining is fragmented and covers fewer workers. We see proposed fair pay agreements as a possible pathway towards addressing this fragmentation.

- 8.2 We have also highlighted how understaffing generates excess returns for retail chains including, in the supermarket and grocery sector. Regulation of staffing levels is a crucial step for the sector, whether this is achieved through collective bargaining, guidelines on safe staffing, some combination of these two approaches or some additional measure.
- 8.3 Finally, we have argued that the pressure that the duopoly imposes on firms further down the supply chain sets an effective cap on the returns to labour, including for workers in the food harvesting, manufacturing, distribution and logistics sectors. As with the food retailing sector, our recommendation is for centralised industry-wide bargaining that can set a floor price for labour that pushes back against the bargaining power exercised by supermarkets.