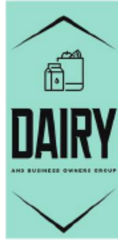

Dairy

and Business Owners Group

Sign our Petition

Draft Report commentary

The Dairy and Business Owners Group makes a series of recommendations because we feel the Commission in its preliminary findings has:

- Not properly considered the role that 4,000 dairies, convenience stores and service stations offer consumers given they have 17.34% market share
- Unwisely proposes 'facilitation' for what would be a foreign supermarket entrant, or worse state-owned, with financial or market privilege not available to existing retailers
- Doesn't fully appreciate how vertical and horizontal integration has given the supermarket duopoly genuine market dominance
- Lacks an achievable outcome such as breaking wholesaling/distribution away from market dominating retailers to create a competitive retail environment.
- Included tobacco products that are regulated outliers that would have skewed its analysis of alcohol.

Our recommendations make groceries cheaper and more accessible

The Dairy and Business Owners Group makes a series of recommendations in response to the questions posed by the Commerce Commission in its draft report (1-6). We also include two other recommendations that need urgent consideration (7-8). Those being increasing horizontal/lateral integration proven with alcohol as a result of a Victorian approach to liquor licensing, which has increased alcohol harm and not diminished it.

Responses to the Commerce Commission

1. Increasing wholesale access to a wide range of groceries at competitive prices:

Qualified support:
For wholesale/distribution only.

Recommendation:
That the Commission rolls back vertical integration in the retail grocery sector by preventing retailers from also owning wholesale/distribution and food service businesses beyond a 19.9% shareholding.

Comments:
If the Commission is serious about lowering prices and boosting competition, then divestment of one key component achieves it. This is by forcing retailers who, as a single or related group, have a combined market share of 19.9%, to sell down their wholesale/distribution business units. This would see warehouses/distribution centres compete with each other for the business of retailers while offering suppliers more outlets for their goods and consumers, lower prices. Brand agnostic, this promotes carbon efficiency as distribution centres would service geographies not brands.

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Currently, it is a sellers' market with next to no competition. We define divestment meaning no more than 19.9% ownership in vertically integrated warehousing/food service and distribution businesses. We define market dominance as anything beyond 20%. This would require Woolworths NZ, Foodstuffs North Island and Foodstuffs South Island, to divest at least 81.1% of their interests in such operations. While Glimours (North Island) and Trents (South Island) are for example owned by Foodstuffs, it is the large distribution centres, along with those of Woolworths NZ, that gives these brands genuine clout and market control. If suppliers cannot get goods into such centres, retailers cannot stock them and this creates the sellers' market we have.

PwC (2019, page10) notes that: "Vertical integration used to be a way for grocers to claim part of the profit pools of manufacturers. Today, it's also a way to control costs across the end-to-end value chain." It is also a source of new value creation noting this report was based on a competitive European market versus New Zealand's duopoly. This end-to-end control here means the market is no longer functioning.

Divestment boldly allows new retail brands to enter the market if they choose by negating any need to establish a hugely expensive distribution ecosystem. It also makes a sector overlooked in this report far more cost competitive. That is the 4,000 dairies and service stations that could grow market share beyond the 17.34% that we currently have. Should dairies and allied businesses have access to goods at competitive prices, then the market will see savings passed onto consumers to increase revenue.

Nielsen & Industry for Z Energy (28 July 2021, p20) puts the market at $19.6bn:	
Supermarkets:	$15bn (77.53%)
Takeaway and Quick Service Restaurants:	$2.5bn (12.75%)
Petrol Convenience Stores (e.g. Z Espress):	$1.3bn (6.63%)
Dairies and Convenience Stores (route trade):	$1.2bn (6.12%)
Banner Convenience (e.g. Four Square):	$0.9bn (4.59%)

2. Directly stimulate retail competition:

Oppose:
The only way to stimulate retail competition is to break up the duopoly's ownership of wholesalers/food service and distribution as noted at paragraph 2.

Recommendation:
That the Commission rescinds this recommendation as being unwise to instead focus on divestment of vertical and lateral operations that are owned by the supermarket duopoly.

Comments:
It would be incredibly poor policy and a reckless use of taxpayers money to 'facilitate' new entrants into the New Zealand retail grocery sector. The practical solution is to break the supermarket stranglehold on wholesale/food service and distribution.

The Commission also misses the mark because 4,000 retail outlets in the form of dairies and service stations could provide local competitive solutions that have the added benefit

of reducing carbon footprints. These are closer to shoppers in the community, rebuild local shopping centre vitality and could be more than a growing 'top up shop.'.

George Mason University's, Dr Veronique de Rugy, sums up the risk of subsidies that has seen recent failures like KiwiBuild and the Provincial Growth Fund. Simply put, government lacks the incentives to manage funds that private investors have as we have skin in the game. Giving subsidies to some businesses puts other businesses that do not receive such subsidies at a disadvantage, distorting investment and other economic activity. Finally, the existence of government subsidies increases incentives for special interests to lobby. The Commission risks slanting the playing field dangerously.

Breaking this stranglehold by divesting wholesale and distribution opens the door to truly local competition and/or innovative brands such as Germany's Lidl to enter the market.

3. Free up sites for retail supermarkets:

Oppose:
This does not consider the potential offered by 4,000 dairies, convenience stores and service stations while breaching the Climate Change Response (Zero Carbon) Amendment Act.

Recommendation:
That the Commission respect its wider legislated obligations under the Zero Carbon Act and does not favour emission intensive supermarkets. It instead focuses on legislated solutions around warehousing, wholesaling and logistics to make the cost of groceries cheaper to 4,000 local outlets.

Comments:
The Commission does not consider either the potential of 4,000 dairies, convenience stores and service stations to provide consumers with lower priced goods that accords with the Climate Change Response (Zero Carbon) Amendment Act.

This recommendation perpetuates supermarkets as destination shops in their own right and ones that rely on the private motor vehicle. By contrast our 4,000 dairies, convenience stores and service stations are local. This means walking and even cycling are for once, realistic options. If they can get access to lower costs goods by reform of wholesaling, distribution and logistics, they also become more than a top-up shop option. We remind the Commission that dairies and service stations have a 17.34% market share in retail grocery.

In the case of service stations they reduce the need for multiple trips - either during refilling or recharging. Again the sector needs even playing field access than being locked out of a vertically integrated value chain that is also using lateral integration to expand reach.

The Ministry of Transport says land transport "accounts for 21% of New Zealand's annual greenhouse gas emissions and is the fastest growing source of emissions.

Between 1990 and 2018, road transport emissions increased by 100%, while emissions across the whole economy increased by 24%."

A 2015 US Department of Agriculture analysis, if applied to New Zealand, shows just why this approach is wrong. If we assume 88% of Kiwi households drove 6 kilometres in a roundtrip to their preferred supermarket and if each households took one trip per week, then that adds up to over 541 million kilometres. That's enough distance for three return trips to the planet Mars that burns through enough fuel to fill at least 15 Olympic sized swimming pools.

4. Supplier Code of Conduct:

Support:
With recommendations.

Recommendation:
That a Supplier Code of Conduct proceed with the Commission authorised to permit collective bargaining for companies with revenues above $10m with supermarkets required to offer space to the top three products in any category.

Comments:
A supplier Code of Conduct needs sanctions (teeth) to prevent it being just a meaningless piece of paper.

The proposal for Collective Bargaining will not work if it is left for small companies only. This makes it too easier for the large retailers to bargain down a collective, but then to go with a cheaper sole source supplier. They need do this only once for the entire concept to fail.

This is why we recommend the Commission be empowered to approve collective bargaining on a case by case basis for any group of suppliers with a turnover of $10m+. This is the whip hand over the supermarkets that would benefit small suppliers.

Another, not covered by the Commission, is that large retailers lockout competitor products lessening choice in competition. This is why we recommend large grocery retailers be obligated to offer shelf space that we don't have as dairies and service stations, to the top three products in any category.

5. Pricing and promotional practices:

Support:
With recommendations.

Recommendation:
This be actioned by the Commission.

Comments:
Unit pricing on all goods, including regulated products, would be welcome but promotional freedoms must be aware of that products like pharmaceuticals and cigarettes are heavily regulated.

6. Increased transparency for loyalty programme terms and conditions:

Support:
Without comment.

Recommendation:
None.

Comments:
None.

The Commission must urgently consider these ahead of its final report

7. This Final Study must tackle horizontal/lateral integration:

Recommendations:
That the Commission incorporates horizontal integration into its Final Report to better regulate grocery retail:

- That retail grocery brands be forced to divest non-grocery liquor stores (and other identified horizontal interests) to increase genuine retail competition.
- That horizontal integration by retail grocery brands with more than 19.9% market share become regulated, with the Commerce Commission given the power to force post-acquisition divestment if competition is lessened.
- The Sale of Liquor Act be amended to create centralised licensing while allowing dairies and convenience stores to again be off-licenses (but under a strict centralised enforcement regime as the current approach has worsened alcohol harm).

Comments:
While there has been much attention placed on the supermarket duopoly, it masks an alcohol triopoly. While the Commission dismissed alcohol as an influence on prices, we

argue that the study suffered from a fundamental flaw. The inclusion of tobacco masking alcohol sales as per paragraph 8.

In 2013, the Sale of Liquor Act was amended so that dairies and convenience stores could no longer sell alcohol while "grocery stores" could continue doing so, so long as they complied with the law and ensured that food products were the largest category sold. Since 2013, alcohol related harm has worsened and not improved. Ministry of Health data shows that Hazardous drinking has been static since 2015/16 while for 15-17 year-olds, it has nearly doubled (in 2018/19 it was 6.3%. In 2019/20 it had grown to 11.6%) among a group not even legally entitled to buy. This has major implications for smoked tobacco with the Ministry of Health doubling down on this error by recommending a prohibitionist approach in its Smokefree Aotearoa 2025 Action Plan (2021).

Foodstuffs has true horizontal integration of liquor retailing in its portfolio, massively increasing its purchasing weight across multiple brands supported by centralised buying and distribution. In 2007, Foodstuffs opened its first Henry's store (now 15), added the Duffy & Finn's brand in the North Island and then, in 2009, purchased Liquorland (70 stores at the time). In 2015 it purchased The Mill (adding another 21 stores). To these must be added Four Square, New World and Pak n' Save as mutually supporting outlets making it the largest single retailer of alcohol in New Zealand. As with wholesale/food service and distribution, we recommend divestment of non-grocery alcohol retail brands.

As with our comments on wholesalers, we wish the Commission to recommend liberalisation because adults must be treated as adults and this would achieve a better policy outcome in terms of consumer pricing and public health outcomes. It is about allowing dairies, under strict licensing conditions, to sell alcohol as we do with other regulated products. To work, this would need a centralised alcohol licensing system that takes decisions out of the 'Victorian' system we currently operates and a policy approach that does not work.

8. Tobacco prices are underestimated by the Commission:

Recommendation: Remove tobacco from the alcohol analysis to create a real picture of this category.

Using 2017 data means the Commission did not consider the impact of 30% increases in the tobacco tax after 2017. The Commission has also not considered how a heavily regulated product, like tobacco, cannot be priced or promoted like it was bread. This is not an option with such a product that makes it the outlier. It is then lumped with another regulated product (alcohol) so we are not sure the value its inclusion serves.

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