

Comments post conference from Mark Fort Public version / non confidential
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I want to thank you, the commission members for the very constructive and helpful way you have all approached this matter.

Firstly, I set out some general remarks then I comment on each session as noted during and from zoom conference attendees and lastly present final comments.

Whatever your final recommendations are, it must be for the long-term improvement of our society as a whole and any potential loss of some current or previous financial gain or short-term loss in the future by the companies involved, must be ignored.

The people involved, from the shareholders of Countdown to the individual store owners in the case of the Foodstuffs, have known the risks and have benefitted hugely from the rewards gained over the past 20 or more years, at the expense of both the suppliers, of whom I was one, and the New Zealand public.

The Josh Gluckmans and Chris Quins of this world are smart, highly capable people well able to take on any role required of them to continue to make the businesses they work for a success, whether it is a horizontal split of stores, the separation of the wholesale division, or some other change.

For 30 years I owned and operated an orchard business and selling all production to either FSNI directly to stores or Countdown through a marketer (Freshmax). I employed up to 25 people (all Maori) seasonally in the small rural area of Te Teko:

What was most distressing was the knowledge gained by visits to their homes as a part time plumber, that they lacked the income to stock their fridges or cupboards with groceries.

Most had to purchase these from the local dairy at highly inflated prices as they lacked reliable transport to travel into Whakatane 20 Km away. They mostly got benefits of some kind to assist them during lay off periods between different crop harvests.

The owners of these small stores could not buy wholesale and invariably got their stock from a Pak'n Save.

During morning stand up meetings, I would tell our workers that while our nashi were selling quickly and in demand at the supermarkets, they were at over TWICE the price I was getting. Some struggled to understand how that could be.

While these comments are slanted to a welfare perspective, it is necessary to add to the background of your report.

If suppliers were to get a fair price from the supermarkets, they could pay their employees a living wage, or if the supermarkets were to charge a fair price based on a reasonable mark-up they could afford to get their family groceries and the Govt not have to pay ever-increasing benefits.

My comments for each session

Session 1 The nature of competition in the retail grocery sector.

This must relate to the way NZ fits on an international scale.

- There are a number of papers available that cover the development of supermarkets in different geographic areas and the ensuing problems and remedies.
- Most areas have a high level of competition created either by the growth of individual companies across adjacent borders as in the EU/ UK, the development of Government supported businesses as in Latin America or Government run chains in addition to publicly owned corporations as in Vietnam and China.

- The Commission's report shows that we have none of those in NZ so there has been no effective competition for at least 20 years. The duopoly has been able to embed a culture of maximum financial gain at every turn in both dealing with suppliers and setting prices to the consumer.

Sessions 2+3

2 Pricing and promotional practices and loyalty programmes

3 Unit pricing

Others far more conversant in these subjects have commented on this and I support those submissions that advocate for major improvements.

Session 4

Grocery code of conduct, private labels and collective bargaining by suppliers

Code of conduct

- The duopoly has readily offered to accept this, as they are keen to show willingness on their part to make some concessions, albeit small, to improve the way they interact with suppliers. They will also know from overseas use of a code it is quite complex to establish and slow to advance through to a satisfactory working level. See Christine Tarcon's comments.

I note from my research it is not always applicable or successful for the full range of supplier types.

Will a code work when there are a limited number of options for a supplier to sell to as in a duopoly?

Graeme Samuel said there needed a lot to be done to get a code to work and made 14 recommendations in his review.

<https://treasury.gov.au/consultation/c2018-338723>

To make the point on the difficulty of an effective Code being fit for purpose, Dean Blake of the Australian FMCG reported in Sept 2020:

“Coles said it has made efforts to improve its code of conduct, has developed an internal supplier charter and launched the Coles Nurture Fund in an effort to support its suppliers”

This is clear evidence a code that began life in 2006, can be difficult to implement or carries little weight when signatories are still working on it 10 years after establishment, and amendments over a year ago.

Tarcon's PP slide shows in 2020 there were still 36% of suppliers experiencing Code-related issues in the UK.

Note: Australia has a separate Code for Horticulture

How will that effect development of an all-encompassing code in NZ?

It surely is a brave person to make a claim on a Code breach that exposes them to the power and Tarcon and Samuels refer to vindictiveness of a duopoly.

As a supplier I was exposed to this kind of treatment that was very difficult to go around.

If recommended, the code must *prohibit* the following

Mandatory discounts

Payment for shelf space

Payments of accounts longer than 20 days after supply of fresh produce.

(Note that Supermarkets are a 7 day working week and most produce is sold within a few days)

It must include the recommended methods of handling disputes as applied in Australia, using an independent arbiter who can act quickly to resolve problems and apply conciliatory enforceable measures.

A code of course is focused on the suppliers and will not help to bring prices down for the consumer, which is what this review is about, but savings for the customers should not be at the expense of the suppliers.

Collective bargaining by suppliers

It is important to allow this and I note it is part of the UK code.

In the early 1990's I attempted to establish a Co Op of our fresh produce grower group to initiate a collective bargaining process.

The reply to a written question to the Com Com at the time was that it would not be legal so the idea had to be dropped.

This appears to be in conflict with a statement made during this session by the Gen Mgr David Stewart FSNI that collective bargaining would currently be allowed / permitted.

Can you confirm the correct position currently or if a change to the Act would be required?

Collective bargaining by suppliers would assist greatly in establishing a relatively stable pricing and supply structure, which would work well if it was allowed.

Good examples of this are available from Japan.

I think this would be of great benefit to some supplier categories as it would help to level the playing field especially for smaller 'new start' crop groups.

I suggest it be applied to any grower group that was under the umbrella of the Commodity levies Act and paying a compulsory levy.

Session 5: Indicators of competition – international price comparisons and innovation.

I note the following

- All Supermarket Companies internationally can and do buy their full range of goods at market prices from suppliers internationally and so the price comparisons based on the quoted sources made by the Com Com team should be accurate.
For added detail See link <https://www.globalproductprices.com/>
- The only variation that may occur are for shipping rates and these in my own experience as an importer of a product from China form a very small part of any final retail costing
- A quick check on the labels of a range of groceries in supermarkets in many countries show they are manufactured or supplied fresh from these same companies and branded as required by the Supermarket Chain operator.
- Many 'House brands' in New Zealand are purchased internationally at low cost and compete with locally produced lines unfairly disadvantaging those producers who through reduced sales are forced to increase their prices to allow for difficult trading terms imposed by the two NZ companies.
Recently there have been only two brands of salad leaves in my local Pak n Save – Pams and Value. Other brands are either barred or simply cannot compete.

On the question of innovation I note that both Countdown and FSNI + SI claim to be innovators but it is all directed to further increasing their market share with own brands of goods and reducing their distribution centre stock and costs.

A report by Tim Bowen of [expert360](#) in 2017 into the Australian supermarket business said:

“Due to increased competition from new entrants, Coles and Woolworths have invested in aggressive price promotions to try to defend their sales/share... and

The increased level of competition in the Australian grocery industry has many benefits for Australian consumers. Firstly, retail prices have already decreased as the 2 major supermarkets, Coles and Woolworths, fight to maintain their current sales and share. Aldi has forced Australian retailers to adjust their retail pricing to remain competitive in the market”.

So if we want that for NZ, how do we achieve it if no big operators are on the horizon?

From <https://expert360.com/resources/articles/supermarket-retail-big-data>

An Australian producer of goods wishing to export to NZ are advised by their Govt

“Promotion of new products is generally required. This can include co-operative advertising with supermarkets, advertising in trade and consumer media and product demonstrations. Costs can be quite high, depending on the product category. Exporters should be aware that they would generally be expected to fund promotional costs”.

From <https://www.austrade.gov.au/Australian/Export/Export-markets/Countries/New-Zealand/Industries/food-and-beverage>

So we see again the costs of doing business is all one way, and benefitting the Duopoly.

Innovation

Climate change is forcing innovation, to stop removing trees from their car parks and plant more for shade purposes, install better insulation to reduce thermal gain, change to more environmental chiller systems are areas of innovation waiting for action.

A move to providing free transport to and from their stores to reduce CO2 emissions of the old poorly maintained car fleet that frequent supermarket car parks would be a welcome innovation for many.

All of these are areas that would demonstrate their willingness to be innovative.

Session 6: Indicators of competition – principles underlying profitability analysis

Two recent reports commissioned by the Australian Government have found evidence that grocery prices might be higher than they need be, for want of competition”

I Quote;

“Maintaining healthy competition within Australia’s \$54 billion grocery retail sector is of vital interest to Australians given that spending on groceries (food and non-alcoholic beverages) is in the order of 17 per cent of total household expenditure on goods and services.

.In Australia Coles has shown that there is plenty of room to move prices down.

In 2017 the Managing Director John Durkan said they had 24 successive quarters of price deflation, (yet still turned a profit of \$920m for the half year.)

From...

<https://expert360.com/resources/articles/supermarket-retail-big-data>

In relationship to the use of an ‘overseer’ of supplier to buyer behaviour Christine Tarcon said, “Consumers benefitted from an 8% price **decrease** over the 7 years I was in office”.

Dean Blake of the Australian FMCG said Sept 2020:

“The supermarket sector has come under fire in a new report, which claims the Coles and Woolworths’ duopoly is a detriment to the overall agriculture and food industry.”

According to the Commission for the Human Future’s The need for strategic food policy in Australia report,

“all aspects of Australia’s food value chain are concentrated on serving the needs of just a few companies, with Coles and Woolies commanding around 60 per cent of fresh food and grocery

sales between them.

A food system that depends on a few corporate interests creates perverse outcomes, particularly the squeezing of producers and processors' margins," the report said.

Session 7 and 8

Options to improve conditions for entry and expansion

The_Supermarket_Revolution_in_Developing_Countries_Policies_to_Address_Emerging_Tensions_Among_Supermarkets_Suppliers_and_Traditional_Retailers.

From <https://www.researchgate.net/publication/233298227>

"In the advanced stage of supermarket spread, however, the sector becomes concentrated for example, in Latin America four to five chains typically control about 75 percent of a sector that in turn controls an average of 55 percent of food retail.

At that stage it is important for governments and the private sector to enforce competition policies".

and

A second and unique source of domestic modern retail investment is by governments.

*"Although chains from the socialist period have been mainly privatized in Eastern Europe, in Asia they have either persisted or have been proactively used to position domestic retail in competition with private domestic and foreign retail.**

In Vietnam, the number 2 chain is the Saigon Cooperative chain [a state-owned enterprise (SOE)], the number 6 is Fivimart (SOE); in China, the number 2 (Lianhua with 10 billion USD of sales) is still partially an SOE.

This clearly adds weight to changes that should be recommended to Government.

Barriers to entry and our planning rules.

See the Australian report established to address the planning rules around land for Supermarkets.

<https://treasury.gov.au/sites/default/files/2019-03/An-Evaluation-of-Planning-Systems-Barriers-to-Entry-for-Grocery-Retailing.pdf>

I note that Countdown and Foodstuffs unless required by good planning consent provisions will build just concrete slab warehouses with little regard for any attractive architectural features to grow a community spirit, so once again all is focussed on the greatest return on the least investment.

I have seen how in France and Italy in the past decade supermarkets of the concrete slab type were commonly in the light industrial areas.

Session 9: Divestment and sponsorship of entry

A. Operational and structural separation

Topic 1: Is Operational and Structural Separation appropriate? **My answers are in colour**

Yes if it meets the obligation of a Govt to ensure their citizens are not taken advantage of in the supply of groceries at inflated prices and little attempt to offer discounted lines in competition with another operator.

· When should more significant interventions like operational or structural separation be considered?

When the companies who obtain, supply and distribute the majority of a nation's food supply at unfair or unreasonable profits.

· Would operational separation be technically possible?

Yes, all the supplier procurement systems are computerised, bar coded, stored and distributed from a few central DC's.

All companies and organisations go through sometimes frequent restructuring processes to obtain benefits in the swiftly developing nature of the business world. This includes selling off quite large sections of a conglomerate. ·

What would the costs of separation be?

Whatever they are they will be absorbed as a cost recoverable over time as in establishing any restructured business.

· If structural separation occurred, could the business be run on an arms-length basis, without requiring divestment? For example, it could have the same shareholders but separate boards and management incentives aligned with the narrow interests of the separated entities.

This was answered well by other submitters and it would not be wise as a change of Govt might agree to them becoming one again.

· Would an independent wholesaler or wholesalers have market power that might require further regulatory intervention?

It would be necessary to require any monopoly situation to be regulated and to avoid 2 new wholesalers but each only selling to one chain of stores.

B. Divestment

Topic 2: What general principles should be applied when considering divestments.

In what circumstances might it be appropriate for the Commission to recommend a divestment remedy in the context of a market study? What, if any, preconditions or criteria should be satisfied before the Commission recommends a divestment remedy?

When a party is making excessive profits from essential items (food).

OR

When the resultant effects bring a heightened level of competitiveness in the supply of groceries to the consumer.

· What are the potential negative consequences of government intervention of this type? What can be done to minimise any adverse impact on investment incentives or reputational risk for New Zealand?

Whatever negative consequences there might be, they have to be weighed against the current negatives of an over priced supply of the current grocery bill for much of the population.

Topic 3: In what circumstances might a retail divestment be effective?

Would a contestable sale process ensure a fair return to the divesting party or parties for the assets divested? Or might some additional minimum price requirement or compensation mechanism be required to ensure the divesting party or parties are appropriately compensated for the divested assets?

- Divestment is likely to be required as the supermarkets are unlikely to do this voluntarily when they have been doing so well for so long, unless of course they fear loss of profits in a new more competitive market.
An arbitration process could ensure that the sale price is in line with general market sales.
- Why would they want to sell? While the Companies tried to slew this question it is clear to me that most, if not all Co-Op storeowners in FSNI would want to buy into a reasonable business model either to keep their store or sell it and buy into the grocery wholesaling side of the business.

· What are the potential risks or unintended consequences associated with such a divestment?

Whatever negative consequences there might be have to be weighed against the current negatives of an over priced supply of the current grocery bill for much of the population.

The Com Com has established that we have a serious need to reset our grocery supply system

Topic 4: What would be required for the effective divestment of a wholesale business?·

If it were thought that adequate competition in the sector could be generated by establishing a stand-alone wholesaler, what assets would need to be divested to enable the establishment of a viable standalone wholesaler?

Just the wholesale distribution centres themselves. Precedence for this carried out over a relatively short period was shown during the big shakedowns of the mid 80's with a number of industries including the Plastics industry which I was involved in at the time.

C. Facilitation of entry and expansion

Session 9

The best options to directly improve retail competition in the grocery market.

Apply asap the two options that are willing to be accepted by the Duopoly providing they accept:

1. A requirement that they, (the three companies) must divest all of their properties not currently operating, occupied or under construction, within 12 months.

Request Councils to advise of any constraints placed on supermarket development in local planning documents.

2. That they will cooperate with the development and implementation of a mandatory code of compliance (with confidential audits on request of suppliers) perhaps with the assistance of Graham Samuels.

3. Recommend to the Govt to pass the necessary legislation to require Countdown and Foodstuffs NI and SI to separate their wholesale divisions within a specified period and put into place the requirement they supply any storeowner who meets basic business standards of credit and food safety standards.

4. Recommend to the Govt to put legislation into place changes to the Fair Trading Act to allow collective bargaining.

If there was a concern of disruption as voiced in the session **Divestment and sponsorship of entry**, there are other options e.g. it could be a requirement for each company to separate and sell some of the current in store operations like the bakery, produce, alcohol or meat departments.

This would allow a strong competitive local element within each store to develop without the added problem of the Govt having to value and fund the purchase of whole stores or wholesale sections.

Providing the owner operators of these small 'in house' operations could buy stock independently, they would offer a chance to develop a new approach and allow a new start-up a chance to enter the market without large financial inputs. They may be a multi store operation based across a number of sites.

Final comments

The situation New Zealand has found itself in is a unique one. We do not have the right mix of population and geography to attract a major operator to establish another New Zealand wide supermarket chain to correct the balance so we have to look for another method.

Since Aldi arrived in Australia both Coles and Woolworths have lowered their prices. (2017 report)
That is why we need to look at either separating the wholesale from the retail or some sort of divestment process, or a Govt intervention. Precedence has been set in other countries for each of these methods of creating a competitive grocery market place.

If the Countdown and Foodstuffs staff on this conference were prepared to put aside their company objectives and when asked which they would prefer to establish and manage between these two options we might get into some positive discussion.

Is it right that the govt continues to subsidise the supermarket duopoly by increasingly handing out greater benefits so that needy families can buy their weekly groceries?

Consumers and suppliers alike are being held to ransom by the supermarkets, and there is no choice for the most vulnerable.

The changes made because of this investigation can and should benefit society as a whole not just consumers or suppliers.

Our society has moved strongly since the mid 1980's towards an unequal one when compared with most other OECD countries.

Of the 3 things that sustain life, food is the most important on a daily basis and lowering the cost of groceries is one way this report to government can influence and help build a fairer society.

As the cost of groceries is one of the major items of expenditure from our income, this is an opportunity to correct an imbalance.

The BERL report of July this year said

With food price inflation showing no signs of slowing down, a balanced diet may soon be out of reach for many Kiwis."

I put a lot of detail into my earlier submissions related to the difficulty as a supplier of working with the duopoly

Thank you.

Mark Fort