

Market study into the retail grocery sector

Preliminary issues paper

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Contents

GLOSSARY	3
PURPOSE OF THIS PAPER.....	4
OUR ROLE AND THE PROCESS FOR THE STUDY	5
OUR ROLE IS TO STUDY COMPETITION AND FACTORS THAT MAY AFFECT IT	5
THE TERMS OF REFERENCE FOR THE STUDY HAVE BEEN SET BY THE MINISTER.....	6
OUR PROCESS ENDS WITH A FINAL REPORT IN NOVEMBER 2021.....	7
HOW YOU CAN HAVE YOUR SAY ON THE ISSUES FOR THIS MARKET STUDY.....	7
OVERVIEW OF THE NEW ZEALAND GROCERY SECTOR.....	8
A WIDE RANGE OF PRODUCTS ARE SOLD BY GROCERY RETAILERS	8
GROCERIES ARE ESSENTIAL PURCHASES FOR NEW ZEALANDERS	11
TWO MAJOR RETAILERS OPERATE NATIONWIDE IN THE NEW ZEALAND GROCERY SECTOR.....	11
THERE ARE ALSO MANY OTHER GROCERY RETAILERS WHO PRIMARILY SUPPLY REGIONAL OR LOCAL AREAS OR SPECIFIC PRODUCT CATEGORIES	13
THE TWO MAJOR GROCERY RETAILERS ARE VERTICALLY INTEGRATED INTO WHOLESALE DISTRIBUTION	14
SOME CONSUMERS' SHOPPING HABITS MAY BE CHANGING WITH ONLINE SHOPPING AND MEAL KITS GROWING IN POPULARITY	15
THE COVID-19 PANDEMIC HAS HAD A SIGNIFICANT IMPACT ON THE RETAIL GROCERY SECTOR	16
POTENTIAL ISSUES WE MAY CONSIDER DURING THE STUDY.....	18
COMPETITION AT THE RETAIL LEVEL.....	19
COMPETITION AT THE WHOLESALE AND SUPPLIER LEVELS	24
THE GROCERY PROCUREMENT PRACTICES OF THE MAJOR GROCERY RETAILERS.....	27
GROCERY RETAILERS' PRICING PRACTICES AND CONSUMER PURCHASING BEHAVIOUR	29
OTHER ISSUES.....	34
ATTACHMENT A KEY PROCESS STEPS AND HOW YOU CAN CONTRIBUTE TO THE STUDY.....	35
ATTACHMENT B SUMMARY OF QUESTIONS WE ARE SEEKING YOUR RESPONSES TO.....	36
ATTACHMENT C HOW YOU CAN HAVE YOUR SAY ON THIS PAPER	41
FORMAT FOR WRITTEN SUBMISSIONS	41
CONFIDENTIAL INFORMATION – DISCLOSURE OF YOUR SUBMISSION	41

Glossary

ACCC	Australian Competition and Consumer Commission.
Dry groceries	Product group consisting of non-perishable food products and certain non-food products. These are most grocery items excluding fresh, perishable products such as baked items, dairy, deli, meat, frozen foods, and fresh fruit and vegetables. Examples of dry groceries include biscuits, toilet paper, pasta, rice, dishwashing detergent and canned products.
NZFGC	New Zealand Food and Grocery Council. NZFGC is an industry association that represents the manufacturers and suppliers of New Zealand’s food, beverage, and grocery brands.
Private label	Also known as home brands, own brands, store brands or generic products. These are products that are manufactured for sale under a retailer’s brand.
Products	Items sold by grocery retailers to consumers.
Product categories	Groups of products sold by grocery retailers that are of a similar type. For example, product categories may include fruit and vegetables, bread and cereals, and non-alcoholic beverages.
Major grocery retailers	Grocery retailers that operate a large number of stores nationwide. The major grocery retailers are Woolworths NZ Limited ¹ and the Foodstuffs Group. ² Woolworths NZ’s retail banners are Countdown, FreshChoice and SuperValue. Foodstuffs’ retail banners include PAK’nSAVE, New World, Four Square, Raeward Fresh and On the Spot.
Supermarkets	Large grocery retailers selling a wide variety of foods (such as dry groceries, fresh produce), beverages and household goods.
Specialist grocery retailers	Retailers of grocery items in particular product categories, for example, meat (butchers) or fresh fruit and vegetables (greengrocers).

¹ Progressive Enterprises Limited changed its name to Woolworths New Zealand Limited in June 2018. See Countdown Supplier Information Portal “Change of Name to Woolworths New Zealand Limited” <<https://supplier.countdown.co.nz/stories/change-of-name-to-woolworths-new-zealand-limited/>>. (Viewed on 7 December 2020).

² Foodstuffs North Island Limited, Foodstuffs South Island Limited and Foodstuffs (N.Z.) Limited.

Purpose of this paper

1. This paper seeks feedback on those matters we must consider and other potential issues we may explore during our market study into the retail grocery sector (study). We are seeking responses from all interested parties – including industry participants, consumers, suppliers and other stakeholders – on these and other relevant issues to help us decide where to focus our efforts during the study.
2. Most New Zealanders are regular visitors to grocery stores, such as supermarkets, to purchase essential items such as food, drinks and other household supplies. Food is a major living cost for most households.³
3. This study provides an opportunity to consider whether competition in the retail grocery sector could work better for the benefit of New Zealand consumers. This includes competition between retailers when buying groceries from suppliers, and competition between retailers when selling groceries to consumers.
4. If competition is working well in markets for the acquisition of groceries from growers and suppliers and for the supply of groceries to consumers, this will benefit consumers through the prices they pay for groceries, the quality of groceries being sold, the range of groceries available and the associated service that is offered.
5. We have been asked to undertake the study by the Minister of Commerce and Consumer Affairs (Minister), due to concerns regarding the level of competition in New Zealand's grocery sector. This study is being undertaken under Part 3A of the Commerce Act 1986 (Act). The terms of reference for the study have been set by the Minister.
6. This paper has three main sections.
 - 6.1 **Our role and the process for the study** describes what a market study is, the terms of reference for this study, and how you can be involved in the process.
 - 6.2 **Overview of the New Zealand grocery sector** provides a brief overview of our current understanding of the New Zealand grocery sector. It also provides some of our initial views regarding the scope of the study, having regard to the terms of reference.

³ Food is the second largest component of average weekly household expenditure behind housing and household utilities. Statistics NZ "Household expenditure statistics: Year ended June 2019" (3 March 2020) <<https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2019>>. (Viewed on 7 December 2020). 'Food' in the Statistics NZ household economic survey includes non-alcoholic beverages, restaurant meals and ready-to-eat food.

- 6.3 **Potential issues we may consider during the study** seeks feedback on those matters we are required to consider and a range of other potential competition issues we may explore. These issues are grouped under four headings: competition at the retail level; competition at the wholesale and supplier levels of the supply chain; the grocery procurement practices of the major grocery retailers; and grocery retailers' pricing practices and consumer purchasing behaviour.
7. The issues discussed in this paper do not pre-suppose that there are actual competition problems in the retail grocery sector. We have attempted to identify factors which may be affecting competition, so that these can be explored during the study. These issues have been identified based on the information available to date, including our reviews of similar overseas studies.
8. We expect that the issues we focus on will evolve as our understanding of the sector develops. Feedback received during the study from stakeholders, including in response to this paper, will help us identify the issues we ultimately focus on in our report.

Our role and the process for the study

9. This section provides an overview of:
- 9.1 our role when undertaking a market study;
 - 9.2 the terms of reference for the study;
 - 9.3 our intended process for the study; and
 - 9.4 how you can have your say on this paper.

Our role is to study competition and factors that may affect it

10. A market study, referred to as a "competition study" in Part 3A of the Act, is a study of any factors that may affect competition for the supply or acquisition of goods or services.⁴
11. Market studies allow us to examine whether markets could work better for consumers. By gathering and analysing information on markets we can identify whether there are features preventing competition from working well. We can then consider if competition in a market could be improved and, if so, make recommendations about how to make markets work better for the benefit of New Zealanders.
12. Further guidance on our approach to undertaking market studies can be found in our [Market Studies Guidelines](#).⁵

⁴ See Section 48 of the Act.

⁵ Commerce Commission "Market Studies Guidelines" (19 November 2020).

The terms of reference for the study have been set by the Minister

13. We must carry out the study in accordance with the terms of reference issued by the Minister. However, we may also consider any ancillary matters that are related to, but not explicitly covered by, the terms of reference.⁶
14. The terms of reference for the study are set out in the box below.⁷

Notice for a Competition Study into the Retail Grocery Sector

I, Dr David Clark, Minister of Commerce and Consumer Affairs, pursuant to section 51(1) in Part 3A of the Commerce Act 1986, require the Commerce Commission to carry out a competition study into any factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand. Matters to be considered in the study must include, but are not restricted to:

1. the structure of the grocery industry at the wholesale and retail levels;
2. the nature of competition at the wholesale and retail levels of the grocery industry;
3. the pricing practices of the major grocery retailers;
4. the grocery procurement practices of the major grocery retailers; and
5. the price, quality, product range and service offerings for retail customers.

The Commerce Commission should make its final report for this study publicly available by **23 November 2021**.

15. The Minister considered it would be in the public interest to require a study into the retail grocery sector given:⁸
 - 15.1 the high level of concentration in the sector;
 - 15.2 some potential competition concerns;⁹
 - 15.3 the significant importance of groceries to New Zealand households; and

⁶ See Section 51A(4)(b) of the Act.

⁷ New Zealand Gazette "Notice for a Competition Study into the Retail Grocery Sector" (17 November 2020) <<https://gazette.govt.nz/notice/id/2020-go5278>>.

⁸ Cabinet paper "Initiating a Commerce Commission market study into supermarkets" (13 November 2020) at [4] <<https://www.mbie.govt.nz/dmsdocument/12272-initiating-a-commerce-commission-market-study-into-supermarkets-proactiverelease-pdf>>.

⁹ Paragraph 18.1 of the Cabinet paper referenced above notes several indicators which may suggest there are lower levels of competition than would be expected in a workably competitive market: unequal bargaining power between supermarkets and suppliers; research indicating decreased competition in the sector over time; the discounting practices of some supermarkets may mislead consumers; and concerns about the availability of suitable land for potential competitors to enter markets.

- 15.4 there has not been an in-depth market study carried out into the grocery sector in recent times.

Our process ends with a final report in November 2021

16. The process for this study is described in our [Statement of Process](#) paper.¹⁰ That paper outlines the process we intend to follow over the course of the study and how interested parties can remain informed. Attachment A provides a summary of our intended timetable and indicative key dates over the course of the study.
17. We welcome responses to this preliminary issues paper from all interested parties. However, we also intend to engage more directly with a range of stakeholders in late 2020 and early 2021.
18. We recognise that the COVID-19 pandemic may affect some stakeholders' ability to engage with us during the study. We aim to be responsive to any issues that may be encountered by stakeholders due to COVID-19, while at the same time balancing those needs against the need to provide our final report by 23 November 2021.

How you can have your say on the issues for this market study

19. We are seeking your views on the issues and questions raised in this paper, or on any other issues that you consider important. Your views will help us to understand relevant issues in the retail grocery sector and help us decide where to focus our efforts during the study.
20. You do not need to respond to all the issues and questions raised – you can instead respond to a single issue or question, or address just the issues or questions that relate to your business operations or experience.
21. You are welcome to provide your views to us by uploading your submission via our website: www.comcom.govt.nz/groceries.
22. To ensure your views can be taken into account, please provide these to us by **4pm, 4 February 2021**. You will also have further opportunities to contribute to our study, as described in Attachment A.
23. A list of the questions asked throughout the paper is included in Attachment B for ease of reference.
24. Attachment C contains further details on how to provide your views on this paper, including what to do if you are providing us with confidential information, or wish to remain anonymous.

¹⁰ Commerce Commission "Market Study into the Retail Grocery Sector – Statement of Process: Our intended process and how you can contribute" (19 November 2020).

Overview of the New Zealand grocery sector

25. This section briefly describes our current understanding of the structure of the New Zealand grocery industry at the wholesale and retail levels, and other relevant details regarding the sector, based on the information we have reviewed to date. The information in this section provides context for the potential competition issues identified later in this paper. We also provide initial views regarding the scope of the study, having regard to the terms of reference.
26. In summary, this section notes that:
- 26.1 a wide range of products are sold by grocery retailers;
 - 26.2 groceries are an essential purchase for New Zealanders;
 - 26.3 two major retailers operate nationwide in the New Zealand grocery sector;
 - 26.4 there are also many other grocery retailers who primarily supply regional or local areas or specific product categories;
 - 26.5 the two major grocery retailers are vertically integrated into wholesale distribution;
 - 26.6 some consumers' shopping habits may be changing with online shopping and meal kits growing in popularity; and
 - 26.7 the COVID-19 pandemic has had a significant impact on the retail grocery sector.
27. We expect our characterisation of the sector will continue to evolve as the study progresses. We welcome comments on the preliminary overview contained in this section. We are interested in views regarding all levels of the supply chain, given our study will consider both competition for the acquisition of groceries by retailers from suppliers, and competition for the supply of groceries by retailers to consumers.

A wide range of products are sold by grocery retailers

28. There are many different types of products sold by grocery retailers. For example, it has been reported that New Zealand supermarkets can carry between 30,000 and 40,000 products, presenting a wide range of variety for consumers.¹¹
29. Our preliminary view is that, for the purposes of our study, it would be reasonable to focus on:¹²
- 29.1 fresh, frozen, packaged, processed and dry foods; and

¹¹ Rob Stock "Kiwis love a bargain, but supermarkets are honing their use" (21 August 2018) *Stuff* <<https://www.stuff.co.nz/business/money/106433154/the-evolution-of-supermarket-specials>>. (Viewed on 7 December 2020).

¹² The terms of reference do not define which grocery products are to be considered in the study.

29.2 non-food items such as cleaning products and personal items.

30. We will consider whether this preliminary view remains appropriate as the study progresses, including whether it is necessary to consider other products sold by grocery retailers when assessing factors affecting competition in the sector.
31. Table 1 below includes a more detailed list of product categories we currently expect to be within the scope of our study. We have based this list on relevant categories in the current (2020) basket of goods used by Statistics NZ for the consumer price index.¹³ Using Statistics NZ classifications helps ensure consistency with publicly available data.

Table 1 Preliminary list of product categories in scope

Product category	Examples of products within the category
Fruit and vegetables	Fresh, frozen, dried and canned fruit and vegetables.
Meat, poultry and fish	Beef and veal; pork; mutton, lamb and hogget; poultry (chicken); preserved, prepared and processed meat; fish and other seafood.
Bread and cereals	Bread, cakes and biscuits, breakfast cereals, pasta products, pastry-cook products, other cereal products (eg, flour, rice).
Milk, cheese and eggs	Fresh milk, preserved milk, yoghurt, cheese, other milk products (eg, cream, soya milk), eggs.
Oils and fats	Butter, margarine, olive oil.
Food additives and condiments	Sugar, sauces (eg, pasta sauce, mayonnaise, tomato sauce), dried herbs, vinegar.
Confectionery, nuts and snacks	Chocolate, sweets, ice blocks, ice cream, nuts, muesli and cereal bars, potato crisps.
Other grocery food	Dips (eg, hummus), spreads (eg, honey, jam, peanut butter), canned food (soups etc), instant noodles, frozen desserts, baby food.
Non-alcoholic beverages	Coffee, tea and other hot drinks. Soft drinks, waters and juices.
Personal care	Razor blades, toothbrushes, toothpaste, soap, shampoo, deodorant, paper tissues, toilet paper, disposable babies' nappies.
Cleaning products and other household supplies	Clothes washing powder, dishwashing detergents and powders, liquid surface cleaner, plastic wrap, paper towels, kitchen tidy bags.

32. Given the large number of products sold by grocery retailers to consumers (and the large number of suppliers from whom they acquire those products) we may need to use a sample of these products or product categories to keep our analysis of some potential competition issues in the sector sufficiently focussed.¹⁴

¹³ Statistics NZ "Consumers price index review: 2020" (23 October 2020) <<https://www.stats.govt.nz/methods/consumers-price-index-review-2020>>. (Viewed on 7 December 2020).

¹⁴ For example, we may choose to focus on several key products for our analysis of the grocery procurement practices of the major grocery retailers (see paragraphs 110 to 118 below).

33. A sample of products has previously been used in overseas grocery market studies. For example, studies undertaken in Australia, the UK and South Africa focussed on a small number of key products for some of their analysis.¹⁵
34. We are considering a similar approach to these overseas studies. Possible factors to consider when identifying products to focus on include:
- 34.1 Which grocery products do consumers spend the most on at grocery retailers?
 - 34.2 Which grocery products have had significant price changes over time?
 - 34.3 Which products are key value items that generate significant sales revenues and/or profit margins for grocery retailers?
 - 34.4 Which grocery products do not have a significant proportion of sales through channels other than retail grocery stores (for example, products sold to the food service or hospitality industry, and export products)?

Questions on the scope of grocery products to be considered in the study

- Q1 Do you agree with our preliminary view on the grocery products to be considered in the study, as described in paragraph 29 and Table 1? Why/why not?
- Q2 Does Table 1 appropriately reflect how products are categorised in the grocery sector?
- Q3 Are some product categories more competitive than others, either in terms of the acquisition of groceries from suppliers, or the supply of groceries to retail customers? If so, please explain.
- Q4 Are there any product categories we should consider in greater detail than others? If so, which ones and why?
- Q5 If we do focus on certain product categories, are the factors set out in paragraph 34 appropriate to guide our focus? Are there any other factors we should also consider?

¹⁵ ACCC “Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries” (July 2008) at 227; UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [9.17]; and Competition Commission of South Africa “The grocery retail market inquiry – Final report” (25 November 2019) at [110].

Groceries are essential purchases for New Zealanders

35. Most New Zealanders are regular shoppers at grocery retailers, purchasing essential items such as food, drinks and cleaning products. In the year ended June 2020, \$22.3 billion was spent at New Zealand supermarkets and grocery stores.¹⁶ Given the importance of grocery items to our lives, it is important that New Zealanders have access to a wide range of grocery products at reasonable prices.
36. We expect our study will focus on the supply of grocery products to New Zealand retail consumers, given the terms of reference provided by the Minister. At this stage, we propose to only consider the supply of groceries for commercial consumption (such as restaurant and catering suppliers) to the extent this provides insights into understanding how competition works in the retail grocery sector.

Questions on the importance of grocery products to New Zealanders

- Q6 Would considering the supply of grocery products to commercial customers assist in our assessment of competition in the retail grocery sector? If so, how?

Two major retailers operate nationwide in the New Zealand grocery sector

37. There are two large grocery retailers that operate nationwide – Woolworths New Zealand Limited (Woolworths NZ) and Foodstuffs Group (the major grocery retailers). The major grocery retailers operate supermarkets under several retail brands.
38. Woolworths NZ operates and supplies over 180 Countdown stores throughout New Zealand.¹⁷ It is also the franchisor of over 60 locally owned and operated SuperValue and Fresh Choice stores, which mainly operate in provincial towns.¹⁸ Woolworths NZ's retail banners are shown in Figure 1 below.¹⁹

Figure 1 Woolworths NZ's retail banners



¹⁶ Statistics NZ "Retail trade survey: June 2020 quarter" (24 August 2020) at Table 1 <<https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-June-2020-quarter/Download-data/retail-trade-survey-june-2020-quarter.xlsx>>. (Viewed on 7 December 2020).

¹⁷ Woolworths NZ "Welcome" <<https://www.woolworthsnz.co.nz/>>. (Viewed on 7 December 2020). Woolworths NZ is part of Woolworths Group Limited. The Woolworths Group Limited also owns and operates 995 stores in Australia. Woolworths Group "Australian Food: Woolworths Supermarkets" <<https://www.woolworthsgroup.com.au/page/about-us/our-brands/supermarkets/Woolworths/>>. (Viewed on 7 December 2020).

¹⁸ Woolworths NZ "Welcome" <<https://www.woolworthsnz.co.nz/>>. (Viewed on 7 December 2020).

¹⁹ Woolworths NZ "Our history" <<https://www.woolworthsnz.co.nz/our-company/our-history/>>. (Viewed on 7 December 2020).

39. In 2019, Woolworths NZ estimated that three million customers were served at its Countdown stores every week.²⁰
40. Foodstuffs has more than 400 retail stores nationwide under the New World, PAK'nSAVE and Four Square retail banners.²¹ It also has Raeward Fresh and On the Spot retail stores in the South Island. Retail stores supplied by Foodstuffs are owner operated franchises. Foodstuffs' retail banners are shown in Figure 2 below.

Figure 2 Foodstuffs' retail banners



41. Foodstuffs is comprised of two main entities.
- 41.1 *Foodstuffs North Island Limited*. A regional cooperative covering the entire North Island, which is owned by its retail members.²²
- 41.2 *Foodstuffs South Island Limited*. A regional cooperative covering the entire South Island, which is owned by its retail members.²³
42. In addition, Foodstuffs (N.Z.) Limited, which is a non-trading entity owned by the two regional cooperatives, represents “the two co-operatives' interests on issues of national or grocery-specific importance”.²⁴

²⁰ Luke Kirkness “How do we shop for groceries? Supermarkets' highest stocked items shine light on how we spend” *New Zealand Herald* <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12304565>. (Viewed on 7 December 2020).

²¹ Foodstuffs also has other retail and wholesale brands, including Gilmours, Trents, Fresh Collective, Henry's and Liquorland. Foodstuffs “Our brands” <<https://www.foodstuffs.co.nz/our-brands/>>. (Viewed on 7 December 2020).

²² Foodstuffs North Island Limited supplies 96 New World, two Fresh Collective by New World, 44 PAK'nSAVE, one PAK'nSAVE mini and 179 Four Square owner operated stores. Foodstuffs NZ “Company information” <<https://www.foodstuffs.co.nz/about-foodstuffs/company-information/>>. (Viewed on 7 December 2020).

²³ Foodstuffs South Island Limited supplies 42 New World, 12 PAK'nSAVE, 66 Four Square, 4 Raeward Fresh and 99 On the Spot stores. Foodstuffs NZ “Company information” <<https://www.foodstuffs.co.nz/about-foodstuffs/company-information/>>. (Viewed on 7 December 2020).

²⁴ Foodstuffs NZ “Who we are” <<https://www.foodstuffs.co.nz/about-foodstuffs/who-we-are/>>. (Viewed on 7 December 2020).

43. Foodstuffs North Island estimates that it serves an average of 2.7 million customers every week through its physical stores or online shopping.²⁵ Foodstuffs South Island serves over 600,000 customers each week.²⁶
44. Retail stores operated by the major grocery retailers typically provide consumers with the opportunity to shop for all of their grocery needs at a particular store, often referred to as 'one-stop-shopping'.

Questions on New Zealand's major grocery retailers

- Q7 Is our description of New Zealand's major grocery retailers accurate?
- Q8 What are the key characteristics of a supermarket, compared to other retail grocery stores?

There are also many other grocery retailers who primarily supply regional or local areas or specific product categories

45. There are also many other independent retailers offering grocery products in New Zealand. These retailers typically operate in urban areas and have a small number of stores. They often provide a narrower range of products and services than the major grocery retailers.²⁷
46. For example, these retailers include (but are not limited to):
- 46.1 independent grocery retailers which provide many of the grocery products sold by major retailers, but may have a limited number of stores or geographic coverage;
 - 46.2 retailers that focus on a specific consumer segment or preference such as bulk foods, organic or fair trade goods, and ethnic supermarkets;
 - 46.3 specialist stores (such as butchers and greengrocers) which provide offerings in specific product categories; and
 - 46.4 convenience stores or dairies which provide a smaller range of grocery products than supermarkets.
47. These retailers may provide an alternative to supermarkets operated by the major grocery retailers, particularly for some product categories. However, their ability to constrain the major grocery retailers across the full range of products may be limited by the specialist nature of their store.

²⁵ Foodstuffs North Island Limited "Our Concise Annual Report FY20" <<https://annualreport.wearefoodies.nz/our-customers/>>. (Viewed on 7 December 2020).

²⁶ Foodstuffs South Island "Annual Report 2019" <https://www.foodstuffs.co.nz/media/168046/fssi_ar_2019_web_version.pdf> at 2. (Viewed on 7 December 2020).

²⁷ Supermarkets often provide a range of complementary services such as car parking, online ordering, home delivery and extended opening hours.

48. Other types of retail supply, such as ‘meal kit’ delivery services, are also likely to be relevant to our study. Meal kits are discussed further in paragraphs 55 to 58 below.
49. Our study is likely to focus primarily on Woolworths NZ and Foodstuffs, given they appear to have a high share of retail grocery sales. However, we will seek to understand the extent to which other grocery retailers are important for competition, particularly in regional or local markets or in specific product categories.

Questions on the role of other grocery retailers

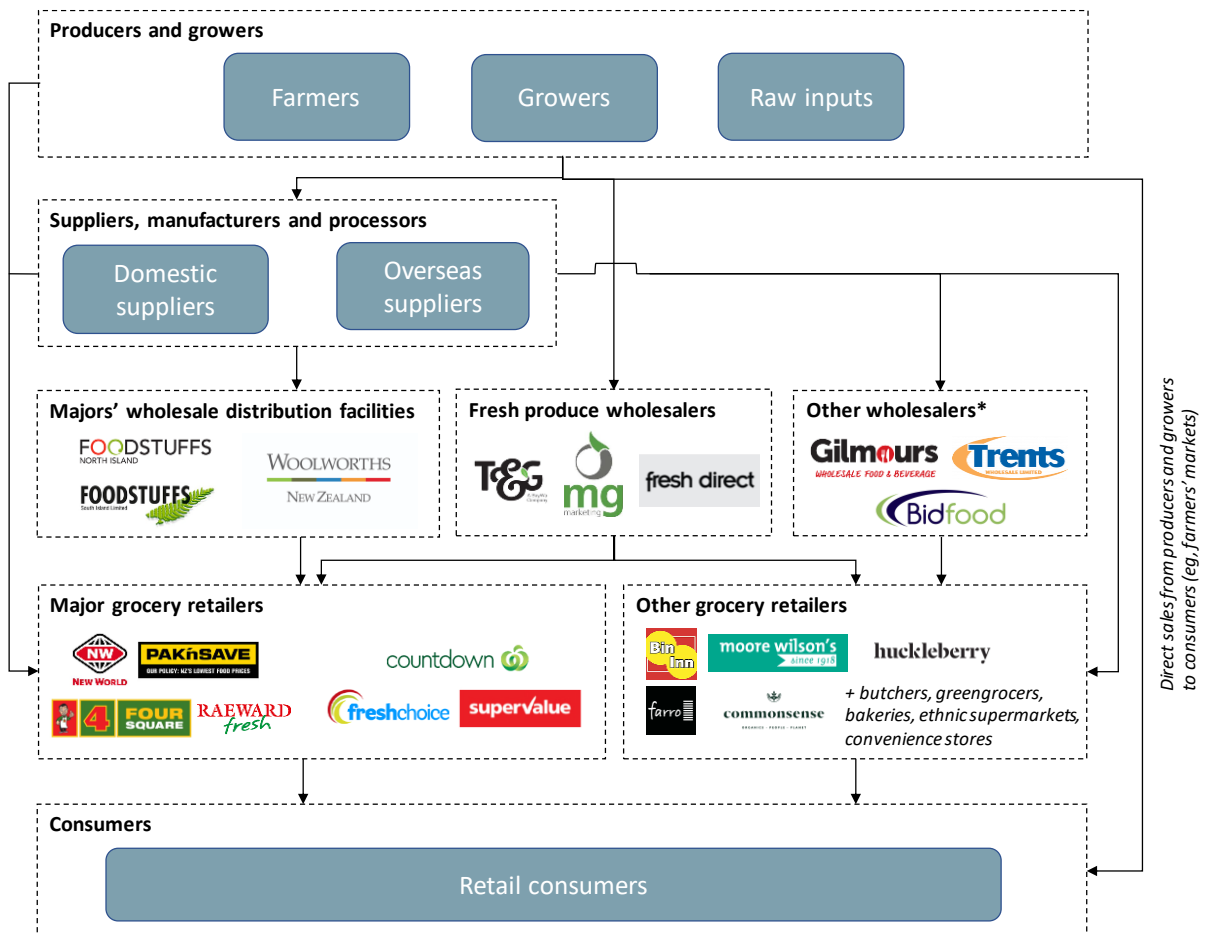
- Q9 How does our description of other grocery retailers in New Zealand fit with your understanding of the sector?
- Q10 Are there any other grocery retailers or types of retailers we should have regard to in the study?

The two major grocery retailers are vertically integrated into wholesale distribution

50. New Zealand’s two major grocery retailers are vertically integrated companies. They own and operate central distribution centres which supply their retail stores throughout the country.
51. Competition for the acquisition of groceries by retailers – who buy grocery products from farmers, growers, suppliers, manufacturers and processors – is an important part of the terms of reference for the study. The major grocery retailers source products from a wide range of suppliers, from small producers of niche products (only available in certain parts of the country) to large suppliers of well-known brands which sell products globally.
52. There are wholesale markets for some fresh produce. Supermarkets may purchase fresh produce from wholesale intermediaries or directly from the growers themselves.
53. However, we are not aware of any large-scale independent wholesalers of dry groceries in New Zealand who would be capable of supplying supermarket chains.²⁸
54. Figure 3 below shows a simplified version of the supply chain for grocery products in New Zealand. We acknowledge that the supply chain is likely to be more complicated in practice, including different supply chains for different types of products.

²⁸ As discussed in paragraph 99 below, there are wholesalers (such as Bidfood, Gilmours and Trents) that supply grocery products to the food service and hospitality industry. We understand that these wholesalers also supply some small retailers of grocery products, such as convenience stores.

Figure 3 High-level summary of the supply chain for the NZ grocery sector



* For the purposes of this study, we are interested in wholesalers which supply retail grocery stores. While wholesalers such as Bidfood, Gilmours and Trents supply grocery products to the food service and hospitality industry, we understand that they also supply some small retailers of grocery products (such as convenience stores).

Questions on the supply chain in the New Zealand grocery sector

- Q11 How does our high-level summary of the supply chain in the New Zealand grocery sector (as shown in Figure 3 above) fit with your understanding of the sector?
- Q12 Are there any other key steps or participants in the supply chain which should be included?

Some consumers' shopping habits may be changing with online shopping and meal kits growing in popularity

55. Many consumers purchase groceries by visiting a retail store.

56. However, consumers' preference to shop online is growing in many product categories, including groceries. In 2019, Woolworths NZ announced a 40% increase in its online shopping sales, to 6.5% of total sales.²⁹ There are also some online only grocery services, such as The Honest Grocer. In January 2019, Nielsen concluded e-commerce represented 59% of supermarket dollar growth.³⁰
57. There has also been an emergence of meal kit delivery services, which include ingredients and recipes for meals. Companies offering meal kit deliveries include My Food Bag, WOOP and HelloFresh. While delivery coverage varies, it appears that most meal kit providers do not have nationwide delivery services, with many limited to urban areas. Ready-made meal delivery services are also available.
58. While we currently expect our study will focus on traditional retail grocery stores, we also intend to consider the impact of online shopping, meal kits and other emerging trends on competition in the grocery sector.

Questions on the impact of changes in consumers' shopping habits

- Q13 In your view, what impact (if any) have online shopping and meal kits had on the New Zealand grocery sector? What impact do you think these trends will have in the future?
- Q14 Are there any other developments in how consumers purchase groceries which might impact competition? How should we take these into account in our study?
- Q15 Do you agree that the study should primarily focus on traditional retail grocery stores?

The COVID-19 pandemic has had a significant impact on the retail grocery sector

59. The COVID-19 pandemic has had a major impact on many businesses operating in New Zealand. In the context of the New Zealand grocery industry, there may have been:
- 59.1 short-term effects on prices, choice and availability of groceries; and
- 59.2 collaboration between supermarkets to stabilise supply and protect consumers.
60. This is not a study into the grocery sector's response to COVID-19 – we are undertaking a wider assessment of competition in the sector. However, as part of this assessment, we intend to consider whether any issues that have emerged during the pandemic are likely to affect competition over a longer period.

²⁹ Countdown "Kiwi uptake of online grocery services continues to accelerate" (press release, 20 February 2019) <<https://www.countdown.co.nz/news-and-media-releases/2019/february/kiwi-uptake-of-online-grocery-services-continues-to-accelerate>>. (Viewed on 7 December 2020).

³⁰ Nielsen "E-Commerce and Convenience: A Look at How New Zealand's FMCG Market is Changing" (24 January 2019) <<https://www.nielsen.com/nz/en/insights/article/2019/e-commerce-and-convenience-a-look-at-how-new-zealands-fmkg-market-is-changing/>>. (Viewed on 7 December 2020).

61. As an essential service, supermarkets were able to operate during the government mandated level 4 lockdown period (25 March to 27 April 2020).
62. Many other grocery retailers, such as greengrocers and butchers, were unable to open their stores during lockdown. Some retailers that were not able to open may have changed their business models or even ceased trading.
63. However, some businesses who had not previously sold groceries to retail consumers began selling online during lockdown.³¹
64. We are aware concerns regarding price gouging were raised during the level 4 lockdown. For example:
 - 64.1 there was significant media coverage regarding price rises for several grocery products;³²
 - 64.2 MBIE set up an online Price Watch service for consumers to report concerns about price increases for essential goods and services; and
 - 64.3 consumers complained that some stores may have temporarily stopped offering promotional discounts.
65. We are also aware that many consumers changed their behaviour through the lockdown period, for example, by purchasing groceries online. This may have been a temporary change. However, it could influence some consumers' behaviour in the future and impact the shift to online shopping that was evident prior to COVID-19.

Questions on the impact of COVID-19 on the New Zealand grocery sector

- Q16 Are there any changes to the New Zealand grocery sector due to COVID-19 that we should consider in our study? If so, what are these changes and what effect, if any, are they likely to have in the future?
- Q17 Has COVID-19 changed the manner or frequency with which consumers shop? If so, do you think that these changes have persisted, or will continue to persist, following the COVID-19 lockdown period? What effect might this have on smaller retailers?
- Q18 Has COVID-19 had any long-term impacts on other retailers (including specialist retailers) and their suppliers?

³¹ Examples include Bidfood (BidfoodHome), Service Foods (Service Foods Home), Trade Me (fresh food boxes) and Mighty Ape (Mighty Mart).

³² For an example, please see Cherie Howie "Price Gouging complaints pour in to Government's 'price watch' inbox" (3 April 2020) *New Zealand Herald* <https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12322407>. (Viewed on 7 December 2020).

Potential issues we may consider during the study

66. Our competition assessment of the grocery sector will focus on:
- 66.1 factors that are affecting competition; and
 - 66.2 competitive outcomes in the grocery sector.
67. In considering the factors that affect competition, we have identified a range of potential competition issues that we may explore during the study. This section seeks feedback on those issues.
68. We have grouped our discussion of factors that may affect competition under four headings:
- 68.1 competition at the retail level;
 - 68.2 competition at the wholesale and supplier levels;
 - 68.3 the grocery procurement practices of the major grocery retailers; and
 - 68.4 grocery retailers' pricing practices and consumer purchasing behaviour.
69. The potential issues identified under each of these headings do not pre-suppose that there are competition problems in the sector. We are seeking feedback from stakeholders and any interested parties on the those we have identified at this point in time, to help us decide where to focus our efforts during the study.
70. In addition to studying the factors affecting competition, we will also consider competitive outcomes in the grocery sector. This will likely focus on:
- 70.1 prices, choice, quality and innovation in the sector;
 - 70.2 the margins and profitability of grocery retailers; and
 - 70.3 whether there are other outcomes that are not consistent with those expected in a workably competitive market.³³
71. The subsections below explain each of the potential issues that we currently propose to explore in more detail, and set out questions we would like views on. We also welcome views on whether there are any other issues we should consider during the study, having regard to the terms of reference provided by the Minister.

³³ The High Court has noted the following points regarding workable competition: "A workably competitive market is one that provides outcomes that are reasonably close to those found in strongly competitive markets... The degree of rivalry is critical. In a workably competitive market no firm has significant market power and consequently prices are not too much or for too long significantly above costs... In our view, what matters is that workably competitive markets have a tendency towards generating certain outcomes". *Wellington International Airport Ltd and Others v Commerce Commission* [2013] NZHC 3289 (11 December 2013), at [14]-[15], and [18]. See also more generally the discussion at [6] to [28].

Questions on our high-level approach to the retail grocery market study

- Q19 Do you have any comments on our proposed high-level approach to the study as discussed in paragraphs 66 to 70 above?
- Q20 Would international comparisons of grocery prices and profitability of retailers provide insights into the level of competition in the retail grocery sector? If so, how should we undertake these comparisons? For example, which measures of profitability are relevant in this context?

Competition at the retail level

72. The nature of competition at the retail level will be a key focus area for the study. There are a range of potential issues we may consider, including:
- 72.1 How intense is the level of competition between grocery retailers, both nationally and in local markets?
- 72.2 Are grocery retailers accommodating each other's behaviour?³⁴
- 72.3 Are features of New Zealand's grocery sector affecting the potential for retail entry and expansion?

How intense is the level of competition between grocery retailers, both nationally and in local markets?

73. We propose to consider whether there is workable competition at the national and local levels of the retail grocery sector.³⁵ This may involve assessing:
- 73.1 which parameters grocery retailers compete on, for example, price, location, product range, quality;
- 73.2 how the major grocery retailers operate their businesses and the nature of competition between them (including how their offerings are determined); and
- 73.3 the extent to which other retailers compete with the major grocery retailers, including the strength of any competitive constraint they provide in regional or local markets, or in specific product markets.
74. Consumers can also play an important role in ensuring competition is workable in any market. We discuss further below our proposed approach to assessing whether there are any factors which affect consumers' ability to seek out the best deals based on their preferences.

³⁴ Accommodating behaviour is described in more detail in paragraphs 79 to 85 below.

³⁵ See footnote 33 above for further details on workable competition.

75. If retail competition is workable, we would expect to see grocery retailers competing to win customers based on factors such as price, quality, choice, and service. However, if competition is not workable at either a local or national level, this may be reflected in outcomes for consumers such as higher grocery prices charged by retailers (and potentially high profitability of these firms).³⁶ We note that high prices may not necessarily indicate high profitability, with many factors contributing to the cost of goods, including transportation, scale and seasonality.
76. The retail banners of New Zealand’s major grocery retailers, Woolworths NZ and Foodstuffs, account for a high proportion of retail grocery sales.³⁷
77. Although the major grocery retailers operate nationally, it is likely that retail competition has both national and local dimensions.
- 77.1 Given the major grocery retailers have stores throughout New Zealand, some decisions for these stores could be made centrally. This may include the approach to pricing, promotional activity and investment in new stores.
- 77.2 However, based on our experience from previous investigations, there are likely to be many local retail grocery markets in New Zealand. This is because most consumers are only likely to be willing to travel a certain distance for grocery shopping and so only consider retailers within that distance on most occasions.³⁸
78. Local variations in the competitive intensity between retailers could potentially lead to different outcomes for consumers based on geographic location. For example, there may be differences in prices, range and other aspects of competition depending on the number, size and identity of grocery retailers operating in each local market.

Questions on national and regional retail competition

- Q21 How do major grocery retailers set their service offerings (such as price, quality, product range and opening hours)? For example, are prices set centrally, regionally, and/or on a store-by-store basis?

³⁶ A lack of workable competition may also affect other outcomes for consumers – such as reduced choice or quality.

³⁷ For example, Foodstuffs North Island Limited’s 2019 Annual Report estimated that it has a market share of 47.4%, while The New Zealand Herald reported in 2019 that Countdown had increased its market share to 32.4%. Foodstuffs North Island Limited “Concise annual report for Foodstuffs North Island Limited, year ended 31 March 2019” at 11 and Paul McBeth “Sales volume rise boosts Countdown supermarkets’ result” (30 August 2019) *New Zealand Herald* <https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12263273>. (Viewed on 7 December 2020).

³⁸ In previous merger decisions, we considered (as a starting point for competitive analysis) that consumers were likely to travel up to 5 km to avoid a price increase of 5%. Commerce Commission “Decision Nos. 606 & 607: Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Limited and Foodstuffs South Island Limited; and (separately) Woolworths Limited and The Warehouse Group Limited” (8 June 2007) at [139]-[150].

- Q22 How closely do smaller grocery retailers compete with the major grocery retailers? What are the main similarities and differences between them? Does this vary regionally and/or locally? Does it vary by product category?
- Q23 To what extent do grocery service offerings (such as price, quality, product range and opening hours) differ across the country? What are the causes of differences?
- Q24 What factors do consumers consider most important when deciding which grocery retailers to shop at, and which brands to purchase? How far will consumers travel to purchase groceries? Does this depend on where the consumer lives? Have any changes in consumers' purchasing behaviour affected the distance or time they are prepared to travel or take in order to shop?
- Q25 Should we compare grocery prices across regions within New Zealand? If so, how should we undertake these comparisons?
- Q26 Do you have any other views on competition in New Zealand's retail grocery sector which you would like to share?

Are grocery retailers accommodating each other's behaviour?

79. We propose to consider whether the retail grocery sector is vulnerable to accommodating behaviour, which is also referred to as coordinated behaviour.
80. Coordinated behaviour involves firms recognising that they can reach a more profitable outcome if they act to limit their rivalry when taking each other's actions into account (such as by following a rival's price increases). If firms are collectively exercising market power through accommodating behaviour, this could lead to worse outcomes for consumers such as higher prices, or reduced choice or quality.³⁹
81. Such conduct does not necessarily require an explicit agreement or express coordinated behaviour between competing firms, which may breach cartel laws.⁴⁰ It can develop instead by firms repeatedly observing each other's actions and reactions so that they reach an implicit understanding to accommodate each other's actions.
82. Accommodating behaviour is a potential outcome in concentrated oligopoly markets. However, this is not inevitable – several conditions must hold for it to occur, including:⁴¹
- 82.1 firms must be able to reach similar views on how they can increase industry profits;

³⁹ There are some circumstances where collaboration can be a valid response to market failure, for example, to stabilise supply and protect vulnerable consumers during the COVID-19 pandemic.

⁴⁰ Commerce Act 1986, s 30.

⁴¹ Commerce Commission "Market study into the retail fuel sector: Final report" (5 December 2019) at [7.78].

- 82.2 firms must be able to detect and punish cheating, so that the potential individual profit gains from a firm's cheating are outweighed by the costs of punishment; and
 - 82.3 the coordinated behaviour must not be undermined by threat of entry or expansion by other firms, or the ability of consumers to disrupt coordination.
83. Grocery retailers could potentially accommodate each other's behaviour in several ways, including through:
- 83.1 location of store openings;
 - 83.2 offerings at their respective stores (for example, opening hours and store quality); and
 - 83.3 prices and promotional schedules.
84. For example, a particular retailer might take the role of price leader, with other retailers following the leader's price movements. Regarding promotional schedules, retailers could potentially work with suppliers to ensure that products are not being promoted by different retailers at the same time.
85. We do not have any views as to whether coordinated behaviour may be occurring in New Zealand's retail grocery sector. However, it is an issue we propose to explore in the study.

Questions on accommodating behaviour

- Q27 To what extent do you think there is accommodating behaviour between retailers in the New Zealand grocery sector? Please explain.
- Q28 Which, if any, aspects of grocery retailers' offerings may be subject to accommodating behaviour (for example, location of store openings, prices, promotional schedules)?
- Q29 To what extent do grocery retailers monitor or respond to one another's behaviour? Which specific factors are monitored and how often are comparisons made?

Are features of New Zealand's grocery sector affecting the potential for retail entry and expansion?

86. We propose to assess the ability of new retailers to enter the New Zealand grocery sector, and of existing retailers to expand their operations.
87. The ability of rivals to expand and enter is a vital part of the competitive process. Even in a market where there are relatively few competitors, the threat of entry and expansion can significantly constrain the behaviour of existing firms, leading to better outcomes for consumers.

88. Barriers to entry and expansion can limit the number of competing suppliers in the market. The expected profitability of entry and expansion depends on the costs and risks associated with entry and expansion. If entry and expansion are difficult then less competitive offerings (with higher prices, lower quality and resulting higher profits) are more likely to persist in the longer term, to the detriment of New Zealand consumers.
89. Conditions of entry and expansion in a market can take a variety of forms, including structural, regulatory and strategic.⁴²
90. *Structural conditions* are associated with the technologies, resources or inputs a firm would need to enter or expand. This may include factors such as the significance of economies of scale, scope or density.⁴³ For example, the geographic location and relatively small size of the New Zealand market could potentially limit the scope for entry.
91. *Regulatory conditions* include resource management or other planning consent requirements, licensing requirements for a business or product, and regulations governing standards and quality. For example, the resource consent process for obtaining permission to build supermarkets could affect the ability for retailers, either existing or new, to open new stores.
92. *Strategic conditions* arise where incumbent firms take actions to discourage prospective entrants or expansion. For example, existing retailers may seek to restrict potential competitors' access to suitable land for grocery retailing or enter into exclusive contracts with suppliers.
93. There appears to have been no large-scale entry into the New Zealand retail grocery sector for many years, suggesting barriers to entry may be high.
94. In the mid-2000s, The Warehouse ventured into the retail grocery sector for a brief period through their 'Warehouse Extra' offering. A media report states The Warehouse abandoned this plan because people shopping for food did not buy as much general merchandise as it had hoped.⁴⁴

⁴² Commerce Commission "Mergers and acquisitions Guidelines" (July 2019) at [3.109] to [3.111].

⁴³ Economies of scale refers to per unit costs falling as production or supply increases. Where production is characterised by economies of scale, an entrant may be at a competitive disadvantage since it will be unlikely to have a sufficient share of the market to have low enough costs to compete effectively. Economies of scale may prevent profitable entry if, in the process of achieving efficient scale, an entrant would drive prices down so that the entrant's expected returns do not justify entry.

⁴⁴ "Warehouse Extra stores canned - takeover door opened" (9 October 2008) *New Zealand Herald* <https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10536637>. (Viewed on 7 December 2020).

95. Other large overseas grocery retailers have indicated differing levels of interest in establishing operations in New Zealand.

95.1 Costco has announced its intention to open a bulk-buy store in Auckland. In April 2020, Auckland Council approved resource consent for a three-story building (including 795 carparks) at Westgate. The estimated cost of the build is over \$100 million.⁴⁵ Costco has also signalled plans for stores in Wellington and Christchurch.⁴⁶

95.2 Aldi previously registered two companies in New Zealand in 2000 and 2001, when it opened in Australia.⁴⁷ However, a recent media article reports Aldi confirmed it did not have any plans to open in New Zealand.⁴⁸

Questions on conditions of entry and expansion

Q30 What factors affect entry and expansion in the New Zealand retail grocery sector? How significant are these factors in affecting entry and expansion from retailers?

Q31 To what extent does the size and geography of New Zealand affect the possibility of entry and expansion?

Q32 Are there recent examples of actual or potential entry or expansion in the sector that we should be aware of? What are these?

Competition at the wholesale and supplier levels

96. This section discusses competition at the wholesale and supplier levels of the New Zealand grocery sector, including:

96.1 What effect is the level of wholesale competition having on the retail market?

96.2 Is competition at the supplier level workable?

What effect is the level of wholesale competition having on the retail market?

97. We propose to consider the extent to which there may be barriers to entry for independent wholesalers in the New Zealand grocery sector, and the impact this may have on the potential for entry and expansion in the downstream retail market.

⁴⁵ Debrin Foxcroft "Costco grocery superstore will be the size of two rugby fields" (28 April 2020) *Stuff* <<https://www.stuff.co.nz/business/121300819/costco-grocery-superstore-will-be-the-size-of-two-rugby-fields>>. (Viewed on 7 December 2020).

⁴⁶ Anne Gibson "Costco outlines plans for stores in New Zealand" (2 November 2020) *New Zealand Herald* <<https://www.nzherald.co.nz/business/costco-outlines-plans-for-stores-in-new-zealand/CDVJFATKZCPEAQ5GBMYK6O5CAU/>>. (Viewed on 7 December 2020).

⁴⁷ Catherine Harris "The competitors that could lower NZ's supermarket prices" (22 January 2020) *Stuff* <<https://www.stuff.co.nz/business/industries/110054048/the-competitors-that-could-lower-nzs-supermarket-prices>>. (Viewed on 7 December 2020).

⁴⁸ Debrin Foxcroft "NZ too small for another supermarket to break Foodstuff and Countdown duopoly" (18 January 2020) *Stuff* <<https://www.stuff.co.nz/business/118805948/nz-too-small-for-another-supermarket-to-break-foodstuff-and-countdown-duopoly>>. (Viewed on 7 December 2020).

98. We understand that there is currently a lack of independent wholesalers capable of supplying supermarket chains in the New Zealand grocery industry – particularly for dry groceries. As discussed in paragraphs 50 to 54 above, New Zealand’s major grocery retailers are vertically integrated, operating their own wholesale and distribution facilities for many product categories.
99. However, there are wholesalers – such as Bidfood, Gilmours and Trents – that supply grocery products to the food service and hospitality industry. We understand that these wholesalers also supply some small retailers of grocery products, such as convenience stores. Gilmours and Trents are not independent wholesalers – they are owned by Foodstuffs North Island and Foodstuffs South Island respectively.
100. There are possible advantages and disadvantages of the major grocery retailers’ vertical integration.
- 100.1 Vertical integration could be generating significant efficiencies in managing the supply chain.
- 100.2 However, vertical integration can also make it hard for independent retailers to enter and compete, because they may not be readily able to access competitive wholesale and distribution services.
101. The size of the vertically integrated major retailers may leave little scope for an independent wholesaler to enter at sufficient scale to compete effectively. Given the major retailers have their own wholesale and distribution facilities, only a small proportion of the market would be available to be served by an independent wholesaler.
102. Therefore, a new entrant may need to simultaneously enter at both the retail and wholesale levels. This may only be profitable if entering on a large scale, increasing the costs and risks involved.

Questions on competition at the wholesale level

- Q33 Are there existing wholesalers who are willing and able to supply new entrants to the retail market? Which product categories do these wholesalers supply?
- Q34 Are there any barriers to entry and expansion at the wholesale level of the New Zealand grocery sector we should be aware of? If so, how significant are they?
- Q35 Do you have any other views on competition at the wholesale level of the New Zealand grocery sector which you would like to share?

Is competition at the supplier level workable?

103. We also propose to consider competition issues at the supplier level of the New Zealand grocery sector, particularly as they relate to the acquisition of groceries by retailers. The ‘supplier level’ refers to farmers, growers, suppliers, manufacturers and processors of grocery products who sell to retailers and/or wholesalers.

104. There is a diverse variety of suppliers who sell to major grocery retailers. These range from small family owned businesses where products are only stocked in some regions or stores, to large multinationals whose products are stocked in all supermarkets.
105. Potential issues we may consider include whether:
- 105.1 information sharing between suppliers could facilitate coordinated behaviour – in particular, category management may provide increased opportunities to exchange information between suppliers, whether directly or indirectly via retailers;⁴⁹ and
- 105.2 grocery retailers offering private label products may have incentives to supply and promote these products ahead of suppliers’ branded products.⁵⁰
106. Private label grocery products (also known as home brands, own brands, store brands or generics) are products manufactured or provided by a company for sale under a retailer’s brand. A supplier of private label products may also produce its own proprietary branded products in competition with the private label.⁵¹
107. Consumers can benefit from private label products through lower prices and greater choice. Private label products can also promote competition, facilitating entry or expansion by suppliers due to the large volumes that these products can generate. Reaching an agreement to supply private label products to a large retailer could potentially provide a launching pad for a supplier to subsequently commence or expand supply of products under its own brand.
108. In 2015, Nielsen reported that for every \$100 spent on groceries, almost \$14 is spent on private label brands such as Homebrand and Pams.⁵² Nielsen also noted that there had been a significant shift in the perception of private label brands, with them no longer viewed only as low-cost alternatives.

⁴⁹ The UK Competition Commission has noted that category management is a relatively common practice within grocery retailing that aims to improve a grocery retailer’s sales or performance in a particular product category through collaboration between that grocery retailer and its suppliers. UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [8.13].

⁵⁰ The major grocery retailers offer their own private label products in their stores. For example, Foodstuffs’ private label brands include the Pams, Pams Superfoods, Pams Finest and Value ranges, and Woolworths NZ’s private label brands include its Essentials and Countdown branded products.

⁵¹ ACCC “Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries” (July 2008) at 359, footnote 1.

⁵² Nielsen “Trends shaping the future of grocery in New Zealand” (22 January 2015) <<https://www.nielsen.com/nz/en/insights/article/2015/trends-shaping-the-future-of-grocery-in-nz/>>. (Viewed on 7 December 2020).

109. However, the ACCC's 2008 inquiry into the Australian retail grocery sector noted the potential for private label products to distort competition.⁵³ In particular, retailers offering private label products may have incentives to:
- 109.1 promote their own labels in preference to proprietary brands otherwise preferred by consumers (for example, by giving private labels preferential shelf space); and
 - 109.2 retain additional promotional benefits obtained from branded suppliers, rather than passing those benefits to consumers in the form of lower retail prices, to promote their own private label brands.

Questions on competition at the supplier level

- Q36 Are there any factors affecting competition at the supplier level we should be aware of and consider during our study?
- Q37 What impact, if any, do private label products have on competition at the supplier level?
- Q38 Do you have any other views on competition at the supplier level of the New Zealand grocery sector which you would like to share?

The grocery procurement practices of the major grocery retailers

110. We intend to consider competition for the acquisition of groceries by retailers in the study, including the grocery procurement practices of the major grocery retailers. Major grocery retailers' and suppliers' relative bargaining power, and the impact this has on outcomes for consumers, is likely to be a particular area of focus.
111. Supermarkets are often recognised as having significant buyer power, because suppliers can be dependent on them as a main route to sell their products to consumers.⁵⁴
- 111.1 New Zealand's major grocery retailers source products from many suppliers. Many of these suppliers are small relative to the retailer they supply, and dependent on those retailers in order to sell their products to end consumers.

⁵³ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at Chapter 16.

⁵⁴ The UK Competition Commission described buyer power as a form of market power that a grocery retailer may have with respect to its suppliers, that allows the grocery retailer to extract better terms from its suppliers than would otherwise be the case. UK Competition Commission "The supply of groceries in the UK market investigation" (30 April 2008) at 155, footnote 2.

- 111.2 Retailers, on the other hand, are often likely to be able to obtain similar products by alternative means and are therefore less likely to be dependent on any particular supplier for sales.⁵⁵ This may tip the balance of bargaining power in favour of the major grocery retailers in some cases.
112. Buyer power can be a driver of efficiency and good outcomes for consumers. This may be the case if buyer power leads to better wholesale terms that are passed on as lower retail prices and improved quality or variety. If there is an imbalance in bargaining power, supermarkets may be able to obtain better purchasing terms than if suppliers had alternative means of selling their goods in New Zealand.⁵⁶
113. However, if used in certain ways, it is possible that too much buyer power in the hands of retailers could lead to worse outcomes for consumers. For example, this could be the case if retailers use their buying power to:
- 113.1 place excessive risks on suppliers, reducing their ability and incentive to invest and compete; or
- 113.2 enter into restrictive supply arrangements which limit a supplier's ability to sell its products via other retailers.
114. The more effective competition is at the retail level, the less likely it is that retailers will be able to use their buyer power in ways that harm consumers.
115. Some suppliers may have greater bargaining power than others when dealing with major grocery retailers. In particular, large suppliers of products which grocery retailers view as 'must have' in their stores may have stronger bargaining power than smaller suppliers.⁵⁷ These suppliers could potentially seek to ensure that their products are favoured by the retailer, for example, by being featured in promotional material or displayed in prime shelf space.
116. Supermarkets' business practices when dealing with suppliers have received attention over the past decade, including from the Government, consumer and industry bodies, and in investigations we have undertaken.⁵⁸

⁵⁵ Including by importing, providing more shelf space, or selling private label products produced by the retailer themselves (in place of the supplier's product).

⁵⁶ For example, through a new entrant or alternative distributor.

⁵⁷ This may be due to brand recognition and volume of sales associated with those products. Retailers may fear consumers would switch to alternative retailers if they did not stock the product in question, given the importance that consumers place on these products.

⁵⁸ In 2014, we investigated whether Progressive Enterprises (now Woolworths NZ) had breached the Commerce Act or Fair Trading Act through some of its business practices when dealing with suppliers. Commerce Commission "Progressive Enterprises Limited: investigation closure report" (20 November 2014). <https://comcom.govt.nz/data/assets/pdf_file/0033/94767/Progressive-Enterprises-Limited-Investigation-closure-report-20-November-2014.pdf>.

117. The New Zealand Food and Grocery Council (NZFGC) is an industry association that represents the manufacturers and suppliers of New Zealand’s food, beverage, and grocery brands. In response to a government consultation paper on unfair commercial practices, the NZFGC stated:⁵⁹

New Zealand’s two supermarket chains wield significant buyer power in their dealings with grocery suppliers, the majority of which rely on supermarkets to access end consumers. This imbalance exists despite the fact that many suppliers are relatively large, sophisticated companies.

118. The NZFGC has previously highlighted several examples of “behaviours caused by a lack of competitive pressure on ‘powerful purchasers’”, including retailers:⁶⁰

118.1 requesting retrospective cash payments;

118.2 refusing to accept price increases despite rising supplier costs;

118.3 unilaterally imposing additional costs or discounting items without prior agreement;

118.4 refusing to pay agreed costs to suppliers; and

118.5 threatening or exacting retribution as a negotiating tactic.

Questions on the grocery procurement practices of the major grocery retailers

- Q39 What are your views on the relative bargaining power of retailers and suppliers in the New Zealand grocery sector? How, if at all, does the relative bargaining power differ based on the specific retailers and suppliers involved?
- Q40 Is the relative bargaining power between retailers and suppliers impacting competition in the New Zealand grocery sector? If so, how?
- Q41 Is there any specific behaviour or conduct between retailers and suppliers we should consider in our study?

Grocery retailers’ pricing practices and consumer purchasing behaviour

119. This section discusses factors which may affect consumers’ grocery purchasing decisions, including:

119.1 How do consumers choose where to shop for groceries and what to buy?

⁵⁹ NZFGC “Discussion Paper – Protecting businesses and consumers from unfair commercial practices: Submission by the New Zealand Food & Grocery Council” (25 February 2019) at [22]. NZFGC is an industry body who represents many suppliers to supermarkets.

⁶⁰ NZFGC “Discussion Paper – Protecting businesses and consumers from unfair commercial practices: Submission by the New Zealand Food & Grocery Council” (25 February 2019) at 9-14. Also see NZFGC “Discussion paper: Review of Section 36 of the Commerce Act and other Matters, January 2019 – Submission by the New Zealand Food & Grocery Council” (27 March 2019).

119.2 How do grocery retailers' pricing strategies and promotional activity affect consumers' purchasing behaviour?

119.3 How do loyalty programmes affect competition between grocery retailers?

How do consumers choose where to shop for groceries and what to buy?

120. We propose to consider whether there are any factors within the retail grocery sector which affect consumers' ability to seek out the best deals based on their preferences.
121. Consumers can play an important role in ensuring competition is effective in any market. Healthy competition is facilitated through consumers having:
- 121.1 access to the information they need to compare the offerings of alternative providers;
 - 121.2 the ability to assess this information; and
 - 121.3 the ability to act on this information.
122. If consumers can act in this way they are able to buy the groceries they want from the retailer who is offering them the best deal. However, consumers' ability to access, assess and act on information may be made more difficult by differences in retailers' pricing methods, loyalty programmes, sales practices or a lack of a simple and effective way to compare prices across retailers.
123. Two broad categories of information are likely to be relevant to consumers' purchasing decisions.
- 123.1 *Information available to consumers when choosing which grocery retailer to visit.* For example, how easy is it for consumers to obtain and compare information on product range, everyday prices and current promotional discounts offered by different retailers before entering the store?
 - 123.2 *Information available to consumers once in store.* For example, how easy is it to compare prices between products of differing sizes (unit pricing)? How does the quality of private label (home brand) products compare to main brands? How easy is it for consumers to find specific products once in store, for example, due to shelf location?
124. The ability for consumers to compare prices was discussed in the ACCC's 2008 inquiry into the Australian retail grocery sector. For example, the ACCC considered the importance of 'unit pricing', where prices are displayed by unit of measure (for example, per litre or kilogram) along with the total sale price for each item.⁶¹

⁶¹ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at Chapter 20.

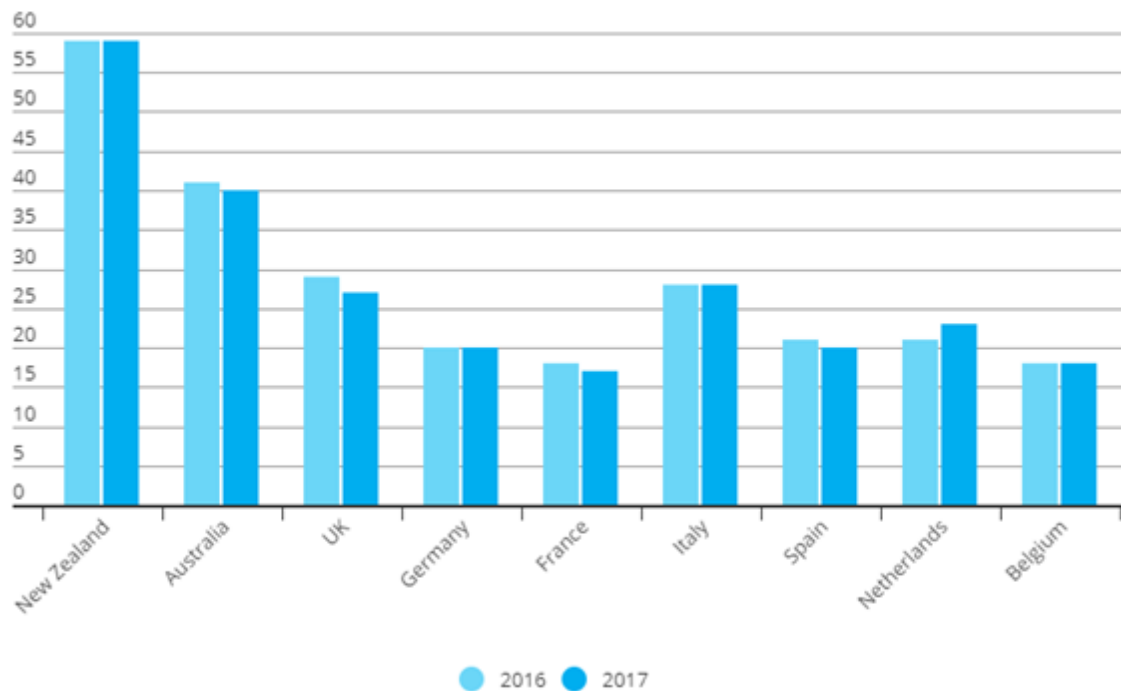
Questions on factors which may affect consumers' ability to make well-informed decisions

- Q42 How relevant do you consider consumers' access to information is to our study?
- Q43 How do consumers compare offerings across grocery retailers? Where do consumers access the information they need to make these comparisons (for example, advertising by grocery retailers, price comparison websites)?
- Q44 How easy is it for consumers to compare product offerings once in store? What factors influence this?

How do grocery retailers' pricing strategies and promotional activity affect consumers' purchasing behaviour?

125. We propose to consider the extent to which grocery retailers use strategies to influence consumers' purchasing decisions. For example, retailers may:
- 125.1 use reference pricing (such as "was/now" promotions), where a new discounted price is compared to a price charged previously, to encourage consumers to purchase a product; or
 - 125.2 promote certain discounted products as 'loss-leaders', encouraging consumers to enter the store, leading to increased sales of other more profitable products.
126. Promotional pricing appears to be a significant feature of the New Zealand retail grocery sector. Nielsen has reported that in 2017 almost \$6 in every \$10 spent on groceries were sold on promotion, well ahead of other developed markets around the world.⁶²

⁶² Nielsen "The \$470m opportunity: Changing the game with price and promotions" (15 May 2018) <<https://www.nielsen.com/nz/en/insights/article/2018/the-470m-opportunity-changing-the-game-with-price-and-promotions/>>. (Viewed on 7 December 2020).

Figure 4 Percentage of grocery products sold on promotion

Source: Nielsen Scantrack and Nielsen Homescan

127. Consumers benefit from lower prices resulting from genuine promotional discounting. Suppliers may also benefit from a resulting increase in sales volumes.
128. However, in some circumstances retailers' discounting strategies could potentially lead to:
- 128.1 higher overall prices, relative to a situation with lower every day pricing and less promotional discounting;
 - 128.2 consumers buying additional products they might not have intended to purchase (or which might be available at a lower total cost from another retailer); and
 - 128.3 some consumers missing out on promotions if they are not carrying the loyalty card required to access discounts.

Questions on retailers' pricing practices

- Q45 What strategies do New Zealand grocery retailers use when setting prices for their products, including promotional prices? What are the benefits and potential harms to consumers of these strategies?
- Q46 Why is the percentage of grocery products sold on promotion high in New Zealand relative to other countries? Does this benefit or harm New Zealand consumers?
- Q47 How are pricing promotions funded? Do these typically result in lower margins to retailers or suppliers?

How do loyalty programmes affect competition between grocery retailers?

129. We propose to consider whether loyalty programmes offered by the major grocery retailers are affecting competition in New Zealand’s retail grocery sector.
130. Some promotional discounts in the retail grocery sector are implemented through loyalty programmes. Discounts are available to consumers who present a loyalty card when purchasing their groceries at the checkout.
131. New World’s Clubcard provides members with access to grocery discounts at New World supermarkets. Clubcard holders can choose from two rewards programmes.⁶³
- 131.1 Airpoints rewards, where the card holder earns Airpoints Dollars when shopping at New World supermarkets; or
- 131.2 Flybuys rewards, where the card holder can choose one of three ways to be rewarded: Flybuys points, ‘New World dollars’, or Z and Caltex fuel discounts.
132. Countdown’s Onecard provides members with access to grocery discounts at Countdown and the choice of either:⁶⁴
- 132.1 Onecard food rewards, where points earned for every dollar spent can be redeemed for Countdown e-vouchers,⁶⁵ or
- 132.2 AA Smartfuel discounts, where consumers can earn fuel discounts for spending a certain amount per week at Countdown stores.⁶⁶
133. Loyalty programmes can lead to significant benefits to consumers, through discounted grocery prices and other rewards. They can also lead to better outcomes as retailers improve the quality of their offerings by collecting personal data that provides further information about their customers’ preferences.
134. However, loyalty programmes could potentially adversely impact some groups of consumers, for example, by:
- 134.1 reducing competition between retailers by increasing customer loyalty and raising switching costs;
- 134.2 leading to different prices for card holders compared with non-card holders (price discrimination); and

⁶³ New World “Make the most of your shopping with Clubcard” <<https://www.newworld.co.nz/clubcard>>. (Viewed on 7 December 2020).

⁶⁴ Countdown “Onecard benefits” <<https://www.countdown.co.nz/onecard>>. (Viewed on 7 December 2020).

⁶⁵ A Onecard point is earned for every dollar spent. 2,000 points gets a \$15 Onecard e-voucher.

⁶⁶ Spending \$100 in a week at Countdown earns a 3 cents per litre AA Smartfuel discount. Spending \$200 in a week earns a 6 cents per litre discount. AA Smartfuel discounts can be redeemed at BP and GAS outlets.

- 134.3 allowing retailers to undertake tailored advertising using large datasets about their customers demographics and purchasing behaviour, raising potential privacy and consumer protection concerns.
135. A recent ACCC review concluded that improvements to Australian customer loyalty schemes and broader legislative reforms are required to protect Australian consumers using these schemes.⁶⁷ The ACCC's report provided some insights regarding:⁶⁸
- 135.1 the significant impact that loyalty programmes can have on consumer behaviour; and
- 135.2 the extent to which these programmes can provide any insights to the businesses who operate them.

Questions on loyalty programmes

- Q48 How important are loyalty programmes in New Zealand's retail grocery sector? What impact, if any, are grocery retailers' loyalty programmes having on the sector?
- Q49 To what extent do consumers base their purchasing decisions on the benefits associated with loyalty programmes? Do consumers typically participate in more than one loyalty programme?
- Q50 Are there any other specific features of loyalty programmes offered by grocery retailers we should consider in our study?

Other issues

136. The list of issues we are seeking views on is based on our initial assessment of the terms of reference for the study issued by the Minister and is not exhaustive.
137. We invite you to raise other issues and provide information that you consider to be relevant to the study, having regard to the terms of reference issued by the Minister.

Questions on other issues

- Q51 Are there any other issues not raised in this paper that could impact competition in New Zealand's retail grocery sector?

⁶⁷ ACCC media release "Changes needed to protect consumers using customer loyalty schemes" (3 December 2019).

⁶⁸ ACCC "Customer loyalty schemes: Final report" (3 December 2019).

Attachment A Key process steps and how you can contribute to the study

A1 Table A1 below sets out our intended timetable and dates for our study, including key opportunities for you to contribute. These process steps and dates are indicative only and may change as the study progresses.

Table A1 Key process steps and how you can contribute

Indicative dates	Key process steps	How you can contribute and remain informed
17 November 2020	Terms of reference for the study issued by the Minister and published in the Gazette.	
November – December 2020	Initial engagement and information requests sent to stakeholders.	
December 2020	Release of preliminary issues paper. This will seek feedback on potential issues we may explore during our market study.	You will have an opportunity to comment on our proposed approach and preliminary issues. These submissions will help inform our approach and help to define the issues that we will consider.
January – July 2021	Further information gathering and engagement with stakeholders, including with consumers. Undertaking of analysis.	We will engage directly with stakeholders, including with consumers.
April – May 2021	Testing information and analysis as required with stakeholders.	We will provide updates on opportunities to contribute.
Around July 2021	Release our draft report. This will include our preliminary findings on factors that may affect competition in the retail grocery sector and draft recommendations for improving competition (if required).	You will have an opportunity to comment on our draft report. We will provide an update on submission opportunities, including details relating to any consultation conference that may be held.
August – November 2021	Consideration of responses to our draft report. We may hold a consultation conference during this time.	We will provide updates on opportunities to contribute.
16 November 2021	Report back to the Minister on our findings.	
23 November 2021	Release and launch our final report.	
From November 2021 onwards	The Minister responds to our final report.	

A2 We anticipate providing further details on specific steps and key opportunities for you to contribute to our study as it progresses. We will be providing updates on our study on our website at www.comcom.govt.nz/groceries.

A3 If you have any information on New Zealand's retail grocery sector that may assist our study, or would like to speak with us about the study, please email us at marketstudies@comcom.govt.nz.

A4 If you would like to be kept informed and receive updates on our study, please subscribe to our mailing list at www.comcom.govt.nz/groceries.

Attachment B Summary of questions we are seeking your responses to

Questions on the scope of grocery products to be considered in the study

- Q1 Do you agree with our preliminary view on the grocery products to be considered in the study, as described in paragraph 29 and Table 1? Why/why not?
- Q2 Does Table 1 appropriately reflect how products are categorised in the grocery sector?
- Q3 Are some product categories more competitive than others, either in terms of the acquisition of groceries from suppliers, or the supply of groceries to retail customers? If so, please explain.
- Q4 Are there any product categories we should consider in greater detail than others? If so, which ones and why?
- Q5 If we do focus on certain product categories, are the factors set out in paragraph 34 appropriate to guide our focus? Are there any other factors we should also consider?

Questions on the importance of grocery products to New Zealanders

- Q6 Would considering the supply of grocery products to commercial customers assist in our assessment of competition in the retail grocery sector? If so, how?

Questions on New Zealand's major grocery retailers

- Q7 Is our description of New Zealand's major grocery retailers accurate?
- Q8 What are the key characteristics of a supermarket, compared to other retail grocery stores?

Questions on the role of other grocery retailers

- Q9 How does our description of other grocery retailers in New Zealand fit with your understanding of the sector?
- Q10 Are there any other grocery retailers or types of retailers we should have regard to in the study?

Questions on the supply chain in the New Zealand grocery sector

- Q11 How does our high-level summary of the supply chain in the New Zealand grocery sector (as shown in Figure 3 above) fit with your understanding of the sector?
- Q12 Are there any other key steps or participants in the supply chain which should be included?

Questions on the impact of changes in consumers' shopping habits

- Q13 In your view, what impact (if any) have online shopping and meal kits had on the New Zealand grocery sector? What impact do you think these trends will have in the future?
- Q14 Are there any other developments in how consumers purchase groceries which might impact competition? How should we take these into account in our study?
- Q15 Do you agree that the study should primarily focus on traditional retail grocery stores?

Questions on the impact of COVID-19 on the New Zealand grocery sector

- Q16 Are there any changes to the New Zealand grocery sector due to COVID-19 that we should consider in our study? If so, what are these changes and what effect, if any, are they likely to have in the future?
- Q17 Has COVID-19 changed the manner or frequency with which consumers shop? If so, do you think that these changes have persisted, or will continue to persist, following the COVID-19 lockdown period? What effect might this have on smaller retailers?
- Q18 Has COVID-19 had any long-term impacts on other retailers (including specialist retailers) and their suppliers?

Questions on our high-level approach to the retail grocery market study

- Q19 Do you have any comments on our proposed high-level approach to the study as discussed in paragraphs 66 to 70 above?
- Q20 Would international comparisons of grocery prices and profitability of retailers provide insights into the level of competition in the retail grocery sector? If so, how should we undertake these comparisons? For example, which measures of profitability are relevant in this context?

Questions on national and regional retail competition

- Q21 How do major grocery retailers set their service offerings (such as price, quality, product range and opening hours)? For example, are prices set centrally, regionally, and/or on a store-by-store basis?
- Q22 How closely do smaller grocery retailers compete with the major grocery retailers? What are the main similarities and differences between them? Does this vary regionally and/or locally? Does it vary by product category?
- Q23 To what extent do grocery service offerings (such as price, quality, product range and opening hours) differ across the country? What are the causes of differences?

- Q24 What factors do consumers consider most important when deciding which grocery retailers to shop at, and which brands to purchase? How far will consumers travel to purchase groceries? Does this depend on where the consumer lives? Have any changes in consumers' purchasing behaviour affected the distance or time they are prepared to travel or take in order to shop?
- Q25 Should we compare grocery prices across regions within New Zealand? If so, how should we undertake these comparisons?
- Q26 Do you have any other views on competition in New Zealand's retail grocery sector which you would like to share?

Questions on accommodating behaviour

- Q27 To what extent do you think there is accommodating behaviour between retailers in the New Zealand grocery sector? Please explain.
- Q28 Which, if any, aspects of grocery retailers' offerings may be subject to accommodating behaviour (for example, location of store openings, prices, promotional schedules)?
- Q29 To what extent do grocery retailers monitor or respond to one another's behaviour? Which specific factors are monitored and how often are comparisons made?

Questions on conditions of entry and expansion

- Q30 What factors affect entry and expansion in the New Zealand retail grocery sector? How significant are these factors in affecting entry and expansion from retailers?
- Q31 To what extent does the size and geography of New Zealand affect the possibility of entry and expansion?
- Q32 Are there recent examples of actual or potential entry or expansion in the sector that we should be aware of? What are these?

Questions on competition at the wholesale level

- Q33 Are there existing wholesalers who are willing and able to supply new entrants to the retail market? Which product categories do these wholesalers supply?
- Q34 Are there any barriers to entry and expansion at the wholesale level of the New Zealand grocery sector we should be aware of? If so, how significant are they?
- Q35 Do you have any other views on competition at the wholesale level of the New Zealand grocery sector which you would like to share?

Questions on competition at the supplier level

- Q36 Are there any factors affecting competition at the supplier level we should be aware of and consider during our study?
- Q37 What impact, if any, do private label products have on competition at the supplier level?
- Q38 Do you have any other views on competition at the supplier level of the New Zealand grocery sector which you would like to share?

Questions on the grocery procurement practices of the major grocery retailers

- Q39 What are your views on the relative bargaining power of retailers and suppliers in the New Zealand grocery sector? How, if at all, does the relative bargaining power differ based on the specific retailers and suppliers involved?
- Q40 Is the relative bargaining power between retailers and suppliers impacting competition in the New Zealand grocery sector? If so, how?
- Q41 Is there any specific behaviour or conduct between retailers and suppliers we should consider in our study?

Questions on factors which may affect consumers' ability to make well-informed decisions

- Q42 How relevant do you consider consumers' access to information is to our study?
- Q43 How do consumers compare offerings across grocery retailers? Where do consumers access the information they need to make these comparisons (for example, advertising by grocery retailers, price comparison websites)?
- Q44 How easy is it for consumers to compare product offerings once in store? What factors influence this?

Questions on retailers' pricing practices

- Q45 What strategies do New Zealand grocery retailers use when setting prices for their products, including promotional prices? What are the benefits and potential harms to consumers of these strategies?
- Q46 Why is the percentage of grocery products sold on promotion high in New Zealand relative to other countries? Does this benefit or harm New Zealand consumers?
- Q47 How are pricing promotions funded? Do these typically result in lower margins to retailers or suppliers?

Questions on loyalty programmes

- Q48 How important are loyalty programmes in New Zealand's retail grocery sector? What impact, if any, are grocery retailers' loyalty programmes having on the sector?
- Q49 To what extent do consumers base their purchasing decisions on the benefits associated with loyalty programmes? Do consumers typically participate in more than one loyalty programme?
- Q50 Are there any other specific features of loyalty programmes offered by grocery retailers we should consider in our study?

Questions on other issues

- Q51 Are there any other issues not raised in this paper that could impact competition in New Zealand's retail grocery sector?

Attachment C How you can have your say on this paper

- C1 We are seeking your views on the issues and questions raised in this paper, or on any other issues that you consider important. Your views will help us to understand relevant issues in the retail grocery sector and help us decide where to focus our efforts during the study.
- C2 You do not need to respond to all the issues and questions raised – you can instead respond to a single issue or question, or address just the issues or questions that relate to your business operations or experience.
- C3 We encourage you to provide comments that are supported by evidence. Less weight may be given to a statement or submission that cannot be supported by evidence.
- C4 You are welcome to provide your views to us by uploading your submission via our website: www.comcom.govt.nz/groceries.
- C5 To ensure your views can be taken into account, please provide these to us by **4pm, 4 February 2021**. You will also have further opportunities to contribute to our study, as described in Attachment A.
- C6 Where possible, you should reference the question number to which each aspect of your submission responds or relates. A list of the questions asked throughout the paper is included in Attachment B for ease of reference.

Format for written submissions

- C7 Please provide submissions in both a format suitable for word processing (such as a Microsoft Word document), and a 'locked' format (such as a PDF) for publication on our website.

Confidential information – disclosure of your submission

- C8 While we intend to publish submissions on our website, we understand that it is important to parties that confidential, commercially sensitive or personal information (confidential information) is not disclosed as disclosure could cause harm to the provider of the information or a third party.
- C9 Where your submission includes confidential information, we request that you provide us with a confidential and a public version of your submission. We propose publishing the public versions of submissions on our website. We note that responsibility for ensuring that confidential information is not included in a public version rests on the party providing the submission.
- C10 Where confidential information is included in submissions:
- C10.1 the information should be clearly marked and highlighted in yellow; and
- C10.2 both confidential and public versions of submissions should be provided by 4pm on the due date.

- C11 If your submission contains information which is considered confidential, a schedule must be provided which identifies each piece of information over which confidentiality is claimed and the reason why the information is confidential (preferably with reference to the Official Information Act 1982 (OIA)).
- C12 We will not disclose any confidential or commercially sensitive information in a media statement, public report, or in response to a request, unless there is a countervailing public interest in doing so in a particular case. Such cases are likely to be rare.
- C13 We will consider any request from a party who wishes to keep their identity and/or the content of their submission anonymous. However, this request must be discussed with us first, before the submission is provided to us. Submitters must justify any request for anonymity by providing reasons.