

1
2 **DAY 2 - RETAIL GROCERY MARKET STUDY CONFERENCE**

3 **22 October 2021**

4 **Session 2: Pricing and promotional practices and loyalty programmes**

5 **Session 3: Unit Pricing**

6 **Ms Rawlings:** Mōrena everybody, good morning. Thanks for being with us this morning on day
7 two of the Commission's conference into our Grocery Market Study. Welcome back for
8 those of you that were here yesterday. And a big welcome to those joining the
9 conference today for the first time and there are a few of you, I know.

10 Ko Anna Rawlings tōku ingoa, I'm Anna Rawlings, the Chair of the Commission for
11 those of you who don't know me. I'm going to make a few quick comments this morning,
12 just for those primarily who weren't here with us yesterday about how we're running the
13 conference online. And then we'll move into our second session for the conference.

14 Other Commissioners that are with me today who have been working on this study
15 are Dr John Small, Dr Derek Johnston and Vhari McWha, Associate Commissioner with the
16 Commission. We also have a number of Commission staff with us today and some of
17 those will be known to you from contributions that you've made to our study already.
18 And you may seem them through the conference as well.

19 The purpose of our study, as you know, is to identify and assess factors that may
20 affect competition in the grocery sector in New Zealand and to make recommendations
21 for improvements to competition where we consider that they may be required.

22 The draft report sets out some preliminary views on the state of competition in the
23 grocery sector and it raised a number of options for recommendations that we may make
24 in our final report. We've been greatly interested in the comments in submissions that
25 we've received, and we thank you all for the time that you put into that. We also really
26 enjoyed the discussion yesterday in our first insightful session.

27 The purpose of this conference is to give those who have submitted an opportunity
28 to speak further on these submissions and for us to probe a little more those issues that
29 are of real material impact for our final report. We don't intend to cover everything that
30 was covered in our draft report. It also gives you each a bit of an opportunity to get a
31 greater understanding of the perspectives of others and to share those perspectives.

32 We've divided the conference into a number of sessions thematically, essentially.
33 Yesterday we discussed the nature of the competition sector and today we'll talk about
34 pricing and promotional practices, loyalty and unit pricing.

35 We'll run until 10:45 and then we'll take a morning break and then we'll resume at
36 11:15 and run through today to 12:30.

1 We'll then resume the conference on Tuesday after the long weekend and discuss
2 issues affecting suppliers, before we move through the rest of the agenda which is
3 available on our website.

4 Please bear in mind that the conference isn't the last opportunity for you to
5 contribute to our market study. We also have asked for submissions following the
6 conference, and we've asked for those comments to be submitted by the 23rd of
7 November. We'll also have some additional questions for parties, we imagine, and we'll
8 contact you in relation to those so that we can gather more information before the end of
9 the year to work towards the provision of our final report, which is due on the 8th of
10 March next year.

11 I just want to spend a few minutes recapping for those who weren't here
12 yesterday just how these sessions operate in an online format. If you have any questions
13 about the sessions or issues that you'd like to raise, then please do send them through to
14 our email address at marketstudies@comcom.govt.nz and we'll try to get back to you as
15 soon as we can.

16 If you have any additional documents that you haven't already provided to the
17 Commission that you'd like to provide relating to any of the matters that we're discussing,
18 they can also be either sent through in that way or you can contact our staff and arrange
19 for those to be sent to us. Please make sure that you indicate clearly who the documents
20 are coming from and the session that they're related to.

21 The discussion in each session will be chaired by one of the Commissioners all the
22 way through the conference. Other Commissioners and staff may also have questions, but
23 we ask that the discussion is fed through the Chair of the session at all times just to
24 maintain the online format in an orderly way.

25 The conference is also run in a webinar format and that means that if you were
26 asked in advance of the session whether you would like to contribute to the session, you
27 will have been joined as a panellist and you can readily and immediately comment on
28 issues or answer questions that are put to you. If you indicated that you would prefer to
29 attend as an observer only, then you've been registered as an attendee of the webinar.
30 But we don't want that to prevent you from commenting on issues that arise if you'd like
31 to. Whether you're a panellist or an attendee, if you raise your hand in relation to any
32 matter that you'd like to comment on, and by that, I mean using the Zoom "raising hand"
33 feature, if you're in the attendee room, our team will send you an invitation to join us as a
34 panellist so that we can receive your comments on the matters being discussed.

35 When you first speak at each session, we'll just ask you to briefly provide your
36 name and organisation that you're from for the purposes of our transcription service and
37 so that others attending the conference can readily identify you, especially if you are
38 attending for the first time. In this way we hope that we'll be able to facilitate discussion
39 and hear from everybody interested in any particular matter, but if time or technology
40 doesn't allow for that, I'd just emphasise that we do welcome your comments by way of
41 follow-up written submission or offline private discussion, if that works best for you.

1 There's quite a lot of material to cover in the conference, so we also encourage
2 you to contribute matters that are either new that haven't been provided in submissions
3 or commenting on submissions and issues and questions that are being raised in the
4 conference. You can take that we have read all of the submissions provided to us and
5 there have been many, and we'd like to keep the discussion as focused as possible and we
6 don't required repetition of those submissions in this forum.

7 You'll note from your Zoom feed that the sessions are recorded. You're asked to
8 speak if you have a headset on, or if you don't have a headset on that will be fine, please
9 make sure that you are near to your microphone when you speak and that you speak
10 directly into the microphone and for our transcription service just if you could speak
11 normally, but reasonably deliberately so that our transcriber can pick up what you're
12 saying clearly. If you're in a room with others, we'd just ask that you speak one person at
13 a time, that you minimise background noise near the microphone such as shuffling paper,
14 that sort of thing as well, so that our recording is as clear as we can get it.

15 And finally, I just want to make sure that members are aware also that we have
16 some members of the media present at the conference. As I'm sure you're aware, this has
17 been a matter of significant public interest and we welcome media. We have asked that
18 the sessions are not recorded in any way, but a transcript of the sessions will be posted on
19 our website as soon as we can manage that. We won't be publishing a copy of the
20 recording itself.

21 Thanks very much, I think those are the housekeeping matters out of the way for
22 this morning and we'll move onto our session discussion pricing and promotional
23 practices.

24 I'm going to Chair today's sessions but I'm sure other Commissioners will have
25 questions and comments as well. The first of the two sessions is going to focus on pricing
26 and promotion and the second on unit pricing.

27 In relation to pricing and promotional practices, you'll be aware that we expressed
28 a preliminary view in our draft report that the use of an array of different promotional
29 practices in their complexity and their very frequent use in the grocery sector, particularly
30 often in combination with one another, could affect competition by making it harder for
31 consumers to accurately assess the value of the offer being provided to them and make
32 choices that really best reflected their preferences. Our view at this stage is that these
33 issues affect the ease with which consumers can assess the offers between competing
34 retailers as well as between products within any particular store. It also can affect, not
35 necessarily transactions entered into on any particular occasion, but the development of
36 perceptions of value over time which can affect competition between banners or between
37 retailers.

38 We raised as a preliminary recommendation that grocery retailers could improve
39 the clarity of their pricing and promotional practices by simplifying and reducing the
40 number of promotional mechanisms that were used, and also by reducing their use in
41 combination with one another to make it easier and less complex for consumers to assess
42 the value on offer and to make purchasing decisions. We also indicated that we thought

1 those changes most likely could be made voluntarily, having regard to the findings of our
2 report. But regulation might be appropriate in the longer term.

3 There is some disagreement between submitters as to whether consumers might
4 find a proliferation of offers to be confusing or to disrupt their decision-making processes,
5 so we want to briefly hear about submitters on that issue today. But to some extent,
6 submitters have also agreed to disagree on that point, and we've heard from the major
7 grocery retailers that they intend to make changes and indeed may have already been
8 making changes before our draft report was issued to the way that they offer promotional
9 pricing to consumers. And the need for those changes are agreed by Consumer NZ. The
10 Food and Grocery Council has also submitted on that point and as have others with a
11 consumer perspective. Some have expressed the view that we shouldn't rely on voluntary
12 change and that mandated change may be more desirable. So, this is an issue that we
13 want to primarily focus on this morning.

14 And then we'll move on to discuss loyalty programmes. We talked about loyalty
15 terms and conditions in our draft report and again the complexity of those terms and
16 conditions and we questioned whether consumers really understand what it is that they
17 are signing up to often in relation to loyalty programmes and also whether they truly
18 understand the offer of value being provided to them through the benefits of loyalty
19 programmes.

20 We've been really grateful for the submissions on those topics, but we didn't
21 consider there were particular issues we needed to canvas today in relation to that point,
22 but welcome comments if others disagree.

23 In the draft report we also identified that loyalty programmes can give rise to a
24 couple of different forms of price discrimination. First, shelf discounts might discriminate
25 between shoppers who are prepared and able to sign up to loyalty programmes. And
26 second, personalised and targeted offers that rely on membership of loyalty programmes
27 and utilise consumer preferences to present offers might have a similar price
28 discrimination affect.

29 We didn't consider that there was evidence that that was providing any harm to
30 consumers in the NZ grocery sector at present and we didn't make a recommendation on
31 that topic. But nevertheless, a number of submitters continue to feel strongly that loyalty
32 programmes do facilitate a former price discrimination. And some of them have told us
33 that discrimination through the use of loyalty programmes, in particular, can exclude from
34 lower pricing those consumers who most need it or need access to it, and we want to
35 further explore that relationship further in our discussion today.

36 So, I'll conclude that overview of this session and I'd like to just call upon perhaps
37 Consumer NZ first of all just to provide some introductory and opening comments on their
38 perspective on the issues of pricing and promotions that we covered in our draft report.

39 **Mr Duffy:** Thank you Chair, Jon Duffy here with Aneise Gawn from Consumer NZ. Thank you
40 for the opportunity to make introductory comments.

1 Look, we agree with the Commission's findings that pricing and promotional
2 strategies used by supermarkets make it difficult for consumers to compare products and
3 assess value for money.

4 We think these strategies are deliberately designed to create confusion. And our
5 most recent supermarket survey, 60% of consumers surveyed, strongly agreed that they
6 were more likely to buy a product if it was in special and assumed it would offer better
7 value for money. However, many also questioned whether the advertised discounts were
8 offering real savings. 74% agreed to strongly agreed that specials have become so
9 common, they weren't sure the savings were genuine. This shows that the majority of
10 consumers are conscious that they're being duped, but due to a lack of alternatives,
11 there's very little they can do about it.

12 Our survey also showed labelling for specials are problematic for many consumers.
13 63% agreed that these labels could be confusing, making it difficult to work out the actual
14 savings. And I think that's been acknowledged by the industry as well.

15 In addition to our survey findings, we receive regular complaints about
16 supermarkets pricing and promotions. The most common complaints we receive are
17 about consumers being charged more than the advertised price at the checkout. Price
18 hikes, particularly during lockdowns. Products on shelves not matching the shelf labelling
19 and online shopping issues including weight discrepancies, underdelivered items,
20 unwanted substitutions and substitutions that cost the shopper more.

21 It's important to note that most of the behaviours we're concerned about here
22 result in customers being misled and are already illegal under the Fair Trading Act.
23 Indeed, the Commission has taken regular prosecutions over the years against the two
24 major players. Regrettably, this has not improved compliance and speaks to an industry
25 that, despite its public stance, appears comfortable misleading consumers using scale as a
26 justification. It appears to treat Court imposed penalties as a cost of doing business. In a
27 truly competitive market, this stance would be untenable.

28 As we noted in our comments yesterday, we do not agree that the required
29 improvements and behaviour can be achieved by relying on supermarkets to voluntarily
30 amend their pricing practices as has been put forward by some participants in the
31 industry. They should have already taken these steps and not waiting for a government-
32 ordered inquiry to do so. In our view, after all, we're talking about basic Fair Trading Act
33 compliance here. It's our view that without regulatory intervention and permanent
34 oversight, the industry will revert to type following this market study. They've had their
35 chance and failed at voluntarily compliance.

36 Having said that, and although it should not be necessary, the development of a
37 Consumer Information Standard could assist in making the application of existing legal
38 requirements clearer to the industry by setting basic minimum requirements for price
39 displays and promotions. And we look forward to expanding on those thoughts as we go
40 through the morning.

1 Turning quickly to loyalty programmes, in our view, these programmes are a form
2 of price discrimination, and we have significant concerns about their use being effectively
3 mandatory. Supermarkets used to offer discounts to any customers, but now, some
4 discounts are only offered to loyalty programme members who swipe their cards and
5 relinquish their personal data to the supermarkets. In a highly concentrated market, we
6 think linking access to discounts to the mandatory collection of personal information is
7 unfair and penalises consumers unwilling to trade their privacy to increase industry
8 profits. The contents of family's weekly shop can reveal highly sensitive information
9 about the individuals in that family. The vague nature of some industry participants'
10 privacy policies leaves a great deal of uncertainty about the use that data is being put to.
11 Consumers who have no choice about where to shop, or who are limited in what they can
12 afford, are effectively required to join the stores' loyalty programme to obtain groceries at
13 a reasonable price.

14 We also receive complaints about how loyalty programme discounts are
15 advertised, cause it's not always clear what the price is if you don't have a loyalty card.
16 Price tags prominently display one price, but the regular price is in a much smaller font,
17 that is often too small for people to see. Also, the way prices are displayed, makes the
18 discounted price look like any other discount and one available to anyone. So, a product
19 that is a 'Club Deal' one week, requiring you to swipe your card, might be labelled a 'Saver'
20 next week, even though the price hasn't changed.

21 We therefore consider intervention is required to prohibit mandatory loyalty
22 scheme membership resulting in price discrimination, requiring supermarkets to ensure
23 member only discounts are clearly labelled is again already required by law, and does not
24 address the fundamental problem that these discounts constitute an unfair practice.

25 Thank you and we look forward to discussing these points further as the morning
26 goes on.

27 **Ms Rawlings:** Thank you Jon. I might call on Woolworths, perhaps first of all, just to provide
28 some introductory comments as well.

29 **Mr Gluckman:** Thank you, and mōrena and tena koutou katoa. Ko Josh tōku ingoa, so I'm Josh
30 Gluckman from Woolworths NZ, Director of Strategy and Transformation and thank you
31 again for the opportunity to be here today.

32 We certainly take the topics of pricing promotions and loyalty schemes very
33 seriously because they really matter to Kiwis, therefore they really matter to us. We know
34 if we don't get our pricing and promotions right, our customers will shop elsewhere and as
35 we discussed yesterday, we see that with the high levels of cross-shopping that does
36 occur.

37 In our experience Kiwis are incredibly price savvy. And the extensive pricing and
38 promotional activity that occurs in our market reflects high levels of competition in action.
39 For example, we have around 6000 products on special in a given week and this
40 represents very active competition by retailers and by suppliers to get their products into

1 customers' baskets. Just as this is a feature of grocery markets all around the entire
2 world.

3 Our Onecard loyalty programme also delivers significant value to our customers
4 and we're happy and obviously expecting to engage more in discussions around loyalty
5 today.

6 For Woolworths NZ, at least, speaking for ourselves, our customers' behaviour and
7 our customer research illustrates that Kiwis have a good understand of how our pricing
8 and promotional schemes work. We've got no incentive for this not to be clear. And as
9 the documents that we've shared with the Commission to date throughout this market
10 study process will show or do show, we're constantly looking to make things even more
11 clear. So, we reject any suggestion that there is a deliberate intent to confuse here, that's
12 certainly not the case. And certainly, to the extent that further guidance or standards
13 from the Commission might help support clarity even further, or drive more consistency
14 across the market, we would certainly welcome this and we're very supportive of that and
15 again, look forward to engaging in some more discussion around the detail of that through
16 the course of today.

17 We have taken a number of steps in recent years. We provide unit pricing already
18 extensively across Countdown and we support a mandatory unit pricing standard to make
19 things clearer for shopper more broadly across the market.

20 We now offer around 4000 products per week at a low price, every day, through
21 our Great Price programme and that's about providing Kiwis with more value every day.
22 Our focus on EDLP (everyday low pricing) means that whereas once our percentage of
23 sales sold on promotion was in excess of 60%, that is now actually well under 40%.

24 We're currently rolling out electronic shelf labels to improve price integrity,
25 improve efficiency, and reduce tickets falling off our shelves. And we've also simplified
26 and strengthened our Onecard, our loyalty programme, relaunching that programme in
27 October 2020 with a simpler, stronger, more transparent and easier to understand, earn
28 currency of \$1 equals 1 point.

29 But we agree there is also room for further improvement. And supermarkets are
30 certainly dynamic environments for shoppers. And we'd really welcome the opportunity
31 to work with the Commission to develop even clearer industry specific guidelines or
32 standards in this space.

33 We also note, just on a more practical note, in the context of today's topics and
34 discussions, there may, at times, be areas where we stray into matters that we're less
35 comfortable discussing given, we're in an environment or forum with other competitors
36 here. So, where that's the case, we might just flag aspects of detail to pick up in either
37 private sessions or give some reflection to over the break. And I'm sure that's
38 understood. And we might also expect to pass around, I guess, the speakers from
39 Woolworths NZ a little bit more today than was the case yesterday. But certainly, we look
40 forward to today's session and thank you again for the opportunity to be here.

1 **Ms Rawlings:** Thanks very much Josh. And Foodstuffs North Island perhaps, Chris is that you or
2 somebody else?

3 **Mr Stewart:** Thank you Commissioner, it's David Stewart, will speak for Foodstuffs NI today and
4 we may also pass to a few other people. So, my name is David Stewart, I'm the GM for
5 Merchandise at Foodstuffs NI.

6 Foodstuffs NI is committed to improving our customer shopping experience and to
7 ensuring that our customers are able to access value by informed purchasing choices. We
8 believe that provided promotions are clearly communicated, they deliver value to
9 customers and are pro-competitive.

10 You will have seen already that Foodstuffs put together a comprehensive action
11 plan in its submission on the draft report, which included a commitment to simplify and
12 clarify our pricing and promotional practices, and also the terms of our loyalty
13 programme. This work is already underway and is being carried out across Foodstuffs
14 North Island and Foodstuffs South Island.

15 In relation to promotions, Foodstuffs is shifting more towards everyday low
16 pricing. Everyday low pricing is offered on the products that matter most to our
17 customers. This shift is an important part of Foodstuffs customer driven transformation
18 which is underway. And in addition to this, Foodstuffs is simplifying its promotional
19 practices by reducing the number of promotional types that are used in PAK'nSAVE and
20 New World. We are already engaging with the Commission on these as we look forward
21 to making it easier for our consumers.

22 In relation to our Clubcard loyalty programme, we consider the programme offers
23 genuine value to its New World customers, including through our Club Deal promotions.
24 The Foodstuffs loyalty programme is simple and easy for a customer to join. However,
25 Foodstuffs does acknowledge the Commission's finding that some of the terms and
26 conditions are not well understood by consumers. So, Foodstuffs is simplifying these
27 terms and conditions and also engaging with the Commission on this topic.

28 With respect to unit pricing, Foodstuffs uses unit pricing information extensively
29 across products in PAK'nSAVE and New World and at some of its Four Square stores,
30 which is subject to technology challenges.

31 Foodstuffs supports the development of industry-wide unit pricing to improve
32 consistency across retailers and to help consumers compare prices. Our view is the
33 Australian Unit Pricing Codes provide a sensible starting point; however, we believe some
34 amendments are required, in particular that unit pricing should apply to all retailers selling
35 groceries, including merchandise retailers, allowing of course for an exception for retailers
36 selling groceries below a minimum of floor space threshold. There should not be a
37 requirement for retailers to supply the minimum range of food base groceries when it
38 comes to unit pricing. And unit pricing should not be required for all advertised media,
39 noting that this will add potential compliance costs.

1 Similar to Woolworths, there may be parts of today's discussion where we would
2 see it as confidential. and we would look to have that in a confidential session with the
3 Commission. Thank you very much.

4 **Ms Rawlings:** Thanks very much. And does Foodstuffs South Island want to add anything to that
5 discussion?

6 **Mr Donaldson:** Yes, thank you Chair. Tim Donaldson, General Manager of Retail for Foodstuffs
7 SI. Foodstuffs SI believes that clearly communicated promotions deliver value to
8 customers and drive competition in the market. And actually, based on what we see
9 globally and within other retail sectors in New Zealand, we believe we already have a
10 simple approach to promotional mechanisms. However, Foodstuffs South Island is
11 committed further simplifying and improving clarity for our customers around pricing and
12 promotions. So, on this basis we have already engaged with the Commission in a
13 confidential manner regarding simplification of our ticketing. We believe engaging in this
14 manner voluntarily will result in a robust and quicker outcome for the customer rather
15 than introducing regulation.

16 With respect to our New World Clubcard programme, we believe that it offers
17 meaningful benefits to our customers through discounts and rewards. It's simple and it's
18 easy to join and therefore accessible to all. As this is a national programme, we are also
19 involved in the engagement with the Commission on improving clarity regarding the
20 national Clubcard terms and conditions.

21 And with respect to unit pricing, Foodstuffs South Island already uses unit pricing
22 on most products at PAK'nSAVE, New World and Four Square. We support the
23 development of standardised industry-wide unit pricing to improve consistency across all
24 retailers and help customers and consumers compare prices.

25 We also believe that the Australian Code provides an opening position to begin the
26 consultation and development process. Thank you.

27 **Ms Rawlings:** Thanks very much for that. We're quite interested, I guess, a good starting point
28 maybe, just in the range of promotional mechanisms that have been used historically in
29 the move to simplify those and, whilst we appreciate that the indication is that there is a
30 simplification underway already, we still would like to just explore a little bit further the
31 range of promotional mechanisms that have been used and the reasons, really, why you
32 might perceive there to be some benefit in a greater range of promotional mechanisms
33 versus a simplification of those yourselves.

34 So, without straying into detailed strategic information or confidential information,
35 could I start perhaps with you, Josh, just on the question of what the benefits historically
36 have been at a high level in your perspective of engaging a range of promotional
37 mechanisms and why the move towards simplification of that on your own account?

38 **Mr Gluckman:** Sure, thank you Chair. Look, I think there's nothing unique about the way that
39 promotions work in the NZ market or have worked in the NZ market are relative to those
40 used by grocery retailers all around the world. So, it's really a feature of the grocery retail
41 market to have dynamic promotional activity and lots of different mechanisms and even

1 the mechanisms that are used to get the various mechanisms are observed widely in other
2 grocery retail markets.

3 And again, that really just reflects ways that retailers and suppliers are looking to
4 compete in delivering competition for customers to get their products into their baskets.
5 And to deliver value. So, it might be a multi-buy to deliver value on products that are
6 commonly purchased in a larger quantity, or it might be a particularly hot special to drive
7 traffic into store. Or it might be a great price on a seasonal line or might be a low price
8 because a fresh item is in season or more abundant and available.

9 So, I don't think there's much that's unique in the New Zealand marketplace.

10 Certainly, for us, and again, consistent with what has been a trend in global retail
11 around the world, the move towards everyday low pricing is consistent with the desire to
12 deliver on the ability to have confidence you can trust in a retailer's prices every day, as
13 opposed to just when a product's on special.

14 Now, that doesn't mean that Kiwis aren't looking for products on special. Kiwis
15 love a bargain and they're highly engaged with the pricing and promotions. And so, it's
16 only natural then that we would meet that demand for some surprise and some delight
17 and some excitement during the shopping experience as well.

18 So, I think that's probably as much as there is to say at this point.

19 **Ms Rawlings:** Did you want to comment on that David?

20 **Mr Stewart:** Yes, happy to comment on that, thank you Commissioner. We would share a lot of
21 the thoughts that Woolworths and Josh have expressed. Our focus is really on providing a
22 benefit for the customers and we can see the different promotional mechanisms provide
23 ways for them to save more money, budget more, enable them to access special
24 occasions, enable them to access seasonal product, they can be to drive traffic. Working
25 with suppliers, there's often a different desire in terms of the level of depth of promotion
26 on the product.

27 We too are seeing a shift, as I outlined in the introductory statement, to everyday
28 low pricing where we're really working hard to provide a stable price to consumers on
29 really key important essential lines for the consumer.

30 So, I would share the view that there are many reasons that we would use for
31 them and agree with the comments that Woolworths have made. Thank you.

32 **Ms Rawlings:** Thank you. I see Sue Kedgley, can I invite you to provide some comments for the
33 National Council of Women.

34 **Ms Kedgley:** Sue Kedgley ahau, I'm from the National Council of Women and I'd just like to make
35 a couple of comments; I can't seem to start my video.

36 The first is that because the key point here is there is absolutely no monitoring, no
37 scrutiny or no transparency of supermarkets. So, we really have no idea what underpins

1 these specials or how genuine they are. What we do know is that promotion and specials
2 are a key marketing strategy for supermarkets. They're probably the marketing strategy
3 to lure shoppers into supermarkets as the gentlemen have already explained. And of
4 course, they have loss leaders, one of which is frequently used is liquor, to lure shoppers
5 into the supermarket.

6 So, it's extremely important that since this is their key marketing ploy, to lure
7 shoppers into the supermarket, it's absolutely critical that they're genuine. But in fact,
8 Consumer NZ surveys have consistently shown, as been explained, that you can have
9 products on special for months at a time and so really they become a selling, that's really
10 the selling price and they're really just a mechanism and we really don't know how
11 genuine they are.

12 I think the other point that we need to mention, which presumably will come up
13 later, is why they're so enormously attractive to supermarkets is that it's the suppliers that
14 have to pay promotions rebates to get a product on special. So, in fact, they're having to
15 discount or reduce their profits to get these specials. So, for the supermarkets, it
16 extremely lucrative for them.

17 And I think they also, supermarkets deliberately used, what we call, 'confusion
18 marketing' to have opaque pricing that makes it very difficult for consumers to compare
19 the value of products and so many products on special, that they really can't figure out
20 and as Consumer NZ has said, that undermines their creditability in that area.

21 But I just wanted to comment also on whether, if we're going to improve, and of
22 course the National Council of Women utterly supports and has done in their submission,
23 unit pricing, use of the Fair Trading Act, cause essentially, if they are misleading
24 consumers, they are breaching the Fair Trading Act with these, or potentially with these
25 ongoing specials. So, it is really important that it is underpinned, in our view, by
26 regulation and we don't simply rely on supermarkets.

27 So, I just wanted to make a quick comment on whether it should be underpinned
28 by regulation or just voluntary.

29 If I might digress for one second, I have a bit of a history in this area and in fact, in
30 2010, I wrote to the then Commerce Commission Minister, Simon Power, (this was when I
31 was a Member of Parliament) requesting a market study into supermarkets. So, I'm
32 particularly delighted that 11 years later it is actually happening. And I did so because I'd
33 done a nationwide survey of suppliers in fruit and grocery areas to supermarkets and
34 horrified at my findings.

35 While in Parliament, I campaigned for a supermarket code of practice, but also for
36 many issues such as country of origin labelling. And in every inch of the way, I was
37 opposed by the, or the supermarkets opposed regulation every step of the way.

38 So, for example, with country of origin labelling, when I presented a 36000-
39 signature petition to Parliament calling for mandatory country of origin labelling, it looked
40 like there was real traction, this might happen. So, the supermarkets said, "No, no, no
41 we'll do it voluntarily, don't worry, we do not want regulation". And as a consequence, it

1 was brought in voluntarily which was a step forward. But there's been consistent
2 breaches of it. I myself have made complaints to the Commerce Commission about, for
3 example, something that would be advertised as product of NZ and on closer scrutiny
4 somewhere you'd find that it was an Australian product. So, again, it was voluntary, so
5 there's no monitoring of it, there's not -

6 **Ms Rawlings:** I might just interrupt you there Sue if I can, because I, so we've actually moved
7 through the country of origin issue very recently, obviously, with the introduction of new
8 country of origin labelling requirements. But I think if, your comments I agree on
9 suppliers, we'll come back to that later in the conference and I also want to touch shortly
10 on the question of mandatory versus voluntarily change in recognition that we have had a
11 strong indication that changes are afoot and I think this question about whether, a, clarity
12 is required and, two whether some greater degree of mandatory requirement and
13 oversight is required. So, I'd like to come back to that.

14 But I might just turn, if I could, to Tex Edwards, who also has a comment, I think on
15 this issue and a couple of others and then we'll move on from that to talk a little bit more
16 about this question of mandatory requirements. Tex.

17 **Mr Edwards:** Mōrena, Tex Edwards ahau, I represent the people who weren't here yesterday,
18 Monopoly Watch New Zealand. Monopoly Watch New Zealand's strapline is market
19 structure matters. I'm also part of a consortium called Northelia who's looking at a
20 greenfield institutional start-up, who would be available to raise \$1 billion worth of capital
21 to proceed with a scalable third operator in supermarkets if the regulatory environment
22 came open to a third operator.

23 I have one sentence on the fundamental difference about promotions and it really
24 pertains to a market structure issue. And my hypothesis to the Commissioners this
25 morning and thank you for allowing me to speak, is my hypothesis here is: if we have two-
26 player market, promotions are used to increase margin and flush stock through the
27 bottleneck.

28 If we have six-player market, or a four-player market, then my hypothesis to the
29 Commission is if we had a four-player market then promotions are used to attract people
30 and get churn into the store. So, a promotion is used to actively go out and hug a
31 PAK'nSAVE customer or a New World customer or a Four Square customer and bring them
32 into the Countdown centre of love. Or if we're a PAK'nSAVE promoter we grab a
33 Countdown customer and bring them across. And so, my hypothesis is, that promotions
34 are fundamentally different and have a fundamentally different outcome in our two-
35 player market, point 1.

36 Point 2. This point 2 is a Northelia comment. Essentially on loyalty schemes, we're
37 going into a new world; we're going into a new style of shopping and in 20-years' time we
38 won't know the supermarkets that we have today. We'll have AI, we'll have Internet
39 fridges and data is going to be gold. It's very important that the Commission consider the
40 actual Privacy Commissioner's submission, which I thoroughly enjoyed and respected, is
41 that the data on the loyalty card should be become portable. Let's assume, or let's not
42 assume, but let's assume, as our colleagues at Woolworths said yesterday, Aldi comes in

1 tomorrow. Well then, if Aldi comes in tomorrow and Costco goes to 20 stores nationwide,
2 which it would have to go to at least 40 stores to make any impact, or some other third or
3 fourth operator came or The Warehouse came back, then this data loyalty card stuff is
4 really, really important because it segments the database, and you can work out what
5 customers you want and what customers you don't want.

6 So, my point on data portability and loyalty programmes is that that tool of why
7 you have to sign up to get the data is that there is value associated in the incumbents
8 maintaining their incumbency through data mining. Second point.

9 Third point is, and thank you Sue Kedgley, complete inspiration with your request
10 for a supermarket enquiry in 2010 and I can't speak with Sue Kedgley on the panel
11 without acknowledging the 2012 Lobbyist Disclosure Bill, which is a fantastic initiative
12 which would have helped to put a different template on the supermarket enquiry, (2012
13 Lobbyist Disclosure Bill, another day's story). Unit pricing, my third point here from
14 Monopoly Watch, is that I think its Monopoly Watch's position that we think at Monopoly
15 Watch that its –

16 **Ms Rawlings:** Tex, can I just interrupt you there. What I'd really like to do is come back to the
17 unit pricing. So, what we'll do is deal with these questions around promotional
18 mechanisms and offers and then I want to grapple with the loyalty question and then we'll
19 grapple with the unit pricing question separately. I think it helps everyone to be able to
20 hear and respond to those issues in turn if we can. Can I come back to you those a bit
21 later on? Thanks very much.

22 So, I see Giles Barker's here with some comment and I might just ask you, if you
23 could, to make a quick comment on this question of promotional pricing, in particular
24 please.

25 **Mr Barker:** Right, kia ora its Giles here from Bloomsberry, I'm based in Wānaka. I've just got one
26 very small comment, I'm concerned about the direction that the question of promotional
27 pricing is focused on. Because my understanding is, that promotional pricing is a key
28 mechanism that the two dominant supermarkets use to control the behaviour of
29 suppliers. And I don't know if that's really been addressed. The control of suppliers is key
30 to what the supermarkets do in New Zealand. I've worked with supermarkets in the
31 United States, in the UK, and in Australia, extensively over 20 years, and New Zealand is a
32 tough, tough place with a veneer of classic NZ collegiality and goodwill. But underlying it,
33 is a very aggressive position and promotional pricing, if you're not on promotion, you
34 don't sell. And people are turned off promotion to control their behaviour and to send
35 very strong messages to suppliers by the two supermarkets.

36 And I don't know if people want to say it out loud. I've been very reluctant to be
37 involved in this process. It's very dangerous to be involved, I believe, for business. And I
38 don't know why we're not talking about what promotional pricing does to supplier
39 behaviour and to the relationship, what it is. And that is that ability of them to turn you
40 off and suddenly you don't sell. I've got example, after example of how that works, and I
41 think most people here know how that works.

1 **Ms Rawlings:** Thanks very much for those comments, I think it will be really interesting to hear
2 further from you on that. So, later in the week, when we talk a bit more about supplier
3 relationships and the prospect of a code there, I think we need to loop into that
4 conversation a question about involvement with promotional practices and I see that
5 Katherine Rich also has some comments to make here and I suspect they could be along
6 similar lines. So, I might invite her to do that Giles, unless there's something else you
7 wanted to come back to? No? Go ahead Katherine, I think.

8 **Ms Rich:** Thank you Madam Chair, I agree with everything Giles said. Look, just a few short
9 points about pricing mechanisms and promotional pricing with regard to the consumer
10 impact.

11 Promotion is frenetic and relentless. Suppliers are expected to continuously
12 promote, the supermarkets demand that. They're also expected not to clash and the
13 reference to the 4000 products that might be on special at any time, retail advice to the
14 Food and Grocery Council is that while there's all this noise, there are really only a group
15 of 10, maybe 20 products that actually a part of competition in getting customers to come
16 from one supermarket over to the other.

17 My other points I would make that do affect consumers, and it's an ethical issue, is
18 that quite often suppliers will offer discounts and savings that may not be passed on. So,
19 a good example would be offering a \$1 scan, 50c of that may get passed onto the
20 consumer.

21 Giles is correct, quite often blocking suppliers from promoting is used as a way of
22 getting leverage over suppliers. And the way that impacts is consumers, is that it means
23 that consumers do not have access to buying some of their favourite brands at a lower
24 price if that's one of the suppliers that has been blocked from participating.

25 There are other issues relating to pricing and that's rejected products at a lower
26 price because they may have an impact on private label that the supermarket is interested
27 in maintaining its position.

28 And the final point is about investment buying. When you're looking at the entire
29 PAK'nSAVE model, it relies on buying everything at a promotional price and then only
30 selectively passing on those savings to consumers.

31 Some of these issues we'll be discussing on Tuesday because they will relate to
32 code of conduct discussions and the principle of fair dealings. But I thought, from the
33 consumer perspective, those are really important points for today.

34 **Ms Rawlings:** Thank you. Tim, I think you might have some additional comments in response.

35 **Mr Donaldson:** Thank you Madam Chair. Look, we're happy to make comment on some of those
36 issues that have just been raised at a later date, when appropriate. But we just wanted to
37 comment on one statement made.

1 We absolutely refute the suggestion that we loss lead on alcohol. We would view
2 that as irresponsible promotion of alcohol and we just wanted to make that comment.
3 Thank you.

4 **Ms Rawlings:** Thank you for that. Mike Chapman.

5 **Mr Chapman:** Thank you Madam Chair. I'm here representing fruit, vegetable and berry growers
6 and I realise the session on Tuesday is the session that really takes us to the next step. But
7 if I can just make two comments which I think are important.

8 The first is that any promotional pricing programme isn't just the supermarket. It's
9 the suppliers too. So, it's got to be looked as a package. And because it's got to be looked
10 at as a package, the clarity and the fair sharing of the costs, etc, do come very much into
11 that. That's clearly a matter for Tuesday.

12 The other point I thought I'd make, is there is quite a difference between dry
13 goods and fresh goods. And certainly, we'll go into that in greater detail on Tuesday. But
14 the thing with fresh vegetables and fruit, etc, is they don't last. And so, it's a very dynamic
15 market and it's very hard to, you know, have some hard and fast rules around such a
16 dynamic market. Now the price at 8 o'clock this morning might be quite different to the
17 price at 9 o'clock this morning between suppliers and the supermarkets, even with
18 promotions. So, there needs to be ability for innovation for suppliers to initiate
19 promotions and not for it to be just supermarket driven and for suppliers to have instance
20 on what is being promoted and the cost sharing of that.

21 But I think Madam Chair, we'll pick that up more on Tuesday, but I thought those
22 were important points to bring in.

23 **Ms Rawlings:** Thank you, thanks very much and good to have some additional participants here
24 today. Josh, I'll come to you and then I just want to raise just to flag where we're headed.
25 A couple of questions if it were possible perhaps for me to go after Josh to Tric Malcom
26 from Kore Hiakai, the Hunger Collective, just to address a couple of issues in the
27 submission relating to the impact of promotional pricing on lower spend or lower budget
28 consumers.

29 But first, Josh, let's have your comments.

30 **Mr Gluckman:** I only have a brief comment for the record in relation to us also not being in the
31 business of loss leading on liquor. That's all, thank you Chair.

32 **Ms Rawlings:** Thank you. I wonder, could I ask you Tric, I think you're in the panel there,
33 whether we have had some submission that – and Consumer NZ may have some comment
34 on this – but the simplification of pricing offers is supported, but I also just wondered if
35 there were any additional comments about how the use of promotional mechanisms may
36 affect consumers perception of value and particularly those consumers shopping on a
37 budget and whether reducing the number of promotional mechanisms available or
38 moving to an everyday low price is perceived as being of benefit to that particular group
39 or other comments that you might have to make there.

1 **Ms Malcom:** Kia ora tatou, ko Tris Malcom ahau, ko Kore Hiakai, Zero Hunger Collective, tōku
2 mahi thank you Madam Chair for the opportunity to speak, I've been listening quietly in
3 the background in somewhat awe of everybody as you go about this business, that's a
4 very complicated and inter-connected thing and so finding the right places to speak, I
5 think and raise certain issues can be quite daunting, I find it that way.

6 But I think for us, it's that complicatedness of the number and layers of the way
7 that specials often happen, whether its loyalty specials or whether it's the special for this
8 week. And the thing that we tried to highlight was that there are shoppers that rely on
9 the special and they don't shop when things are not on special. And so, when sometimes
10 those things get overlaid with each other, that can be quite difficult for people with a low
11 level of literacy, both in terms of their numeracy and literacy abilities.

12 And so just, we have raised some issues around that, how are those things made –
13 when people expect the sale price to be their normal price, how does that actually set
14 them up when those prices are no longer available? And we know that from the
15 behaviour of the people that we interact with, that there are a lot of people that budget
16 to the sale price as if it is the normal price.

17 And one of the things I think the Commission raised was if the sale price is so
18 common, that it actually becomes the assumed price, is there a kind of discrepancy in the
19 way that things are actually priced anyway, that if something is so often on sale is that not
20 then the normal price?

21 Yeah, that's the thing that we tried to draw attention to, and we've watched that,
22 particularly in the lockdowns, and we watched it again this latest lockdown, around
23 peoples' behaviour about when all of those specials come off and there's no guarantee,
24 people just stop purchasing and you'll see the result in the way that food parcelling has
25 gone up exponentially in this last lockdown as a consequence.

26 **Ms Rawlings:** And so, in light of that, do you consider it to be helpful to move to more of a
27 model where you have an everyday low price that is being signalled to consumers as a
28 price that is likely to apply on a more consistent basis, do you think there would need to
29 be some greater degree of education and understanding about changes in methods of
30 promotional pricing?

31 **Ms Malcom:** Yes. And there's a question for me around, so why does the price roll? So, why is it
32 that you do 2-weeks on this price and then 2-weeks on the different price and then back
33 to that price and then back to that, with a bounce? Because all that happens for the
34 consumer is they wait. If that's what they rely on, they wait till it comes back down. So,
35 what is the "real" price? And so yeah, I'm not sure education is the right thing. I think it's
36 actually for us there's a sense of what is the honest price then between those two things
37 that a consumer will behave as if one price is the real price, whether or not the
38 supermarkets believe that's the real price. So, it's about perception then.

39 **Ms Rawlings:** I think that's helpful; I mean so I think really what you're suggesting is that there
40 are people who really are treating the discounted price is the price that they're prepared
41 to pay and they're waiting for that before they are shopping for those particular items?

1 **Ms Malcom:** Absolutely and I think that, again, the important aspect of that is, what is the
2 consumer's perspective on that? Or, how is the consumer's behaviour attached to that
3 price? Not what is the intention of the price on the other side.

4 **Ms Rawlings:** Thank you, that's very helpful, thanks very much. Jon, Consumer NZ I'll take final
5 comment from you on this topic and then we might move on to talk about the question of
6 voluntary versus mandatory change.

7 **Ms Gawn:** Kia ora, I'm Aneleise Gawn from Consumer NZ, speaking here with Jon today. So, the
8 research that we've done has shown that many shoppers like to buy things on special.
9 They're more likely to buy a product on special, but the issue that we have is that these
10 special prices can be confusing. So, in our research, 63% of the participants in the survey
11 found it difficult to work out how much they were saving and thought that the price labels
12 were confusing. So, there's such a myriad of labels that they can't figure out what's what.

13 Some of the supermarkets, earlier, made comments that the supermarket
14 shoppers are very savvy, but we would disagree with that. They've been really confused
15 by different specials. We receive complaints on a really regular basis from shoppers who
16 are thoroughly confused by what they've been charged and why. They're confused by the
17 prices; they're confused by the different special signs and why they exist.

18 So, we really think there needs to be a clear set of rules, preferably in a consumer
19 information standard, about pricing and promotions to clear up these issues.

20 **Ms Rawlings:** Thank you. I think I might come back and start with you on that question about
21 how we might go about that. But just first of all I see that Mike Brooker has his hand up
22 there, we'll just take comments there from Foodstuffs North Island and then move onto
23 this second question.

24 **Mr Brooker:** Thank you very much Madam Chair. I haven't spoken yet, but my name is Mike
25 Brooker, I'm the General Counsel for Foodstuffs NI. I've been in this role for 12-years and
26 previously was an external consultant to the business.

27 Look, really good conversation, we hear the messages. We want to work with our
28 supplier community to actually get to a less promoted environment and as you know
29 we've been engaging with the Commission on that. I mean it's a hard thing to do when
30 you're in the environment that we're currently in and I think others will appreciate that
31 it's a New Zealand wide problem, that we're keen to be part of the solution for.

32 Just a couple of other comments I'd like to make. I really do reject the comment
33 made earlier that we treat penalties as part of the cost of doing business. In the time that
34 I've been with the business, which, as I said has been 12-years in the business and a lot
35 longer outside the business, we've been prosecuted once for breaches of the Fair Trading
36 Act. You'll be familiar with the case, I wouldn't be surprised if it gets discussed, we
37 pleaded guilty to that immediately. We made some mistakes, we acknowledge those,
38 there was a combination of human error and data entry, etc. We stood up to that, we
39 acknowledge it, and we want to do better. We learnt from it, and we continue to learn
40 from it.

1 We think this is a healthy debate in a healthy time to just take a pause in this
2 industry and see what we can do better, and we've made some commitments to do that.
3 We've talked about EDLP, and we've talked in confidence with the Commission about that
4 and we will continue to do so.

5 We also really value the comments from this wider group, in particular from the
6 Zero Hunger Collective. We want all of our customers to receive value in our stores and
7 that's really important to us. And we know differentiate between customers, it's in our
8 interests for all customers to shop with us and that's what we seek.

9 On Clubcard and loyalty schemes, we try to make it as easy as possible for people
10 to sign up. So, you don't need an email address to sign up for Clubcard. You can do it in-
11 store. There are no requirements to have technology to do it and then that does offer you
12 some benefits. And I guess, putting it on the table, the benefit for us in doing that is we
13 get to know and engage with our customer and it's really hard to do that when your
14 customers come in, they might pay by cash, you don't know them, they go through our
15 stores, there's plenty of them, and it's really hard to get an idea of what people buy and
16 what they buy in what groups, etc, etc. So, we have no data.

17 So, data is helpful to us, I will acknowledge that, and it gives us customer insights
18 and it gives us opportunity to refine our offers and give back to the customer what the
19 customer wants. We do engage with the Privacy Commissioner; we have a lot of
20 engagement with the Privacy Commissioner. I've spoken to John Edwards on many
21 occasions, and we do our absolute utmost to make sure that customer data and personal
22 information is protected.

23 I'll reiterate the point that we do not loss lead with alcohol. It's actually illegal to
24 promote alcohol at 25% or more off, outside of store. So, I'm sorry, but that is just not
25 true.

26 And I think we're going to get into this in a bit more detail, but the voluntary
27 versus compulsory, let's have that discussion. We have made some public and firm
28 commitments about the changes that we're making.

29 So, I'll leave it at that, but thank you for the opportunity.

30 **Ms Rawlings:** Thank you. I might actually just keep you there if we can while we move, might be
31 a convenient way to move into this question about making changes to the range of
32 promotional mechanisms. And you will have seen that Woolworths has made some
33 submission in favour of industry specific guidelines on promotional pricing.

34 So, I just wondered what your views are on providing additional guidance and
35 regulation to support the changes that you intend to make and your views on making
36 those changes within the business on a voluntary sort of basis?

37 **Mr Brooker:** Yes, thank you. I think that the challenge with regulation is it can potentially have
38 unintended consequences. We're not particularly worried about the burden regulation
39 would put on us, we're up for that. But it's just a question of getting it right, isn't it, and a
40 question of whether this industry in this particular space particularly different to other

1 industries and whether there is a real need for industry specific legislation or regulation,
2 rather.

3 So, we have committed to voluntary changes. At this stage we think there's an
4 opportunity to see that through and see the benefits of that and we know, of course, that
5 we're under a great watch from the Commission and others. But we're very committed to
6 these changes.

7 I think, what I would say in terms of that is that the Fair Trading Act, some would
8 say it hasn't been enforced specifically and rigorously enough. But it is an outcomes
9 focused piece of legislation and that's really what we're ultimately all here to do is to
10 achieve outcomes for consumers.

11 So, when you combine that it's been increased a little bit in terms of the
12 requirement for substantiation and of course we're all familiar with the requirement for
13 misleading or not to mislead, and I think it's been made more than once the point that
14 some of the behaviours that have been alleged, would be in breach of current legislation.
15 You know, if they were carrying on in the way that has been described, I agree, some of
16 the behaviours would be in breach of current legislation.

17 So, I think the tools are there. But we're committed to working with the
18 Commission to try and get a better outcome for customers.

19 **Ms Rawlings:** One of the suggestions has been, at the very least, whether we talk about it as
20 mandatory or voluntary, a need for a much more specific guidance about particular types
21 of price promotion and price display, things of that nature. Do you find it difficult to
22 navigate those requirements, do you think that that kind of guidance is missing in terms of
23 how you determine what falls on the right side or the wrong side of the existing law, just
24 focusing on the Fair Trading Act itself?

25 **Mr Brooker:** Sure. I hear what you're saying and I'm certainly hearing what others are saying in
26 this conversation, so, you know, we need to make improvement and we're committed to
27 doing that.

28 But in terms of, is the obligation unclear? The obligation is not to mislead our
29 customers, we believe that is, you know, it is a set of rules that we believe we understand.
30 We are getting criticism, I understand that. But we believe we understand that it's
31 outcome focused and it's a good measure. You know if customers are saying they're
32 being misled, then we need to have a conversation with them.

33 **Ms Rawlings:** Thanks very much for that. I'll just see whether Foodstuffs South Island have
34 anything they wanted to add to that conversation and then come to you, James Radcliffe,
35 at risk of making it a legal conversation, to begin with at least.

36 **Mr Donaldson:** Thank you Madam Chair. No, we don't have anything further to add, thank you.

37 **Ms Rawlings:** Thanks Tim, James?

1 **Mr Radcliffe:** Thanks Madam Chair, I'll try and keep it as non-legal as I can, I take onboard that
2 feedback, I think. So, we're sort of broadly in agreement with Foodstuffs North Island, at
3 least, in the sense that there's existing legislation that covers a lot of this stuff. I think
4 there's been a huge number of very valuable points raised. A lot of those relate, I think, to
5 clarity rather than consistency. And, you know, the Fair Trading Act is in place at the
6 moment, the Commission enforces that, the Commission has a set of guidelines for
7 retailers which is published on its website.

8 In terms of voluntary versus mandatory, I think we are, I guess to a certain extent,
9 in the Commission's hands. We are prepared to support any recommendations the
10 Commission makes if the Commission feels that the existing guidance that its published is
11 not adequate to do the job or is not quite fit for purpose at the moment, we'd be happy to
12 support that.

13 We think in terms, if the sort of objective I guess is a competition law objective and
14 to try and make it easier for customers to compare promotions across retailers as
15 opposed to, sort of, within retailers, then we think probably some more detailed guidance
16 is required and if that's to apply across all retailers selling the same product, which we
17 think would be necessary if the intent is to give the customers the opportunity to compare
18 the widest possible range of prices, then we do think it needs to be more specific. It can
19 be challenging to interpret and put into effect sort of quite broad guidance and an
20 example that we've given in our submission is the Commission's guidance on sort of
21 discounts and what are usual prices which says it's the price that goods are commonly
22 sold at. So, we think if a consumer information standard or some sort of mandatory
23 requirement is required, that that needs to deal with issues of definition in relation to
24 that.

25 So, what exactly is a usual price, how long does a product need to be on its usual
26 price before a special can be advertised, offered, some things of that nature. We agree
27 with Foodstuffs North Island, it can be some unintended consequences of this sort of
28 thing. So, for example, if we took on board Consumer NZ's view around ticketing and the
29 size of fonts and so on, that could actually have an impact on a move to electronic shelf
30 labels.

31 So, we do think it requires some working through, but I think we're aligned with
32 the Commission and we're aligned with Foodstuffs North Island, in fact probably most of
33 the speakers today, if the view is there needs to be a change to ensure consistency and
34 greater clarity, then we'd absolutely support that, we would absolutely work with the
35 Commission to achieve that. But we do feel that some form of detailed industry wide
36 guidance would be desirable and if that guidance is in place, we can't see why it wouldn't
37 be mandatory.

38 Thanks, Chair.

39 **Ms Rawlings:** We just explore that notion of mandatory, so the Commission offers guidance.
40 Often the Courts ultimately are the final arbiter of what these principle-based pieces of
41 legislation require and I just wonder if there were to be a mandatory set of more detailed
42 principles whether that would be how you would see that being administered I guess.

1 **Mr Radcliffe:** I guess by assumption would be, if that question is directed at me Madam Chair –

2 **Ms Rawlings:** Yes, it is, sorry.

3 **Mr Radcliffe:** - consumer information standard or something of that nature, but as I've said
4 we're agnostic, if the Commission issues detailed guidance, mandatory or not, we would
5 comply with it. Thank you.

6 **Ms Rawlings:** Thanks very much. Perhaps if we could go to Consumer NZ on this point. So, we
7 did raise the possibility of a consumer information standard in our draft report in its
8 simplest terms and in fact, no more than a sentence of that nature I think, and so this
9 question of whether that's the appropriate tool and what it might prescribe is an
10 important.

11 Can you give us some insight, Consumer NZ, into why you would support
12 mandatory requirements over voluntary? We've obviously heard your introductory
13 comments, but in terms of the more technical nature of the content and of securing the
14 kind of compliance that you were talking about. And I guess I'll just caveat that too with
15 trying to think about two separate sets of material here.

16 One is fair trading compliance you've raised as being an issue that the complaints
17 that you see indicate that perhaps there's a level of fair trading compliance that we've
18 acknowledged and said that we would look at more closely through our Fair Trading
19 Branch.

20 But also, there's a set of other things that we've talked about to do with frequency
21 of promotional offers that don't necessarily reach that threshold of breaching the Fair
22 Trading Act. And so, we're just grappling with both of those sets of material really and
23 your submission that we have some kind of mandatory control, I think, over both of those
24 areas.

25 But if you could elaborate on that, I think that will be helpful for us.

26 **Mr Duffy:** Sure, and thanks for the opportunity to do so. So, look, its actually quite comforting to
27 hear that there seems to be general consensus around the idea that greater clarity in this
28 area would be good for the industry and good for consumers, and we agree. I won't
29 labour the point I made earlier around, you know, Fair Trading Act compliance and the
30 alleged lack of it at the moment. We think a Consumer Information Standard is the most
31 practical way to provide clarity to the industry as to what the, you know, the basics of Fair
32 Trading Act compliance look like in this area.

33 They need, you know, any consumer information standard will need to be specific
34 and it may possibly they need to be even be category specific because if you look at the
35 case law and the current guidance on, for example, how long something can be on sale
36 for, it is, you know, there is a whole lot of flexibility built into those legal tests to account
37 for the type of good we're talking about. So, it might be that fruit and vege specials
38 permit a different duration to dry good specials, for example. And that would need to be
39 though through. And there's a lot of room for debate there.

1 But an added bonus of that is that it could provide clarity for other sectors. I'm
2 thinking of the Briscoes affect here, in terms of how long goods are on special for. So,
3 there could be a wider benefit to other markets as well as the supermarket market.

4 Your second question related - sorry could you repeat the second part of your
5 question?

6 **Ms Rawlings:** It was really whether you're advocating a degree of guidance or mandatory
7 requirement that elaborates on what's required to comply with existing fair trading
8 requirements, as well as, or instead of, mandatory requirements relating to the use of
9 promotional mechanisms themselves. So, there I'm getting more at the conclusions we've
10 drawn about reducing and the major grocery retailers' indication that they would reduce
11 the number of promotional mechanisms used and used in conjunction with one another
12 to simplify the information and the decision-making process for consumers.

13 So, that's a category of competitive issue that we focused on in our draft report
14 that sits outside of current Fair Trading Act requirements because we formed the view
15 that it didn't, in all cases, lead to misleading consumers so much as distorting decision
16 making which is more of a competition issue.

17 **Mr Duffy:** We might part ways slightly with the Commission there on that conclusion in the sense
18 that I think if a consumer is overwhelmed and bombarded with promotional advertising
19 in-store, they could be misled, so we would argue potentially there is a Fair Trading Act
20 issue there in some places.

21 But, where there isn't, I think, incorporating it into a Consumer Information
22 Standard would be useful cause it would effectively clarify whether it is a Fair Trading Act
23 breach or not, not to comply it would be. Failing that, then clear guidance from the
24 Commission would be useful.

25 Our preference would be ultimate clarity backed-up by enforceability, so
26 incorporating it into a Consumer Information Standard would be better for consumers in
27 our view.

28 **Ms Rawlings:** Thank you. Sue Kedgley, I'll just take a comment from you and then perhaps I'll
29 just give the major grocery retailers an opportunity to respond before we go to our break.
30 Did you have a comment, Sue?

31 **Ms Kedgley:** Yes, thank you Madam Chair. I just wondered whether a Consumer Information
32 Standard, a mandatory one, could not be incorporated into a supermarket code of
33 conduct and then therefore if you had a supermarket Adjudicator or Commissioner, one of
34 their tasks could be to monitor the consumer information standard and delighted to hear
35 that there's something of a consensus on the need for that.

36 **Ms Rawlings:** Thank you. If I go back perhaps starting with James Radcliffe, maybe, whether you
37 have any final comments in response on this point. But I'll also just add another short
38 question, and that is as to whether you have any concern that mandated and very
39 prescriptive rules for the sector could limit your capacity to compete actually and whether

1 that's one of the unintended consequences perhaps that we need to be thinking about as
2 we look at this.

3 **Mr Radcliffe:** Thank you Madam Chair. Yes, I certainly agree that is potentially one of the
4 unintended consequences of something like this and that's why I feel that it's necessary to
5 consult with the major grocery retailers and others in relation to a Consumer Information
6 Standard like this. I think the last thing that we'd like to do or that would benefit
7 consumers is sort of a lack of ability for new entrants to innovate in terms of how they
8 advertise and how they structure their promotions. So, I think that's necessary.

9 I guess in relation to the final comments, as I said, we're sort of in the
10 Commission's hands in terms of a Consumer Information Standard, if its properly drafted
11 we think that would be a good thing. We think it should apply to all retailers so I can't see
12 why a consumer shopping for, for example, a bottle of hand cream, shouldn't be able to
13 compare the price for that at a New World, a PAK'nSAVE and a Warehouse. So, in relation
14 to Sue Kedgley's comments, we would see that sitting outside of a grocery code of
15 conduct.

16 But that said, we're happy to engage on this, we're sort of agnostic in terms of
17 voluntary or mandatory. I guess we err on the side of mandatory and we think should
18 apply to all retailers with similar goods.

19 Thank you, Madam Chair.

20 **Ms Rawlings:** Thank you. Foodstuffs North Island.

21 **Mr Brooker:** Thank you Madam Chair. So, look endorse a lot of what James said. As I said
22 earlier, really engaged in this, want to get best outcomes for consumers. Being
23 completely honest, a set of rules that is very prescriptive is the easiest environment for us
24 to operate in because we know where the lines are and it's easy to stay on the right side
25 of them.

26 All I'd say though is it's an incredibly dynamic industry. There's a lot of variation in
27 the products that we sell. Some are incredibly fast moving. Others not so. And I just
28 would caution a little bit around a set of very prescriptive rules in an industry like that.

29 So, very keen to work with the industry, very keen to engage. Understand the
30 outcomes that are desired, certainly looking to reduce the amount of ticketing, the
31 confusion, the promotions, etc.

32 One little example that we do, as you well know, is comparative advertising on
33 price in our PAK'nSAVE brand. If it was too prescriptive, you could kind of potentially
34 knock that on the head. And we think that's a pro-competitive thing. So, it's just an
35 example of where this needs to be well thought through, but hear the comments.

36 Thank you.

37 **Ms Rawlings:** Thank you. And anything additional to that, Tim, from the South Island?

1 **Mr Donaldson:** Thank you Madam Chair. Look, we're absolutely up for the consultation and the
2 conversation. We do have some concerns around unintended consequences around
3 regulation, but we're happy to be part of the consultation process. Thank you.

4 **Ms Rawlings:** Thank you. I'm conscious we've gone a little over time and into our morning
5 break, but thank you everybody for the discussion this morning, I think it's very
6 interesting, I think it is very positive to see a high degree of consensus really around steps
7 that could be taken in this area and so we've got a bit of thinking to do about that. We'll
8 take a break now to 11:15 and come back into a further session, which is focused on unit
9 pricing. But I've taken it upon myself to judge the timing a little bit and I think we'll just
10 start at the beginning of that session with a couple of issues relating to loyalty
11 programmes that we wanted to cover which is really as I flagged at the beginning around
12 the scope for price discrimination and just addressing those comments in a little bit more
13 detail and then we'll move into discussion of unit pricing for the bulk of the session.

14 So, if we can see you back here at 11:15 that would be excellent and I'll just remind
15 everyone to turn off their microphone in particular, but probably also their camera during
16 the break. Thank you.

17

18 **Ms Rawlings:** Hello, welcome back everybody, thanks for the break and as I indicated before the
19 break, we'll just spend a couple of minutes now on the question of loyalty programmes
20 and segmentation of groups of consumers if we can. And then we'll focus most of our
21 discussion through to 12:30 on unit pricing.

22 So, just to recap on the loyalty issue. We dealt with the question of terms and
23 conditions for loyalty and disclosure of data practices in particular in our draft report and
24 we've had submissions on those matters and our view is that we don't need to focus on
25 those issues further today.

26 But we also had a number of submissions relating to the fact that loyalty
27 programmes may appeal and those who sign up to loyalty programmes may fit more in a
28 category of a more affluent or higher spend consumer and that those on a budget or with
29 lower spends, may not access loyalty programmes and that they may, in turn, not access
30 the discounts that are available and the offers that are available through loyalty
31 programmes. That included a recommendation from parties such as Consumer NZ and
32 Christians Against Poverty recommending that the major grocery retailers be prevented
33 from targeting discounts to specific discounts to loyalty card holders only.

34 I just wanted to explore that issue a little bit further and perhaps start with
35 Consumer NZ and maybe just elaborating on your position in respect of loyalty
36 programmes discounts and whether you can tell us a bit more about the effect that you
37 think those discounts have on consumers and how you weigh, I guess, the benefit versus
38 those disbenefits that you've identified.

39 **Mr Duffy:** Thank you Chair. Well firstly, it's really the mandatory nature of membership of a
40 loyalty scheme that has us concerned. We don't have a concern with loyalty schemes
41 where it is a viable option to get access to good pricing not to be a member of a loyalty

1 scheme. So, I think it's important for us to be clear at the start we're not saying loyalty
2 schemes per se are discriminatory or problematic.

3 What we see – and this was particularly highlighted, I think, when, through the
4 public backlash that occurred when New World made its Clubcard compulsory, (I know
5 there's contention around this) but basically with no notice to consumers. And we were
6 receiving multiple complaints from consumers who had got to the checkout, expected the
7 usual practice of having the checkout operator swipe the checkout operator's card and
8 then to receive those discounts.

9 They were pretty put out that they weren't entitled to those discounts and
10 obviously asked the question, why. And then it really put membership of that loyalty
11 scheme under the microscope, and it will be interesting to see on the other side, (I'm not
12 aware of any data on this, Foodstuffs would hold it) but you know, whether they saw a
13 spike in uptake of their loyalty scheme. I imagine that they did because consumers want
14 to get access to these discounts.

15 But the backlash that we saw was consumers being really concerned about what
16 they would be giving up by becoming a member of that loyalty scheme, and I'm sorry I
17 don't mean to single Foodstuffs out, it's just that there was this event that set consumers
18 in motion to complain, I guess, recently. So, consumers contacting us were worried about
19 what they would be giving away, what use Foodstuffs, in this instance, would be making of
20 their data. And we need to appreciate that, you know, the contents of a family's weekly
21 shop is actually pretty intimate data. There's, you know, there's a lot that can be revealed
22 about you as an individual or as family through your weekly shop. And consumers need to
23 be able to trust that if they are being forced to join such a scheme, that their data is being
24 handled correctly.

25 And kind of a secondary concern that we have, and I realise the industry,
26 particularly Foodstuffs, is addressing this and have noted it before, but the vagueness of
27 their terms and conditions, their privacy policy, around what use they're putting that data
28 to, leaves the door wide open to further commercialisation of that data and from what
29 we've heard from consumers, there is a lack of trust around the use that that data is being
30 put to.

31 In terms of the discriminatory nature of these policies, we don't see why you
32 should have to trade away your privacy rights to get a reasonable price for your groceries.
33 And again, the Foodstuff example showed that consumers were used to receiving those
34 discounts and when those discounts were asked to be traded away for data, the
35 complaints we received showed that consumers, at least the complainants to us, were
36 objecting to that trade and didn't see it as a fair trade.

37 In terms of consumers in a lower socioeconomic bracket, again they may feel that
38 there is no choice. I'll flip that on its head, it may be that, for consumers in a higher
39 income bracket, they have the luxury of choice. They have the luxury of saying, "Actually I
40 will hold onto my privacy in this instance, and I'll pay a higher price and I understand that
41 bargain". For consumers who are more price conscious and rely on those discounts, they

1 do not have that luxury and we feel that that could amount to a degree of discrimination
2 in some instances.

3 **Ms Gawn:** I'd just like to add, in terms of our research, we did a nationally representative survey,
4 as you know, and we found that 31% said that they couldn't get an advertised special
5 price because they didn't have the supermarket's loyalty card. So, people who don't want
6 to join up are certainly missing out on these prices.

7 **Ms Rawlings:** So, in our report we talked about three different benefits, and one was the sort of
8 Club Deal/Club Price that you obtain by using your card at the checkout. And the others
9 were commonly the accumulated rewards, so your voucher for \$10 or \$15, whatever it
10 might be, or other benefits. And the third was the capacity for personalised offers to be
11 made; personalised discounts.

12 So, I take from what you're saying, that it's really the use of the loyalty card, when
13 you say "mandatory" I mean obviously it's not mandatory in that consumers don't have to
14 join, (it's not a membership scheme), they don't have to join to shop instore. But I take
15 what you are saying to be that it's the requirement that you belong to the loyalty scheme
16 that you use the card to obtain the Club Deal or the Club Price, that is the issue that you're
17 taking.

18 Whereas the choice to join up and acquire accumulated rewards is a less of a
19 concern to you. Is that a fair way to put it?

20 **Ms Duffy:** Yeah, from what we've seen, the accumulative rewards are kind of neither here nor
21 there to most consumers, they are looking for that immediate price discount, rather than
22 the accumulated rewards.

23 **Ms Gawn:** Again, our research has shown that loyalty programmes don't rate highly in terms of
24 the list of concerns and the list of things that consumers take into account when they're
25 going to choose a supermarket or going shopping.

26 **Ms Rawlings:** And why do you think that might be?

27 **Ms Gawn:** Well, they're more concerned about convenience and overall price than the potential
28 small rewards that they may get. And they're also concerned about having to give up
29 their data of course.

30 **Mr Duffy:** And if you look at actually the amount that you need to spend, we have done some
31 analysis, I don't have it to hand, but you know, you need to spend many thousands of
32 dollars before a reward is available. So, I think consumers are alive to that and it's the
33 upfront discount, based on what we've seen, that they're attracted to, not the actual
34 rewards.

35 **Ms Rawlings:** Thank you. I think there are others also who have made submissions on this point
36 about loyalty really being more accessible, if you like, to higher spend or benefiting higher
37 spend consumers. I think Christians Against Poverty have submitted on this point, we
38 don't have them on the panel here today, but I know, I think they're in attendance, if you
39 had further comment on that, we'd love to hear it at some point.

1 I might just ask again, Tric Malcom, if you have any comment on the question of
2 access to loyalty programmes and loyalty discounts for consumers, whether there's
3 anything you wanted to add to Consumer NZ's comments if you're still online there?

4 **Ms Malcom:** Kia ora anō, Tric Malcom from Kore Hiakai Hunger Collective. I don't think we do
5 have anything to add except that for the people that we engage with, loyalty programmes
6 don't feature highly for them in what determines their behaviour in where they shop.
7 Low price does. And I think the other thing I didn't mention last time, but I would that for
8 those on lower incomes, I think, and I don't know if that's information that would be able
9 to be extracted, they are more likely to do a main shop rather than lots of little shops
10 because transport is the other thing that sits alongside price. Transport and price
11 determine how they shop. Kia ora.

12 **Ms Rawlings:** Thank you. I see Alan Botica has his hand up there for some comment on this
13 topic.

14 **Mr Botica:** Kia ora, tena koutou katoa, ko Alan Botica tōku ingoa, ko Botica Butler Radon te
15 umanga, here on behalf of Monopoly Watch. There seem to be some sensitivity in the last
16 session about the issue of alcohol as a loss leader. And the question really is, what can I
17 buy it for? And if just went online and looked at my local supermarket, I can buy bottles of
18 one particular brand at 20% less than I can buy them in the adjacent Liquorland.

19 So, how is that? It's not that the supermarket is selling it at below what it costs.
20 The supermarket is buying wine and selling wine at a premium price and getting good
21 margin for that and the alcohol supplier is selling them the beer at a lower cost. So,
22 effectively to the consumer, they are able to buy alcohol from the supermarket at a lower
23 price because the supermarket is getting the benefit from the additional sales or the
24 additional revenue going to the supplier from the wine. And that answers the question as
25 to why there is a sensitivity around the idea that it's a loss leader. Technically it's not, but
26 the effect is the same. Thank you.

27 **Ms Rawlings:** Thanks for your comments. Anybody else wanted to comment on the question of
28 access to loyalty or distribution of the benefits of loyalty. Nick Hogendijk, I think.

29 **Mr Hogendijk:** Good morning, thank you for having Madam Chairperson. A couple of things that
30 stand out to me and this is, first of all, the use of loyalty data and promotions are actually
31 intrinsically linked. I think there is a real concern here. If I were a retailer hearing some of
32 these conversations, I'd be quite concerned. And I think they have a right to be.

33 If you restrict too much around how they promote and the vehicles they use to
34 promote, you're actually going to harm the consumers and the shoppers' ability to get
35 products at the right price.

36 So, under a current duopoly situation or a two-business ecosystem environment,
37 promotions aren't necessarily used as actively as they should be for the benefit of
38 consumer. But when you start to look at three, four, five and six retailers in the market
39 who are all competing on like for like scale, actually promotions are a very, very powerful
40 mechanism for retailers that benefit the consumer.

1 So, I think we need to be careful with that and I think there is an opportunity there
2 for not being too restrictive to make sure you're in the best interest of the consumer, but I
3 do think, and John Duffy referred to this when he said, you know, it might be category or
4 department specific in terms of the approach to any promotional standards employed and
5 that would also be accurate. Because fresh produce is different from dry grocery, is
6 different from alcohol, its different from tobacco, etc. And so, there are different
7 legislations that are attached to some of those categories as well as there are different
8 mechanisms that are used to activate those and based on expiry dates and all manner of
9 reasons.

10 The more pressing issue for me is around how promotions are used by retailers
11 and the process that starts from dealing with the vendor through to getting to the
12 consumer. And we'll talk more about that on Tuesday, cause promotions are largely used
13 as a margin driving exercise by the retailers in the New Zealand market at the moment.
14 And that's because they can, it's not, you know, if you had the opportunity to do it, you
15 would too. And so, you know, there is a strong level of influence in many instances that is
16 applied by retailers towards suppliers. And I think it's more transparent with Woolworths
17 than it is with the Foodstuffs business in the way they're operated, and I think that's
18 because there are similar practices across the ditch for that business. But again, in a four
19 to six retailer market, it starts to change the reason and the "why" you promote and how
20 you deal with your vendors.

21 The last part for me that links into that is the loyalty data. The loyalty data is a
22 revenue stream for retailers on two fronts. One, it is a revenue stream because it lures
23 customers in and they think they're given special deals, there is a fear of missing out, it's
24 almost weaponised if you like, to be able to get consumers and shoppers into the store.

25 And then there's the suppliers paying for the benefit. And they do that in a few
26 ways. They do the payment for the access to promote through a loyalty programme, so
27 being associated with it. They pay to provide points as a top-up in many instances for
28 promotions on their brands that are exclusive to those consumers. And then they also pay
29 to access the data. And that's to understand who their shopper and consumer are related
30 to brand X or Y that they might have in their portfolio and potentially that of their
31 competitors as well.

32 But it doesn't translate to consumer benefit, it translates to a deeper level of
33 understanding, and I think the privacy concerns and how that data is used, is actually quite
34 important and the cost structures that sit behind it, as well, need to be considered in this.

35 Thank you.

36 **Ms Rawlings:** Thanks very much for those comments. Hans Maurer I think from United Fresh, is
37 it?

38 **Mr Maurer:** Good morning, yes, I represent United Fresh, but I'm going to make a comment in a
39 private capacity, from a different life.

40 30-years ago, I was the project manager to establish what was then called the
41 Onecard, it was a Foodtown Card. Foodtown being the part that is now Woolworths NZ.

1 And at that time, the reason for establishing the card, the reason for establishing the
2 loyalty programme was the supermarket company I worked for wanted to get out of
3 having to constantly run promotions at the deep cut level. So, we thought, naively at the
4 time, that by having that card system, the loyalty card system, that we could actually
5 migrate our shoppers. And the short answer is, it wasn't possible because we had to learn
6 that we had to actually not just us segmenting our consumers, but our customers were
7 coming into our stores, there's a segmented population and different parts of promotional
8 strategy was applying to different customer segments. So, that didn't work.

9 The second point I want to make is that I've heard lots this morning about retailers
10 being told, you know, bad boys, you're promoting too deeply, and we need to get away
11 from that. And consumers are expecting discounts and deep cuts. But at the same time, if
12 you take away the ability to market and manage their brands, then consumers are going
13 to miss out ultimately.

14 So, that's my two points worth of comments for here.

15 **Ms Rawlings:** Thank you very much for that. We'll got to Woolworths, Josh.

16 **Mr Gluckman:** Thank you Chair, and I might focus specifically on loyalty member discounts and
17 I'm mindful we also want to spend some time discussing unit pricing.

18 I suppose just some comments from a Woolworths NZ standpoint. We have over 2
19 million Kiwis who are members of the Onecard programme. It's clearly very easy to access
20 and easy to join and its participating in by Kiwis from all walks of life and they receive
21 significant value from participating in that Onecard programme, whether that's from
22 members only discounts, whether that's form rewards earned in the form of grocery food
23 vouchers for example for every dollar spent. But also, importantly for better ranging
24 decision that we make through more email communications that are more relevant to
25 them. Through better design of promotional campaigns, through a better design of store
26 formats and propositions, etc. So, there are a number of benefits that are provided
27 through participation.

28 And of course, it's important to note you don't need to have a loyalty card to be
29 able to access low prices at Countdown. And you don't need to be able to, you don't need
30 to have a loyalty card to be able to access low prices more broadly in the market.

31 PAK'nSAVE, FreshChoice, SuperValue, Four Square don't even have loyalty
32 schemes and similarly new entrants to the market such as Farro have been able to readily
33 establish loyalty schemes.

34 But speaking for Countdown, I guess, customers tell us that one of the things
35 they're looking for in a loyalty programme are members only discounts. And for a large
36 number of Kiwis, loyalty programmes are a driver of store choice. Although similarly there
37 are other drivers of store choice for other shoppers. So, it's only natural we offer club
38 prices as part of our rewards proposition and that's something that's commonly observed
39 around the world. You know, Tesco's Clubcard, there are many, many other examples
40 where members-only discounts are a feature of grocery loyalty schemes.

1 And so, while, Club Prices, which are what we call our members only discounts, are
2 important, we also make sure we're offering affordable access to groceries across the
3 board. So, for example, in a given week we'll have 6000 products on special, as I've
4 mentioned. We'll have 4000 products on a Great Price, which is the low price every day.
5 And we'll only have around 1000 members only Club Prices. And those prices can be
6 accessed through a registered Onecard, but they can also be accessed without even
7 registering your Onecard, meaning you don't even have to provide your data if you don't
8 want to.

9 And so, the situation might be different if we were requiring a Onecard to be
10 swiped for access to all specials or Great Prices and we were requiring your registered
11 details as part of this, but that's very clearly not the case for what we do at Woolworths
12 NZ. And I think so some of the statements that have suggested that there's kind of this
13 mandatory requirement certainly aren't correct. So, in our experience Club Prices are
14 good for customers and our customers certainly tell us as much and that's a common
15 feature around the world.

16 Thank you.

17 **Ms Rawlings:** Thank you, and David Stewart for Foodstuffs NI.

18 **Mr Stewart:** Thank you Madam Chair. From Foodstuffs' perspective I think there's a few points
19 we would like to make.

20 I think, firstly, the first point is that we don't believe it creates a material
21 disadvantage for New World customers. Our data shows that Club Deals are applied on
22 average to less than 10% of the products that are in our store in a given week. And so, we
23 see that as a smaller portion of the other promotional activity that goes on in the store.

24 We'd also point out that customers can and do shop promotions, other
25 promotions in New World as well as the ability to shop, as Josh alluded to, in other
26 banners and particularly we have PAK'nSAVE and Four Square where customers are able
27 to shop, and particular customers are able to shop for very good prices at PAK'nSAVE and
28 there are no loyalty programmes in Foodstuffs North Island in those banners.

29 The next point is, we would say that its very simple and easy to join, so there are
30 not barriers to joining, including an ability to sign-up on the day, in the moment, if the
31 customer would like to access the products.

32 I'd also just like to make the comment back to the earlier statement around
33 everyday low prices. So, we have a growing a number of everyday low prices which are
34 creating good prices on products that are important to our customers every day. So, that
35 is, also, they're always available and it's not a Club Deal so it doesn't relate to the loyalty
36 scheme.

37 So, in summary, we feel that and the fact that loyalty programmes are widely used
38 to across retailers in New Zealand, we're comfortable that there's no discrimination for
39 customers.

1 Thank you.

2 **Ms Rawlings:** Thank you David. Tex, I think you've got a couple of comments on this issue and
3 then we'll move on, I think, to unit pricing.

4 **Mr Edwards:** Thank you Chair. If I could just share a few observations of where we're going with
5 loyalty cards. Today, they're physical cards and they sit in your wallet. Tomorrow, we're
6 having our phone slot into that lovely little basket that some of the supermarkets have
7 mobile phone carriers for you. And tomorrow we're having a financial incentive to turn
8 location-based services on, on my Onecard app, or today my Sainsbury app or my
9 PAK'nSAVE app.

10 So, essentially, I'd just like to reiterate the requirement for vigilance with the
11 Commission on how we study loyalty programmes. Because when we reach out to the 1-
12 year, 5-years, 10-year future, we've got the location-based services app turned on. We've
13 got the mobile phone in the that specific carrier that some of the supermarkets now have
14 for your mobile phone. And the details are, if you look at it, I think it's section 56, but I'll
15 stand corrected, but in the terms and conditions you allow their store to video you, cause
16 they have their security cameras on. So, we're having a reading that Mrs Jones or Mrs
17 Paru, they're reading the premium wine section in detail and then picking up their
18 vegetables very quickly, they won't tempt on Thomas the Tanks, you've actually got
19 consumer data that on an AI perspective is overwhelmingly a barrier to entry.

20 And my point here is the future of loyalty cards needs to be looked at by the
21 Commission as well as today's. Thank you.

22 **Ms Rawlings:** Thanks very much for those comments too, I think we agree that loyalty is a topic
23 in of itself, although we've assessed it both in this study and in the fuel study as well. So,
24 we're grateful for the insights on these reasonably narrow aspects today.

25 Let's turn to unit pricing, a little belatedly for our last session of the day today.

26 As I outlined at the beginning, we addressed the question of unit pricing in our
27 draft report in chapter 7. It's not currently mandatory in New Zealand like it is in Australia
28 and in the EU, but nevertheless we observed that the major grocery retailers use unit
29 pricing to some extent. But we identified some concerns about consistency of its use and
30 the clarity of the information provided in unit pricing and in particular varying sizes of font
31 size and what have you.

32 So, that meant to us that consumers had less scope to actually obtain the benefits
33 that might otherwise be available to them from unit pricing to compare prices both
34 instore but between stores and to build this perception of value over time which we
35 consider to be equally if not more important to the competitive process as we do the price
36 comparison between products in store albeit a different kind of competitive process.

37 We thought that improved unit pricing could assist consumers and we proposed a
38 Consumer Information Standard to implement unit pricing in NZ and to require things like
39 a consistent use of units across products, similar products that are prominent and clear
40 display of the unit price. And we have had some really broad support for those

1 recommendations, both from retailers and from consumer advocacy groups, Consumer
2 NZ, but also many others.

3 So, in this session I wanted to really focus on the potential design and scope of any
4 unit pricing regulation and talk about that in a little more detail. And also, the potential
5 compliance costs of the introduction of unit pricing and who it might apply to and whether
6 the compliance costs affect to who and how it might apply.

7 There is a line, I think, that we need to draw here between keeping the discussion
8 at a reasonably high level about the broader concepts of unit pricing and then delving into
9 a lot of detail which would have to be resolved through a regulatory policy process if this
10 remains a recommendation that we make. And to that end, Mr Jarratt has provided a
11 very detailed submission that outlines for us some differences that he would perceive to
12 be useful or issues to address when comparing the Australian unit pricing code with any
13 recommendations we might make in New Zealand, so we'll come back to that.

14 I wanted to start though, again, just with the, because this practice is already
15 engaged across the major grocery retailers, just start with an outline perhaps from
16 Woolworths. You've supported the introduction of a unit pricing code modelled on the
17 Australian code and I think you, and also Foodstuffs, have identified that there may need
18 to be some differences.

19 I wondered if you could just give us your perspective of the differences that might
20 be most material if we were using the Australian code as a base and then, perhaps, we
21 could kick off with that and see where that takes us.

22 **Mr Gluckman:** Thank you Chair, and I'll introduce Andrew Dixon from our buying team to lead
23 that on the Woolworths NZ perspective.

24 **Mr Dixon:** Thank you Josh and good morning. Look, as we've indicated in our submission, we're
25 very supportive of a comparative unit pricing code, we think it provides customers with
26 really helpful information and we certainly support the idea that a code is applied
27 consistently across all grocery retailers.

28 With regard to your specific question referencing the Australian code, we certainly
29 believe the Australian code is a very helpful starting point to develop a New Zealand based
30 code.

31 Probably the area where we think we may need to look at it slightly differently, is
32 probably the narrow definition of the retailers that are bound by the code as described in
33 the Australian code. There's some quite prescriptive requirements that mean that
34 retailers that, I guess, we'd expect to be included, may not be and some examples of that
35 could be smaller Countdowns, smaller Metro stores, New Worlds, SuperValue,
36 FreshChoice or Four Squares. We would expect all of those stores to be bound by the
37 code.

38 I think also there's some quite specific requirements that may mean for example
39 that grocery retailers with quite large footprints may be excluded, such as The
40 Warehouse.

1 So, we'd be certainly open to discussing how we can make the code applied to a
2 broader base of grocery retailers in the New Zealand context.

3 **Ms Rawlings:** And, just while I have you there, one of the areas of discussion I think relates to
4 category. So, in Australia you've got a definition of whether you're in or you're out,
5 essentially, on a mandatory basis at least, by a list of groceries and that includes fresh
6 produce.

7 Do you think, and some people have suggested that that's not an appropriate
8 defining characteristic, if you like, because increasingly we see retailers who are perhaps
9 online and not selling fresh product. Do you have a view on that?

10 **Mr Dixon:** We would certainly agree that all online grocery retailers should have unit pricing. We
11 think the, again the definition as applied in the Australian code, is probably too narrow.
12 For example, just because a retailer doesn't sell meat, we don't think that should exclude
13 them from being bound by the code. So, we would probably, as I've already indicated,
14 support quite a broad definition and that would be encompassing a wide range of retailers
15 accepting that retailers may choose to tailor their offer and we would, I guess, be
16 surprised, we wouldn't recommend that retailers are effectively able to exclude
17 themselves from being bound by the code due to some of those dynamics.

18 **Ms Rawlings:** Thanks for that. Could we go to Foodstuffs and just have your comments on the
19 same question really, the scope and inclusion then we might just drill down into some of
20 those details.

21 **Mr Stewart:** Thank you Madam Chair, yes very happy to provide our thoughts. We would
22 generally agree that the Australian unit price code is a good basis for starting. There are
23 some exceptions that we think are important and, in particular, the exception around
24 retailers being required to supply a minimum range of food-based grocery items, so that's
25 specifically to the point that was just talked about.

26 We believe it should be applied to all retailers selling grocery items in an equal
27 manner and this would help the Commission achieve the aim of making it clear for
28 consumers and easy to compare grocery prices between the retailers.

29 We feel that there, like in the Australian code, there should be a minimum floor
30 space requirement so that some of the smaller retailers can be excluded, that would need
31 to be worked through, in our view, in further discussions.

32 Those would be the key points. We note Woolworths comment that retailers like
33 The Warehouse for example, be excluded if we use the Australian code and our view
34 would be that retailers like that would certainly need to be captured if there was a code in
35 place. Thank you.

36 **Ms Rawlings:** Thank you. Any different perspective from the South Island, Foodstuffs?

37 **Mr Donaldson:** Thank you Madam Chair. Foodstuffs North Island and Woolworths New Zealand
38 have captured our thoughts as well, thank you.

1 **Ms Rawlings:** Thank you. Sue Kedgley, some comments on the unit pricing issue?

2 **Ms Kedgley:** Yes, thank you Madam Chair. We obviously strongly support unit pricing, you know,
3 there's such an array of shapes and sizes, etc, of food that this does provide an incredibly
4 useful comparison tool. Agree about the Australian code, except that I strongly agree with
5 others who've said it should have as broader application as possible, it should certainly
6 apply to online grocery retailers and so forth.

7 But I just want to make the point that in Australia they did a review of the
8 effectiveness of the code, which you've probably seen, but it really highlighted that there
9 were many examples they found of miniscule fonts sizes, inconsistent use of unit pricing.
10 So, I think it's absolutely critical that it needs to be prominent and legible, clear and
11 accurate and that it is mandatory and there is some monitoring of it so that consumers
12 can use it easily and effectively.

13 And if I might just simply quickly respond on the issue of liquor, because it's been
14 raised a number of times. During the consideration of a liquor legislation in Parliament,
15 some submitters claimed that supermarkets were using liquor as a sort of loss leader
16 because they said it was cheaper for many of them to buy their, particularly beer, from
17 supermarkets than it was from a wholesaler. So, this resulted in an inquiry into this. And
18 basically, the interesting thing for me was that it transpired that, yes indeed, beer was
19 being sold much more cheaply than by many wholesalers, but there was a whole very
20 confusing package involving a whole lot of rebates, which enabled the supermarkets to
21 sell liquor, certainly beer, at a very low cost.

22 So, I hope that somewhere along the line, in this inquiry, we'll be investigating the
23 whole issue of rebates, which I gather are illegal in some other jurisdictions. Thank you.

24 **Ms Rawlings:** Thanks for those comments. Consumer NZ, you've also supported the use of unit
25 pricing rules, but through a Consumer Information Standard which was reflected in our
26 draft report, but I just wondered if you had any views about whether a separate code or a
27 Consumer Information Standard may be more appropriate and also you made a
28 suggestion that we draw more squarely on ISO guidance on unit pricing to supplement any
29 lessons learned from the Australian code. I wondered if you had any further comments on
30 those matters that you might like to share with us?

31 **Mr Duffy:** Look, I think it's been pretty well covered by other parties and its actually quite
32 refreshing to see general consensus here that anything that's introduced – firstly we need
33 some regulation in this area. There needs to be clear guidance to industry, the Australian
34 regulations don't go far enough and there are some fairly arbitrary cut-off points around
35 what traders are covered and what aren't. And our reference to the ISO was really to
36 provide a comparison point to the Australian regulation that provided a wider application
37 for it.

38 So, at a high level, we are really supportive. Ultimately, we're just looking for
39 clarity; a system that's easy for consumers to use and understand. There'll be a degree of
40 kind of learning that goes on over time, for consumers, but once they're used to, once
41 people are used to how products are being displayed under a standard, as long as it's

1 drafted correctly and is easy for businesses to comply with, we see there's a huge amount
2 of benefit for regulation in this area.

3 **Ms Rawlings:** Thank you. I might ask Mr Jarratt, I think you were in our panellist room.
4 Given that it seems, as Jon has said, that we've got quite a degree of consensus here and it
5 feels a bit like something we might be discussing further at some point through our
6 process or outside of it, whether you might like to share just some high level insights into
7 your perspective on lessons learned or matters that we should really be giving priority and
8 thinking about implementing unit pricing as a mandatory requirement in New Zealand.

9 **Mr Jarratt:** Thank you Chair. I'm speaking in a private capacity, but I am a member of and do a
10 lot of voluntary work for consumer organisations in Australia. And as I said in my
11 submission, I've had a longstanding interest and involvement in unit pricing. It's nearly
12 20-years now since I got involved with it and I did a Churchill Fellowship in 2007, which
13 allowed me to see unit pricing in several countries and since then I think I've lost count of
14 the number of countries that I've seen unit pricing in.

15 Can I say that it is, unfortunately, what I see often is not very satisfactory from a
16 consumer perspective. So, I believe that New Zealand has an opportunity and needs to
17 have a world best practice unit pricing system and that has, obviously, got several
18 components. And I guess from what you're saying that a lot of the detail would be
19 determined later which is what I suspected and said in my submission.

20 What I think is important for New Zealand is to recognise some of the things that
21 are really essential for any effective consumer-focused unit pricing system. But I want to
22 say also that increasingly it's been recognised that a good unit pricing system delivers
23 benefits, not only for the economy, but also for individual retailers, in that a good system
24 adds to the consumer satisfaction, then that is beneficial for the retailers as well.

25 I think in the NZ context, the main thing I would like to highlight here is in response
26 to your question about what's unique about NZ that might make things different to, have
27 different requirements. And I think the main thing that I would like to highlight here, plus
28 something else that's come up this morning that I wasn't aware of, and I think is really
29 important, is that New Zealand's weights and measures legislation is not as prescriptive as
30 the Australian.

31 So, the Australian scheme was with the ACCC administers, relates entirely to
32 constant measure, prepacked products like cornflakes and bottles of milk, etc. It does not
33 apply to any products that are sold loose from bulk or [inaudible] which have not got a
34 constant weight and I know from my many visits to NZ and from interaction with my
35 family there, that these pre-packaged but not constant measure packages are important
36 in New Zealand. They're mainly in trays, you know, the transparent packaging and for
37 chilled products largely, but some fruit and vegetables. So, when the Australian weights
38 and measures laws covers these and they've got quite precise requirements in terms of
39 the units of measure that must be used for those products and the unit of measure that
40 has to be used for the unit pricing of the say, meat or fish that's in one of these
41 transparent trays. And it has to be per kilo.

1 To the best of my knowledge in my submission I suggested the Commission consult
2 with weights and measures, but those requirements are not there. So, to have an
3 effective system, you need good integration of the unit pricing across all three types of
4 products that are sold to the consumer.

5 So, that's my biggest point to you, that you can't just look at the Australian
6 legislation for unit pricing of pre-packaged products and assume you can get an effective
7 New Zealand system by transferring that to New Zealand. It won't work and it won't be
8 beneficial for consumers.

9 The second point that I want to make is that I can't think that I've ever seen good
10 consumer focused unit pricing on electronic shelf labels in supermarkets. And I've seen
11 them in many countries, and they cause particular problems for the display of unit price
12 information, and I noticed that that's been mentioned a couple of times this morning in
13 terms of the extent to which electronic labels constrain, reduce the flexibility that retailers
14 may have and make changes.

15 So, I think those are the main points.

16 I think the other one I would just add is, I'm guessing New Zealand does here, we
17 are increasingly being concerned about meeting the needs of all consumers including the
18 vulnerable and the disadvantaged and those with disability. And we're extremely pleased
19 to see that the new guidance that the ACCC has just put out for retailers in Australia on
20 how it would provide unit pricing, which I've provided the Commission with a copy of, and
21 I encourage you to read it because it's a substantial improvement on the previous one,
22 that does mention the need for retailers also take account the needs of consumers with
23 disability and take account of disability legislation. And my understanding is that your
24 equality legislation in NZ would be somewhat equivalent to what we have in Australia.

25 So, I leave it at that Chair, thanks very much for the opportunity to comment.

26 **Ms Rawlings:** Thank you for your insights. And I just have one follow-up question if I may and
27 that is we've been talking about which retailers might be included in a mandatory regime
28 and in Australia there is a well-defined definition, we've talked about whether that
29 excludes some appropriate retailers as well. But it is also possible to sign-up voluntarily
30 and once you do that, then you must comply with it.

31 I wonder whether you had observed or had any comment about whether a
32 narrower group of mandatory requirements still achieves a good outcome across a sector
33 because I wonder whether if there are, say major retailers who are covered by mandatory
34 requirement, then others wishing to compete with them at what we've called, a fringe, for
35 now, are more likely to sign-up on a voluntary basis and therefore comply.

36 Have you seen an interplay between mandatory and voluntary requirements under
37 a regime like that?

38 **Mr Jarratt:** I don't think so. Although I do recognise that some supermarkets that are
39 independent and also some supermarkets that are part of the bigger chain, would not be
40 covered by the mandatory code because of the floor size restrictions, but they do provide

1 it. But equally there will be other supermarkets, bricks and mortar supermarkets that
2 don't voluntarily provide it and would be beneficial to consumer to do so and there others
3 that don't provide because they're excluded for the reasons that Woolworths and
4 Foodstuffs has mentioned.

5 We were unsuccessful in getting the Australian Government to change the
6 legislation recently, we were very disappointed about that cause that's one of the changes
7 that we thought would be beneficial. And we continue to campaign for those and other
8 changes to the legislation.

9 I might just – whilst I've seen my notes, when we were developing the unit pricing
10 legislation, initially alcohol and cigarettes were included as products and then there was
11 [inaudible] for health and other policy decision that was decided not to be mandatory.
12 And supermarkets, I don't think, provide the unit pricing for that, but I'd need to check on
13 that cause in Queensland, they're not allowed to sell alcohol anyway.

14 **Ms Rawlings:** Well, thank you very much for both your written submission and for being with us
15 today, it's very useful for us to have your experience with the regime. Hans, I see that you
16 have some comments to make on this issue.

17 **Mr Maurer:** Thank you Madam Chair. The most recent Australian guidance document from the
18 ACCC was published this month, so its hot off the press and it includes a couple of
19 examples on fresh produce unit pricing. And when I look at that and look at the example
20 used, which is medium sized lemons, \$1.50 each unit price, meaning \$1.50, as well as the
21 option of saying, approximately 80g per fruit therefore \$18.75 per kilo.

22 The word "approximate" starts getting stuck in my throat because if you take
23 lemons as an example, we have lemons that we grow here in New Zealand, but we also
24 import our lemons at times of year from different parts of the world, for example
25 California.

26 Now, the weight of a Californian lemon is totally different to the weight of a New
27 Zealand lemon. If you look at NZ products like brussel sprouts, the brussel sprouts grown
28 in Ohakune are minute compared to size of the brussel sprouts coming out of Timaru.

29 So, the issue of "approximate", what is the definition going to be? So, to me, it's a
30 clear example that when we start looking at any code, specifically here in our unit pricing
31 code, we need to start looking at specific requirements of categories within the
32 supermarket offer.

33 And I would go along with the previous speaker of saying what we cannot do is
34 take an Australian code and take it out of context and implement it in New Zealand
35 without actually understanding the strategic landscape we are placing it in as well as the
36 product specific issues which are different in this country to other countries.

37 Thank you very much.

38 **Ms Rawlings:** Thanks very much for that. I have just a few questions, a couple of topics really
39 just to cover in the 20 minutes or so remaining. One relates, rather than the Australian

1 exemption relating to floor space for stores. Also, to just the technological requirements
2 and capacity to implement unit pricing. And a number of submitters have raised the
3 question of whether there is a disproportionate compliance cost to smaller stores to
4 comply with unit pricing requirements in comparison, perhaps, with some larger retailers.

5 Could I just ask Woolworths, perhaps first and then we'll go to Foodstuffs who may
6 have some even greater insight into this, having some smaller stores.

7 **Mr Dixon:** Thank you Commissioner. Yeah, look I think certainly very small operators perhaps
8 independently owned stores, single owner scenarios, I think it's probably reasonable to
9 suggest that executing a comparative unit pricing regime may be problematic. And we
10 probably don't see that as a major problem. I guess our concern is more related to large
11 chains or cooperatives, perhaps, being able to opt out of a regime due to some tight
12 definition.

13 I think most of the modern retailers these days, their technology systems are well
14 advanced, and it certainly doesn't, from our perspective, seem unreasonable that
15 comparative unit pricing should be an enhancement that's reasonably easy to execute.

16 Having said that, these things do take some time and it's important that they're
17 done carefully, so we certainly wouldn't recommend rushing the implementation of these
18 kind of changes, they may take a little bit of time, particularly if systems need to be
19 reconfigured or enhanced. Cause we're often talking about multiple systems here,
20 merchandise systems, point of sale systems, ticketing systems. But all of this is doable,
21 and it's been done, it's done all round the world, certainly done in Australia, we've done
22 it, Foodstuffs have done it, we don't see any reason why other retailers shouldn't be able
23 to do it.

24 **Ms Rawlings:** Thank you. Foodstuffs, any views on that?

25 **Mr Stewart:** Thank you Chair, yes, we have a few thoughts around that. We do share the
26 concern for smaller retailers and smaller stores as Woolworths have outlined. I think
27 we're concerned in general about the compliance costs and it maybe in particular in very
28 small retail outlets that the system investment or the ticketing investment is high, relative
29 to their turnover, so we are concerned about that, and we'd be very happy to work
30 through with the Commission further on that type of topic.

31 We're also concerned in a more broader extent around ticketing, electronic tickets
32 were mentioned previously. And we have a concern around once we get to a point where
33 there is a code in place, whether the electronic tickets that are currently in our stores will
34 be able to accommodate all the requirements. Particularly concerned about limited
35 number of fields. So, we believe there's quite a high compliance cost that will be
36 associated with implementation. It could be in the rounds of tens of millions of dollars.
37 It's just a risk that will need to be managed and probably, as outlined by Woolworths, the
38 long-lead time is quite important, or a lead-time, is important there so that we would be
39 able to make sure that we're able to import the product to be able to make an
40 adjustment.

1 System enhancement in general, there would be need for changes depending on
2 the outcome of a code in our core systems and we just need to work through that
3 systematically. So, that would bring some compliance cost and a timeframe that will be
4 required.

5 Some of our smaller stores, not in the New World space but certainly in the Four
6 Square space, some of our smaller stores currently wouldn't have the systems in place to
7 be able to do it and so we would need a lead-time before we were able to implement it in
8 those stores, or depending on their size, maybe some form of exemption.

9 Thank you.

10 **Ms Rawlings:** Thank you. I think other Commissioners might have questions on this issue.

11 **Dr Small:** Yes, I've got one. I just wanted to make sure, I mean it sounds like this is another area
12 where there's a reasonably broad area of agreement, but I just wanted to check with both
13 of the majors if we could about the breadth of the application of unit pricing. I take it
14 from what I've heard so far that you are, because you envisage value in a broad scheme
15 that that would include, obviously include specials and instore promotions and so they
16 would have unit prices attached to them, I assume that that's what you're saying.

17 But I just wanted to check about advertising. Would you include that as well in the
18 breadth of the scope so that when you're putting out your mailers, they would have the
19 unit prices on them as well?

20 **Mr Stewart:** So, do cover your first point first, Commissioner, thank you, yes, we would expect
21 them to apply to promotions. And in relation to the second point, the view that we
22 understand the Commission's take about proximity to point of sale rather than wider
23 advertising material, we believe it's most important at the point of sale and our
24 preference would be that it is limited to the point of sale. That would be our preference.

25 **Mr Dixon:** Sorry if I could just add to that as well and I probably agree with David in the sense
26 that, yeah, the key location is the point of sale, it's obviously called comparative unit
27 pricing for a reason, it's to help customers compare products and make valued
28 judgements about those products. Likewise, we would certainly, as is outlined in the
29 Australian code, be happy and would actively include comparative unit pricing in our
30 media, in our print media in particular. We do note that in the Australian code, TV and
31 video is excluded. And I suspect that's due to the, sort of the short nature of those and
32 the brief time that those products are represented to consumers. We obviously need to
33 be careful that we don't add too much complexity to those messages.

34 Just a final point, probably also on electronic shelf labelling, you know, we are absolutely
35 committed to displaying comparative unit pricing on our electronic shelf labelling, we see
36 electronic shelf labelling as a really pro-consumer initiative that's going to help price
37 integrity, make our business more efficient and certainly resolve some of the problems
38 that we may have had over the years with tickets falling off inadvertently. So, we think
39 that's a good innovation for us and customers.

1 **Dr Small:** So, did I get that right, you'd probably want to exclude TV and video ads from unit
2 pricing scheme, but print might be okay?

3 **Mr Dixon:** Certainly, our mailers, our catalogues, our print media, no problem whatsoever.

4 **Dr Small:** That's what attracts people to your store, right?

5 **Mr Dixon:** Yeah, absolutely and that's the way the regime is applied in the Australian market as
6 well and we'd happily comply with that.

7 **Dr Small:** Thank you, that's all.

8 **Ms Rawlings:** I think Ian Jarratt has a few more comments, we might just keep your video off,
9 we were having a few issues before, but feel free to unmute yourself and share your
10 comments with us.

11 **Mr Jarratt:** Thanks Chair. I just thought I'd share a little bit of information about the store size
12 issue and also now that we're talking about it, commented on the advertising issue. The
13 floor size or however you're going to measure it, there's been an issue in all jurisdictions
14 around the world and they're tackled in a variety of ways.

15 Some of them have tackled it in terms of number of employees. Some of it tackled
16 it in terms of turnover, some of them have tackled it in terms of floor area.

17 So, take your pick. But one that I particularly liked was in Ireland where they just
18 took the approach if you have got an electronic system for producing store shelf labels,
19 you're in. And if you haven't, you're out. So, that's the way they tackled it. So, I think it's
20 worth thinking about. Obviously isn't in the Australian system.

21 And in relation to advertising, Chair, you were commenting right at the start about
22 the need to increase consumer awareness of value, not only when they're in the store, but
23 when they're looking at adverts, be they on television, in newspapers, or wherever. So,
24 we are very supportive of having the unit price provided whenever the selling price is
25 provided by a retailer, be it instore, online, or in any form of advertising. We feel that's
26 likely to be the most beneficial for consumers in the long run. Adds next to nothing to the
27 costs of retailers and will be hugely beneficial for competition.

28 **Ms Rawlings:** Thanks very much for those additional comments. I suspect, unless others have
29 comments and I don't see any particular request to comment at this stage, that might
30 actually be a good summary of the issue when it comes to unit pricing and a good place
31 for us to leave off.

32 I'll just ask whether Commissioners have any other questions before we do that.
33 Actually, I see that Nick's there, so I'll go to Commissioners first to see if there are any
34 additional questions and then we might just briefly hear from Nick Hogendijk.

35 **Ms McWha:** Nothing from me thanks.

36 **Dr Small:** No fine, thanks Anna.

1 **Ms Rawlings:** Nick.

2 **Mr Hogendijk:** Thank you. A couple of things for me just on clarification around the Australian
3 code. We do training programmes on the Code of Conduct in Australia and whilst it's
4 mandatory for the retailers that have signed on to it, it's also they're able for them to walk
5 away at any stage should they see fit as well. So, it's only mandatory while you're signed
6 on. So, just as a point of extension to what was discussed earlier.

7 The other thing that sticks in my mind, you've got a dual ecosystem at the
8 moment. You've got a Foodstuffs ecosystem and a Woolworths NZ ecosystem and unit
9 pricing, whilst it needs to be more broadly addressed, and it definitely needs to be
10 simplified and sort of spread out to a wider reach of retailers. It also needs to be included
11 in the wholesale side of things.

12 You've got Matt Lane from Night 'n Day referred yesterday to paying in excessive
13 grocery prices for products from his source of supply, and that doesn't seem right, and I
14 think the simplest way to start to address that is to publicise unit pricing at a more broad
15 level. So, level 1 in your market at wholesale, level 2 at retail, and therefore level 3 being
16 the consumer has complete transparency at the point of purchase. But third-party
17 retailers who have no choice but to source from these two particular ecosystems, also
18 have transparency around unit pricing at the same time.

19 Thank you.

20 **Ms Rawlings:** Thanks very much for that. Well, I think that most likely concludes our session on
21 unit pricing as well today and those are the issues that we wanted to discuss relating to
22 consumer-facing issues today. So, thank you very much for everyone who has submitted
23 already on the draft report, Chapter 7, in relation to these issues in our options for
24 recommendations. Thanks very much for your time here today.

25 I suspect there may be some consumer organisations in particular who have been
26 here as attendees and may have some additional thoughts, having listened in on today's
27 discussion and I just want to emphasise in particular our interest in hearing from those
28 parties from the consumer perspective which is often difficult for us to access and we've
29 been hugely grateful for your participation, both in writing and here today, in particular
30 Tric Malcom, thanks for being with us and Consume NZ for your contributions. And of
31 course, to everybody else who's contributed to the panel today.

32 And we'll pick up again on Tuesday morning, enjoy your long weekend.

33 Josh, you had something just in closing?

34 **Mr Gluckman:** Only insofar as it will be helpful if there was some closing remarks from
35 Woolworths NZ on the topic and we'll keep it very, very concise. It's been a very
36 constructed day, obviously we started by pointing out how important pricing and
37 promotions and loyalty were to Kiwis and therefore to us and I think we've traversed the
38 degree to which we take those matters very seriously and there's no question that
39 promotions are a significant feature of the New Zealand grocery retail market, the way
40 they are a feature of grocery retail markets around the world and we think that's again a

1 healthy sign of active competition in action and healthy retailer competition and healthy
2 supplier competition as well.

3 We do think in fact specials are a really key part of suppliers' marketing strategies
4 and I think that there was some suggestion earlier in the day that it was something that
5 was driven solely by retailers. Certainly, in our experience that's not the case and we
6 imagine that that's a topic we may come back to in more detail on Tuesday.

7 In any case, we're very supportive of the opportunities for more clarity, for more
8 guidelines as James and Andrew have set out from a Woolworths NZ perspective. We'd
9 support broad application across retailers and certainly large retailers in the marketplace,
10 whether that was The Warehouse, Costco, Chemist Warehouse, online entrants, and
11 others and we're certainly looking forward to continuing to engage and consult in the
12 detail from this point beyond. So, thank you very much.

13 **Ms Rawlings:** Right, well thank you everybody and we'll see you, hopefully, on Tuesday morning,
14 most of you.

15

16