

23 November 2021

Commerce Commission
44 The Terrace
WELLINGTON 6011

Marketstudies@comcom.govt.nz

Market Study into the Retail Grocery Sector – Post-Conference Submission

Thank you for the opportunity to make a submission on the issues discussed at the Commerce Commission’s consultation conference.

The Warehouse Group remains of the view that the only thing that will make a meaningful difference to the grocery prices consumers pay in New Zealand is encouraging and facilitating new entry and expansion into grocery and adjacent markets and ensuring that competition is not only preserved but flourishes over time.

Nothing we observed at the conference changes our view that the Commission’s preliminary finding, that competition is not working well for consumers in the retail grocery sector, is correct.

Indeed, in attending the consultation conference we observed how the participation of smaller retail entities and independent experts added significant depth to the case for improved competition and demonstrated the consequences of the current situation on both consumers and businesses. These submissions reinforced the urgent need to take action to encourage and facilitate new entry into the grocery and adjacent markets, including if necessary, via significant structural change.

Our view remains that facilitating new entry and expansion could be supported through the following actions:

- Facilitating immediate access to the two major grocers’ products and end-to-end supply chain infrastructure. Entry into the grocery market carries high risk and requires significant investment, which could be overcome with short/medium term access to the grocers’ products and infrastructure at net pricing/terms to help a new entrant to become established and to build the scale necessary to develop these things for itself
- Facilitating access to suitable new or incumbent sites and addressing unjustified restrictive property covenants that have the effect of preventing access to suitable sites for potential competitors
- Legislative support to prohibit behaviours that could harm competition, such as “pocket pricing” or localised price discounting, or leveraging purchasing power to prevent supply to competitors, and ensuring that the current lack of competition is not further exacerbated by allowing the two major grocers to expand further or vertically integrate, including through



purchasing new sites, investment into or acquisitions of foodservice or meal kit providers or wholesalers/aggregators, at least until competition has reached a place where it is working better for consumers

- Ensuring that adequate resources are allocated to investigating and enforcing breaches of competition law or the Code of Conduct and that processes are designed to allow complaints to be submitted easily and cost-effectively

While not canvassed extensively in the Commission's process to date, we consider that attention should also be given by the Commission or the Government to removing legislative barriers to entry in the form of regulations that prevent new entrants from selling the full range of products that are available from the two major grocers, for example, health related products and alcohol. The major grocers' ability to sell these products to the exclusion of new entrants creates an uneven playing field for new entrants.

There was significant discussion at the conference about a Code of Conduct. While we remain supportive of introducing a Code of Conduct that is operated and enforced independently, we believe that compliance with the Code should not be mandatory until a business has reached a size where it is a viable competitor to the two major grocers, at which point regulation and oversight would be appropriate. This is the position in the United Kingdom.

Requiring new entrants to comply with the Code may create or increase barriers to entry or expansion through imposing disproportionate operational or technical requirements and compliance costs. It is important not to lose sight of the fact that the need for the Code is driven by a lack of supermarket competition; it would be ironic if the very existence of the Code undermined a long-term solution to the underlying problem that resulted in its need.

We note that other factors that were discussed at the conference as potentially affecting the efficacy of competition in the current retail grocery sector included vertical integration, private label products, loyalty schemes and pricing promotions.

While some of these features might be creating or illustrating issues in the current market structure, the Commission should take care to ensure that any recommendations it makes do not have the unintended consequence of making new entry more difficult. Again, it would be unhelpful if a focus on treating the symptoms exacerbated the underlying problem.

The commercial reality is that many of these elements will be important to support new entry into the market. For example, private label products can offer consumers products that are of good quality at affordable prices and pricing promotions and loyalty programmes can help deliver increased value for consumers. Vertically integrated supply chains, whilst today may not be benefiting consumers, do have an important role to play in building the required skill and scale to deliver a competitive consumer offer.

Finally, there were some suggestions that overseas investment regime should be altered to encourage foreign investment in the grocery sector. We do not agree that there is a need for bespoke changes to the overseas investment regime to permit overseas investment in the grocery market that would not otherwise be in the interests of New Zealand.



At The Warehouse Group, our aim is to help Kiwis live better every day and we would like to play our part in offering consumers access to competitively priced groceries in New Zealand. However, even for a business of our size and footprint, this carries a significant degree of risk, which can be mitigated via the changes we have suggested.

We support the work undertaken by the Commerce Commission and we hope that the study's recommendations encourage and facilitate new entry and expansion to deliver better outcomes for New Zealanders.

Yours faithfully

The Warehouse Group Limited

A handwritten signature in black ink, appearing to read "Nick Grayston", written over a light gray rectangular background.

Nick Grayston
Chief Executive Officer

