

17 May 2022

## **PUBLIC VERSION**

**By Email: anthony.stewart@comcom.govt.nz**

**Attention: Anthony Stewart**

Commerce Commission  
PO Box 2351  
Wellington

Dear Anthony

### **Life Health Foods / Chalmers Organics - Confidential Submission on SOUI**

We make this confidential submission on behalf of LHF in relation to confidential information that has been provided to us on a counsel-only basis in accordance with confidentiality undertakings we have given to the Commission. This submission should be read in conjunction with LHF's public submission of the same date.

#### **1. A meat alternatives product market which includes tofu best isolates the competitive constraints**

1.1 The Commission places weight on the fact that **[Redacted]** it was provided with feedback that some major grocery retailers stock meat-alternative products and tofu in different sections of the store".<sup>1</sup>

**1.2 [Redacted]**

**1.3 [Redacted]**

**1.4 [Redacted]**

**1.5 [Redacted]**

**1.6 [Redacted]**

1.7 On the supply side the Commission identified that most suppliers cannot easily switch production between tofu and meat-alternative products<sup>2</sup> for three reasons.

- (a) tofu uses different equipment and processes than meat alternative patties and meat alternative sausages;<sup>3</sup>
- (b) tofu uses soybeans as its main input whereas other plant-based products can use a variety of input;<sup>4</sup> and
- (c) suppliers said they would need to make significant investments in new capital, processes, and staff to switch production between tofu and meat-alternative products.<sup>5</sup>

**1.8 [Redacted]**

---

<sup>1</sup> SOUI at [27.2].

<sup>2</sup> SOUI at [31].

<sup>3</sup> SOUI at [31.1].

<sup>4</sup> SOUI at [31.2].

<sup>5</sup> SOUI at [31.3].

1.9 [Redacted]

1.10 [Redacted]

**2. Major grocery retailers would be likely to exercise countervailing power**

2.1 The Commission's conclusion that it is not satisfied the major grocery retailers would be likely exercise their countervailing market power in response to an increase in price or reduction in quality by sponsoring new entry, giving favourable treatment to their own brands or making product selection choices that would effectively constrain the merged entity [Redacted]

2.2 [Redacted]

2.3 [Redacted]

2.4 The Commission's preliminary views that the supermarkets would not be able to constrain the merged entity because smaller suppliers could not easily supply the supermarkets, and supermarkets were unlikely to be able to sufficiently expand their private label offering, [Redacted]

***Expansion of existing suppliers***

2.5 [Redacted]

2.6 [Redacted]

***Expansion/favouring of private label***

2.7 The Commission's preliminary view is that "based on the evidence before us, we are not currently satisfied that the major grocery retailers would be able to preference their private label brands in a way that constrains the merged entity".<sup>6</sup>

2.8 [Redacted]

2.9 [Redacted]

2.10 [Redacted]

2.11 [Redacted]

***Brand loyalty***

2.12 The Commission preliminary view is that "customers exhibit a high degree of brand loyalty" such that entry or expansion may not constrain the merged entity and could be unprofitable for the supplier.<sup>7</sup> This conclusion is based on [Redacted]

Yours faithfully  
**MinterEllisonRuddWatts**

Dr Ross Patterson  
Partner

T +64 9 353 9864  
ross.patterson@minterellison.co.nz

---

<sup>6</sup> SOUI at [122].

<sup>7</sup> SOUI at [86.4].