

FOODSTUFFS NORTH ISLAND LIMITED/FOODSTUFFS SOUTH ISLAND LIMITED

SUPPLIER SUBMISSION ON STATEMENT OF ISSUES

18 April 2024

INTRODUCTION AND SUMMARY

1. Thank you for the opportunity to provide a submission on the Statement of Issues (**SOI**) dated 4 April 2024 regarding the proposed merger of Foodstuffs North Island (**FSNI**) and Foodstuffs South Island (**FSSI**).
2. [] (**Supplier**) is a supplier of consumer products. []
[]
 - (a) []
[]
 - (b) []
[]
 - (c) []
[]
3. As set out in the Statement of Issues, the Commerce Commission may grant clearance if it is satisfied that the merger will not have, or would not be likely to have, the effect of substantially lessening competition in the market. It is well established that if the Commission cannot exclude a real chance that a merger will lead to a substantial lessening of competition, it must decline clearance.
4. In this submission, Supplier is primarily focused on the upstream market for the acquisition of groceries. More particularly, Supplier has provided information in response to the following questions posed by the Commission:
 - (a) how closely the Parties compete in the acquisition of grocery products and the extent of competition that would be lost with the proposed merger (paragraph 93);
 - (b) the level of constraint provided by other rival acquirers of grocery products (ie, the ability of suppliers to switch between different grocery retailers) (paragraph 101); and
 - (c) the importance of channel diversity for innovation (paragraph 107).
5. Supplier agrees with the Commission's characterisation (at paragraph 80 of the SOI) of the proposed merger as a three-to-two reduction in the number of major grocery retailers acquiring groceries from suppliers.
6. While FSNI and FSSI only sometimes compete directly for volume, the significance of having both FSNI and FSSI is that they represent opportunities for suppliers to have products listed and therefore increase the chance of a more diverse offering to consumers. If clearance is granted for the merger, it would become very difficult to continue to sell a product or to launch a product unless

the merged entity was to list it - the merged entity would likely become de facto the “decider” of what products are listed in NZ. [

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Extent of competition between FSNI and FSSI (paragraph 93)

The Parties as alternative channels to market, and competitive reaction by Parties

7. Currently, Supplier's portfolio is supplied through the following channels (calendar year 2023).

- (a) Foodstuffs North Island []
- (b) Foodstuffs South Island [];
- (c) Woolworths [];
- (d) other retailers/channels, including [], and []

8. Supplier's experience is that FSNI and FSSI are, to an extent, alternative channels to market. Some of Supplier's products are ranged in FSNI but not FSSI, and vice versa, as set out in in Appendix 1.

9. While FSNI and FSSI only sometimes compete directly for volume and the product ranges are largely aligned between North and South currently (in Supplier's categories, Supplier estimates that there is [] alignment), the [] variance is a critical potential channel to either re-listing nationally, or new product/supplier introduction. This is where the (actual and potential) rivalry, ultimately benefiting consumers, is able to occur.

Impact of being a supplier with strong brand on terms and bargaining position

10. With reference to terms of supply, key promotional items such as price and non price-promotions, activation, displays, etc. are negotiated with retailers.

11. More specifically, growth opportunities are identified and Supplier seeks to work with retailers to implement initiatives to unlock those opportunities. Such strategies may include various types of promotions, in-store displays, and online and instore media. However, retailers usually impose an additional fee on top of the trading terms.

12. []

- (a) Supplier's products typically comprise between [] of products stocked by a supermarket whilst they represent a very significant percentage of its business, []

- (b) []
- []
- []
- []

Ability to switch between different grocery retailers (paragraph 101)

Proportion of volume accounted for by the Parties compared with others

13. As described above, the majority of Supplier's volumes are supplied [

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Differences in terms between the Parties and other channels

14. Regarding the Commission's question about the differences in trading terms between FSNI, FSSI and Woolworths, as mentioned above, what differs are investments/activation/promotions/display payments between these entities. []
[]
[]
15. The significance of the above is that, in the event that a product is de-listed in either FSNI or FSSI, a supplier may be able to justify continued supply and investment (in terms of promotional support, new product launch) relying on one of the two Foodstuffs' entities and Woolworths, bolstered by sales through the remaining channel. If the merger was approved, the merged entity would likely become the de facto "decider" of what products are listed in New Zealand.

Bringing new products to market/innovation (paragraph 107)

Channel diversity and investment in innovation

16. This submission is focussed on innovation in the form of introducing new products not previously supplied.
17. Supplier's view is that to support a successful introduction of a new product, it would be necessary [] . While, as recorded at paragraph 115 of the SOI, FSNI and FSSI are in the process of centralising their procurement model, in the counterfactual (FSNI and FSSI remain separate), []
18. Supplier does not consider that it is possible to exclude the real chance the merger would lead to centralised decision making that eliminates the ability for a targeted launch in the merged entity, and a loss of the current variation (allowing rivalry and growth) within Foodstuffs' stores in each Island.
19. Putting it another way, [] a failure to secure listing in the merged entity would make it extremely difficult to justify, for instance, media (including social media) spend to promote the product.

Confidentiality

20. Confidentiality is sought for the information in this submission that is included in square brackets and highlighted. A public version of this submission with the confidential information deleted will be provided to the Commission.
21. We request that we be notified of any request made under the Official Information Act for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time request is made.
22. These requests for confidentiality are made because the information is commercially sensitive, and disclosure would be likely unreasonably to prejudice the commercial position of Supplier.

Appendix 1 – Confidential