



20 April 2024

Submission to the Commerce Commission on its Statement of Issues re the proposed Foodstuffs North and South Island merger

The Grocery Action Group (GAG) was set up to bring down the price of groceries for all New Zealanders. It believes making groceries more affordable will help relieve poverty in Aotearoa. GAG strongly opposes the application from Foodstuffs to merge its North and South Island supermarket and distribution operations. Allowing the merger would result in a substantial lessening of competition in an already failed market in which New Zealanders pay some of the highest prices in the world for groceries.<sup>1</sup> The Commission's own Market Study into retail grocery prices noted out of the 38 OECD countries, New Zealand ranked fifth highest for prices and fourth highest for expenditure.<sup>2</sup> A merger of this magnitude would also make it more difficult for any potential new market entrant. The inevitable outcome for consumers would be groceries becoming even more unaffordable.

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<sup>1</sup> RNZ report on World Vision study showing NZ among the most expensive in world for groceries, <https://www.rnz.co.nz/news/national/510447/price-of-common-foods-soars-more-than-50-percent-in-nz-report>, downloaded 21 April 2024.

<sup>2</sup> Commerce Commission Market Study, [Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf \(comcom.govt.nz\)](https://www.comcom.govt.nz/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf) at [3.91], downloaded 22 April 2024. While this was 2017 data the Commission said it was "not aware of any reason why the rankings would have changed significantly" at [3.92].

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## **1. Key recommendations**

- A. The Commerce Commission should reject this application because it would lead to a considerable lessening of competition in an already failed market. Aotearoa New Zealand has one of the most densely concentrated markets in the world for groceries. Further consolidation by Foodstuffs in its retail and wholesale operations will inevitably mean even higher prices for consumers. A merger would effectively:
- a. decrease competition by consolidating power in the largest supermarket operator
  - b. heighten the barriers for any new market entrant
  - c. increase prices to consumers in a country that is already paying some of the highest prices in the world for food
  - d. defeat the purpose of the recently introduced Grocery Industry Competition Act 2023 and the ensuing Grocery Supply Code, both in place to protect consumers from this kind of merger application
- B. Put consumers at the centre of the reason to reject this application as per the purpose of the Commerce Act 1986 which is to promote competition for the long term benefit of consumers.

## **2. Consumer interests lacking**

- 2.1 GAG is concerned the Commission's issues paper is particularly focused on suppliers and the supply chain, but gives scant attention to the impacts of this proposed merger on consumers. Indeed, the word "consumer" is mentioned only 36 times across 46 pages compared to 193 for "supplier" and 81 for "supply". GAG contends consumers should remain at the heart of the Commission's considerations, given the purpose of the Commerce Act, 1986 section 1A is "to promote competition in markets for the long-term benefit of consumers within New Zealand". GAG agrees there are

problems on the supply side but does not believe they are the core problem the Commission is charged with addressing.

- 2.2 Consumer NZ’s sentiment tracker puts cost of living as a top concern for Kiwis.<sup>3</sup> In a poll conducted by Consumer NZ of more than 1000 people about their supermarket shopping, 98% said they were worried about the cost of groceries and were making weekly changes to their shop as a result. 84% said they had removed items from their usual shop because of cost.<sup>4</sup>

*“We’re concerned about the rising cost of living and how many New Zealanders are struggling to afford their grocery bills. With only two main players there is a distinct lack of competition that is contributing to high prices and higher than acceptable profit margins.”* Jon Duffy, Consumer NZ CEO<sup>5</sup>

- 2.3 In further research in 2022 Consumer NZ said the cost of food was now the second highest financial concern for New Zealanders after housing, compared with a year ago when it ranked eighth.<sup>6</sup>
- 2.4 Business publication *NBR* last year released a special investigation into the pricing practices of the duopoly, using grocery price data. It found “opaque pricing and baked-in margins for the duopoly is more of the uncompetitive status quo for the consumer.”<sup>7</sup>
- 2.5 The New Zealand Food and Grocery Council has said the applicants have not been able to show any benefits from the proposed merger that would accrue to consumers. This lines up with the Commission’s well-evidenced

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<sup>3</sup> Consumer NZ’s sentiment tracker is a nationally representative quarterly survey.

<sup>4</sup> Consumer NZ poll, <https://www.consumer.org.nz/articles/new-zealanders-are-worried-about-the-rising-cost-of-food>, downloaded 21 April 2024.

<sup>5</sup> Consumer NZ CEO Jon Duffy, <https://www.consumer.org.nz/articles/cost-of-living-is-new-zealanders-top-concern>, downloaded 21 April 2024.

<sup>6</sup> Consumers NZ’s sentiment tracker, <https://www.consumer.org.nz/articles/supermarkets-the-high-cost-of-food-in-new-zealand#:~:text=Fast%20forward%20a%20year%20and,when%20it%20was%20ranked%20eighth>, downloaded 21 April 2024.

<sup>7</sup> *NBR*, Price Check: Dazed and confused at the supermarket, 11 December 2023, <https://www.nbr.co.nz/business/dazed-and-confused/> downloaded 6 February 2024.

findings about the current lack of competition, high barriers to entry, and high profitability of the incumbent operators.<sup>8</sup>

### 3. Events since market study release

- 3.1 The Commission sought submissions on events since the release of the Market Study in March 2022 – noting the study found the intensity of competition between the major grocery retailers is muted and does not reflect workable competition.<sup>9</sup>
- 3.2 GAG contends that not much has changed since the release of the market study and the ensuing legislative and regulatory changes. Most of those changes deal with the supply side, but for consumers prices continue their inexorable rise as Foodstuffs tightens its grip on price and choice. The practices of confusing pricing, specials that aren't special, increased shelf space devoted to home brands thereby shutting out choice, and failure to provide proper unit pricing continue.
- 3.3 The day the grace period for complying with the new Grocery Supply Code was over, suppliers were swamped with dozens of varying agreements from Foodstuffs.<sup>10</sup> Online news operator *Newsroom* reported that instead of receiving a single contract, one South island supplier said they received many agreements that weren't standardised and contained different terms which included "some nasty barbs". One of the obligations in the new code is to deal with suppliers in good faith.<sup>11</sup>

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<sup>8</sup> New Zealand Food and Grocery Council submission on Preliminary Issues, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0025/344158/FSNI-and-FSSI-Food-and-Grocery-Council-submission-on-Statement-of-Preliminary-Issues-19-February-2024.pdf downloaded 24 April 2024, at p5 [j].

<sup>9</sup> Commerce Commission, Statement of Issues, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0037/348859/FSNI-and-FSSI-Statement-of-Issues-4-April-2024.pdf, at p41 [154.2].

<sup>10</sup> Newsroom, "Suppliers swamped with deals as supermarket grace period ends", 4 April 2024, downloaded 20 April 2024.

<sup>11</sup> Commerce Commission Grocery Supply Checklist for Suppliers, 29 February 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0025/344950/Grocery-Supply-Code-Checklist-for-Suppliers-29-Feb-2024.pdf, downloaded 24 April 2024, at p7 [6].

- 3.4 Foodstuffs announced in January this year it would close its Flaxmere store meaning 10,000 of some of our lowest income citizens lose their only supermarket.<sup>12</sup> Foodstuffs announced it was still committed to the Hawke’s Bay community. The question that should be asked is: would the closure have occurred if there had been rival supermarkets in the area?
- 3.5 Food prices keep rising. Food price inflation has slowed but was still running at 2.1% in February 2024.<sup>13</sup> There is little sign of price falls other than seasonal variation. Looking at prices between February 2022 and February 2023 the price of common food went up 50% according to a World Vision survey.<sup>14</sup> The cost of food including: rice, bananas, chicken, tomatoes, eggs and oil increased by 56% despite food prices trending down globally. Even Ethiopia had a lower percentage jump, at 43%. World Vision head of advocacy and justice Rebekah Armstrong said New Zealand, like other countries was grappling with climate change’s affect on food supply. But, she said there was a long-standing problem of lack of competition in the supermarket sector in New Zealand which had been a factor. The cost of a food basket in 2023 was \$78.32 compared with \$50.16 in 2022.<sup>15</sup>
- 3.6 In Australia, where there is currently two inquiries into lack of competition among supermarkets, prices, according to the World Vision survey, dropped 29% over the same period.
- 3.7 Online supermarket startup Supie collapsed in October 2023. Liquidators reported it failed because of a lack of sales volumes and scale to operate

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<sup>12</sup> Flaxmere to lose its only supermarket, 19 January 2024, Stuff, <https://www.stuff.co.nz/business/350151614/flaxmere-lose-its-only-supermarket>, downloaded 24 April 2024.

<sup>13</sup> New Food Inflation, Datasets, <https://tradingeconomics.com/new-zealand/food-inflation>, downloaded 20 April 2024.

<sup>14</sup> World Vision report on 10 most common food prices. It examined food prices in 67 countries.

<sup>15</sup> RNZ report on World Vision study showing NZ among the most expensive in world for groceries, <https://www.rnz.co.nz/news/national/510447/price-of-common-foods-soars-more-than-50-percent-in-nz-report>, downloaded 21 April 2024.

the business profitably.<sup>16</sup> CEO Sarah Balle cited a number of reasons for the failure but said lack of co-operation from large suppliers to the supermarket duopoly was a factor.<sup>17</sup> While there are now new wholesale agreements in place, no supermarkets of scale have entered the New Zealand market.

3.8 In January this year the Commerce Commission announced an inquiry into false and misleading shelf pricing at the duopolies following a complaint from Consumer NZ. The not-for-profit asked the public to send it examples of misleading pricing. They sent them in their hundreds. Among examples provided to the Commission were:

- specials that cost more than the regular price
- multibuy deals where products would have been cheaper to buy individually
- loyalty card pricing displayed as the default
- shelf pricings that didn't match the checkout price.<sup>18</sup>

3.9 These issues arise in an environment where the duopolies know they are under scrutiny from the regulator. Yet they seem to act with impunity. Allowing Foodstuffs to merge its North and South Island operations would only exacerbate this situation.

3.10 The Commerce Commission has taken no action against Sanitarium after it stopped supplying The Warehouse with Weet-bix in September last year, under what was widely regarded as either pressure from the duopoly supermarkets or at least a fear of market reprisals. The Warehouse, the only current realistic competitor to the duopoly, was selling the breakfast

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<sup>16</sup> Supie collapse: Liquidators' first report reveals why grocer failed, how much it owes, NZ Herald, 16 November 2023, <https://www.nzherald.co.nz/supie....> downloaded 20 April 2024

<sup>17</sup> As above.

<sup>18</sup> Commerce Commission investigates pricing following Consumer NZ complaint, 24 January 2024, <https://www.consumer.org.nz/articles/commerce-commission-investigates-problematic-supermarket-pricing-following-consumer-nz-complaint#:~:text=Commerce%20Commission%20investigates%20problematic%20supermarket%20pricing%20following%20Consumer%20NZ%20complaint,-By%20Gemma%20Rasmussen&text=Woolworths%2C%20Foodstuffs%20North%20Island%20and,compaint%20with%20the%20Commerce%20Commission>, downloaded 24 April 2024.

staple considerably more cheaply than either Woolworths or Foodstuffs. After remonstrating with Sanitarium privately, The Warehouse went public; three days later supply was back following consumer outcry. Grocery Commissioner Pierre van Heerden and his team reviewed hundreds of pages of documents but could find nothing written to substantiate any evidence of anti competitive behaviour.<sup>19</sup>

3.11 GAG and other consumer groups were concerned such a clear breach could not be substantiated. The Commission needs to be more courageous of its view of “substantially lessened competition” or review the threshold for when it might take action.

3.12 The supermarket duopoly continues to provide poor unit pricing displays on grocery items. Often there is none or it is too difficult to read. Unit pricing is one way consumers can make comparisons over package size because the numbers have to be standardised. This at least lets them know when confusing so-called specials are not so special. The supermarkets first resisted supplying unit prices (it is common and mandatory in many other countries), then promised to do it voluntarily. GAG has frequently found food with either no unit pricing (specially in Foodstuffs where there are Club deals) or where it is so small as to be virtually unreadable. This year it has become mandatory, with the grace period ending in August, but still Foodstuffs flouts even its own voluntary system.

#### **4. Lessening competition**

4.1 GAG believes if the merger were to proceed it would be highly likely to substantially lessen competition in two markets – the upstream market for the acquisition of groceries and the downstream market for sale of groceries.

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<sup>19</sup> Warehouse, consumer advocacy group disappointed Commerce Commission rejects weet-bix complaint, NZ Herald 20 March 2024, <https://www.nzherald.co.nz/nz/warehouse-disappointed-commerce-commission-rejects-weet-bix-complaint/ABO5DIVBKZHF3N4LATSZZTU5I/#:~:text=The%20Warehouse%20laid%20a%20complaint,an%20investigation%20into%20Sanitarium's%20decision>, downloaded 24 April 2024.



- 4.2 A number of submitters to the Commission’s Preliminary Issues Paper drew attention to the different approaches between Foodstuffs’ North Island and South Islands for product ranging and negotiations with suppliers. Clearly, this leaves open the opportunity for a supplier whose product is, say, deranged in one island to maintain supply in the other. Equally, it allows for one supplier to, say, supply only the South Island with no interest in supplying the North Island. But if the merger were to be agreed, those suppliers would be left with no options. They could, and in many cases would, have to remove their product from New Zealand – a situation that could end their businesses. Alternatively they could choose not to service New Zealand consumers at all by only exporting if that option was available.
- 4.3 In submissions already received by the Commission, some suppliers have said they will be shut out, particularly in the South Island, if the merger is agreed to.<sup>20</sup> One supplier noted a more decentralised approach in the South Island allowed small or new manufacturers to directly contact local stores to get their products ranged – an avenue that is a lifeline for new entrants to get established and thrive. That is backed up by the *NBR* investigation that said a proposed merger would result in standardised products on supermarket shelves across the country – “leading to fewer options for suppliers, particularly the smaller ones already vulnerable to category managers deciding what the nation needs as groceries.”<sup>21</sup>
- 4.4 GAG notes the New Zealand Food and Grocery Council believes allowing the merger will see a substantial lessening in competition at retail and wholesale levels across grocery outlets of all sizes and brands plus liquor,

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<sup>20</sup> Anonymous C submission to the Commerce Commission Preliminary Issues Paper, 25 January 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0022/342382/Anonymous-C-submission-in-response-to-Statement-of-Preliminary-Issues-25-January-2024.pdf, downloaded 7 February 2024.

<sup>21</sup> Price Check: Dazed and confused at the supermarket, *NBR*, 11 December 2023, <https://www.nbr.co.nz/business/dazed-and-confused/> downloaded 6 February 2024

pharmacy and fuel, and public benefit cannot be found, given the perverse impacts and cost increases for supply.<sup>22</sup>

4.5 The proposed merger, if approved, would remove any likelihood of competition between the two Foodstuffs co-operatives. Under the counterfactual status quo such competition could arise in a number of scenarios:

- If there were tension between banner groups within one island, that might lead to one banner group detaching marketing and procurement functions from Foodstuffs in its home island and attaching itself to Foodstuffs in the other island.

This could plausibly arise, if say, Four Square felt it was being disadvantaged by Foodstuffs setting its prices too high relative to New World or Pak'nSave, thereby depriving it of the opportunity to compete against the other banner groups. By attaching to the other Foodstuffs, it could compete without the constraint of having those key functions carried out by a wholesaler heavily conflicted with the responsibility of profitability of the other brands – its major competitors – in the same island.

- If Foodstuffs, itself, concluded public pressure for change had reached a point where it had to respond and voluntarily restructure to have more competitive brands.
- If the regulator or the Government determined mandatory restructuring was required.

4.6 Approving the merger would remove all those possibilities, thereby lessening potential competition.

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<sup>22</sup> New Zealand Food and Grocery Council submission to the Commerce Commission Preliminary Issues Paper, 19 February 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0025/34/4158/FSNI-and-FSSI-Food-and-Grocery-Council-submission-on-Statement-of-Preliminary-Issues-19-February-2024.pdf, downloaded 24 April 2024, p4 at [5.c].

## 5. Rise of home brands lessening competition

5.1 It is notable that while consumer groups, New Zealand Food and Grocery Council and even the Commerce Commission have strong concerns about the rise of home brands and what that means for choice, price and innovation for consumers, Foodstuffs is this month trumpeting that its home brand Pams has become the country's most popular grocery brand.<sup>23</sup> In a campaign on TV, cinema, social media instore and bus backs, Foodstuffs is promoting Pams as affordable. The counter story is that with its might Foodstuffs can with its home brands:

- crowd the supermarket shelves with its own product;
- reduce choice for consumers;
- keep prices high;
- keep profit margins high by cutting what it takes from suppliers;
- use the innovation of suppliers for their own products and shut them out.

5.2 The New Zealand Food and Grocery Council says a merger would not only consolidate bricks and mortar buying power, but brand buying power, particularly for Foodstuffs' private label [Pams] because the proposed merged entity will represent nearly 60% of the grocery sector. Deranging to accommodate that left consumers with less choice.<sup>24</sup>

## Learning from overseas

### *United Kingdom*

6.1 In April 2019 the UK Competition & Markets Authority (CMA) prohibited the merger of the second and third largest supermarkets in the country,

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<sup>23</sup> Tough times make Foodstuffs' Pams most popular grocery brand in NZ, Inside FMCG, [www.insidefmcg.com.au](http://www.insidefmcg.com.au), downloaded 20 April 2024.

<sup>24</sup> New Food and Grocery Council submission on the Commerce Commission Statement Preliminary Issues Paper, 24 February 2024, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0025/344158/FSNI-and-FSSI-Food-and-Grocery-Council-submission-on-Statement-of-Preliminary-Issues-19-February-2024.pdf, downloaded 24 April 2024, at p4 [5.g]

(Sainsbury's and Asda), because of a substantial lessening of competition. The supermarkets are also two of the four largest retailers of online delivered groceries and similarly to New Zealand's Foodstuffs, they supply fuel through petrol stations adjacent to their larger grocery stores. The CMA found extensive competition concerns which were expected to lead to price rises or a worsening of quality, range or service for customers at either a national level or at individual stores.<sup>25</sup>

- 6.2 Significantly, the CMA surveyed customers covering in-store groceries, online delivered groceries and fuel, through which it received detailed views of 60,000 shoppers and motorists.<sup>26</sup>
- 6.3 The CMA also considered whether co-ordinated effects could arise, whereby the Parties and other grocery retailers would recognise they are mutually interdependent and they could reach a more profitable outcome if they aligned their behaviour to limit their rivalry i.e. duopoly behaviour as we have here. On that basis the CMA found substantial lessening of competition in the retail supply of online delivered groceries in areas where another supermarket was not present, which represented 20% of the UK postcode units.<sup>27</sup>
- 6.4 It is worth noting the merger was rejected in a market that has four significant supermarket chains and further smaller challengers. The CMA considered various options including promises from Sainsbury's and Asda about holding prices and cementing in discounts. All were rejected in favour of a full prohibition of the merger. The CMA described it as the "only effective remedy to the significant lessening of competition we have found".<sup>28</sup>

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<sup>25</sup>CMA Anticipated merger between J Sainsbury PLC and Asda Group Ltd, Summary of Final Report, Notified: 25 April 2019, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://assets.publishing.service.gov.uk/media/5cc1434ee5274a467a8dd482/Executive\_summary.pdf, at p1, downloaded 20 April 2024

<sup>26</sup> As above at p3 [8].

<sup>27</sup> As above at p2 [6]

<sup>28</sup> As above at p4 [11]

While Foodstuffs says it does not currently compete between the North and South Island, it is worth noting the CMA said: “where the merger lessens competition in local areas representing a significant proportion of the Parties’ overall supermarkets, the merger may result in price rises (and/or a worsening of other aspects) across all the Parties’ stores. The effect could be a worse deal for customers in each local area where one or more the the Parties is present (that is, including in areas where they do not overlap).<sup>29</sup>

### *Australia*

6.5 Australian consumer advocacy group Choice,<sup>30</sup> in its submission to the current Australian Senate Committee on supermarket prices noted the market for groceries in Australia was highly concentrated with only four companies controlling over 80% of the total grocery market. Woolworths had the largest share at 37%, Coles at 28%, Aldi 10% and Metcash 7%.<sup>31</sup> Essentially that means the two big operators control 65% of the market. In New Zealand the market concentration is so dense that two supermarket chains – Foodstuffs and Woolworths (formerly Countdown) - control more than 80% of the market. Foodstuffs is the largest of the two. Any agreement to allow it to consolidate by merging its North and South Island operations with a single wholesale distributor will inevitably lessen competition and increase prices for consumers.

6.6 Choice also pointed to drastic price increases over the past few years, with the two major supermarkets regularly rotating products through a variety of different discounts and often confusing promotions. Constantly fluctuating prices had potentially allowed supermarkets to increase prices

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<sup>29</sup> As above at p7[26]

<sup>30</sup> Choice is the leading consumer advocacy group in Australia. It is an independent, not-for-profit and member-funded.

<sup>31</sup> Choice submission to the Select Committee on Supermarket Prices, February 2024, The Effect of market concentration and the exercise of corporate power on the price of food and groceries, <https://www.choice.com.au/consumer-advocacy/policy/policy-submissions/2024/supermarket-prices>, downloaded 24 April 2024, at p6.

beyond what they would have been able to, had they simply increased prices transparently over time.<sup>32</sup>

### *Canada*

6.7 A recent article in Canada's national newspaper *The Globe and Mail* noted consumers might grumble about Canada's cosy network of oligopolies (including grocery) keeping prices high. But for investors, a market in which a few players dominate one sector, can look very different. It said slim competition which keeps startups out and profits in looks good for them. "We have a handful of oligopolies that are able to fend off new entrants (whether regional or foreign) without needing to destroy profits..."<sup>33</sup>

### *United States*

6.8 The US Federal Trade Commission (FTC) has sued to prevent a merger of giant supermarket chains Albertsons and Kroger, a deal the FTC says would create a monopoly. Online publication *Investopedia* said consumer advocates and politicians, including US President Joe Biden, were concerned that grocery store mergers could reduce competition and give companies more power to raise prices at a time when household budgets are reeling from significant increases in the cost of food over the past few years.<sup>34</sup>

## **7. Divestment option**

7.1 The Commerce Commission's Statement of Preliminary Issues noted submitters, such as GAG, had suggested a form of divestment, before, or

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<sup>32</sup> Choice submission to the Senate Select Committee on Supermarkets, Submission 72, p7, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/file:///Users/suzan/Downloads/2024-02-17%20supermarket%20pricing%20inquiry.pdf, downloaded 21 April 2024.

<sup>33</sup> Consumers may grumble, but investors love oligopolies, *The Globe and Mail*, Report on Business, B1, 30 March 2024.

<sup>34</sup> FTC Sues To Block \$24.6b Kroger-Albertsons Merger, *Investopedia*, 21 February 2024, <https://www.investopedia.com/regulator-sues-to-block-kroger-albertsons-merger-8600367>, downloaded 24 April 2024.

instead of granting clearance to the Proposed merger. The Commission said it had no such power, only a court had that power.<sup>35</sup>

7.2 Sadly, this is an accurate reflection of New Zealand law. However, in March this year, a bill was introduced in Australia, which would give their regulator, the Australian Competition and Consumer Commission, the power to apply directly to a court for a divestment order. This bill has been introduced with the express purpose of breaking up the Coles/Woolworths duopoly where misuse of power has occurred.<sup>36</sup> The Select Committee is due to report back on 7 May 2024.

7.3 Examples of a divestment order a court could make include, forcing the sale of a suite of specific supermarkets held by Coles or Woolworths which would then have to be sold to another supermarket competitor or to an international operator that wants to enter Australia.<sup>37</sup>

7.4 GAG points this out to note the concept of divestment is not novel, indeed is being seen as a potential solution in other countries. While this Government has not shown interest in a divestment option thus far, it may only be a matter of time before the same question arises here at more official levels. It also suggests political sentiment is turning away from supporting or enabling duopolies. Allowing the Foodstuffs merger would be inconsistent with this overseas trend and leave New Zealand consumers at a strong disadvantage to others around the world.

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<sup>35</sup> Commerce Commission, Statement of Issues, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://comcom.govt.nz/\_\_data/assets/pdf\_file/0037/348859/FSNI-and-FSSI-Statement-of-Issues-4-April-2024.pdf, downloaded 24 April 2024, at [27].

<sup>36</sup> Watchdog would get powers to 'smash' supermarket duopolies under Greens bill, Guardian online, 18 March 2024, <https://www.theguardian.com/australia-news/2024/mar/19/watchdog-would-get-powers-to-smash-supermarket-duopoly-under-greens-bill>, downloaded 24 April 2024.

<sup>37</sup> Senator McKim, The Second Prof Bills Competition and Consumer (Divestiture Powers) Bill, 2024, second reading, Hansard speech to the Senate, 20 March 2024, [https://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansard\\_Display?bid=chamber/hansards/27581/&sid=0159](https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansards/27581/&sid=0159), downloaded 24 April 2024.

## **8. Conclusion**

8.1 GAG is focused on achieving lower prices for consumers at the supermarket checkout. The application to merge Foodstuffs North and South Island co-operatives is counter to what the Commission's own supermarket study found. Allowing it would defeat the purpose of the new regulatory regime, provisions of the Commerce Act, and would substantially lessen competition.

## **9. Contact**

Suzanne Chetwin, chair GAG, [suzannechetwin@xtra.co.nz](mailto:suzannechetwin@xtra.co.nz), mob

## **10. Who we are: GAG board**

### **Sue Chetwin LLB, CNZM (chair)**

Sue Chetwin has more than 17 years' experience working for and on behalf of consumers. She is the former CEO of Consumer NZ, a position she held for 13 years. She chaired the Government's review into the drug buying agency Pharmac, and was a member of the Law Society Independent Steering Group Committee considering the terms of reference for the statutory framework for legal services. She chaired an independent consumer panel assisting Chorus prepare its investment proposals to present to the Commerce Commission. She is also a director of Food Standards Australia NZ and the Financial Markets Authority. Her experience includes 25 years in journalism, including editing Sunday News, Sunday Star Times and the Herald on Sunday. She was awarded a CNZM in 2021 for services to consumers.

### **Deborah Hart**

Deborah chairs the Consumer Advocacy Council which advocates for residential and small business electricity consumers, the Retirement Villages' Residents' Council, and the Holocaust Centre of New Zealand. She sits on the Human Rights Review Tribunal and has served as a lay member of the High Court. She advises



on government relations and mentors executives. A solicitor by training, she is the former executive director at the Arbitrators' and Mediators' Institute of New Zealand. More recently Deborah chaired the independent review of Aotearoa New Zealand's electoral laws.

**Ernie Newman (Interim Secretary)**

Ernie is a semi-retired Digital Economy Consultant based in the Waikato. From 1999 to 2010 he was Chief Executive of the Telecommunications Users Association (TUANZ), through the period when it lobbied successfully and intensively for the breakup of Telecom's monopoly. His expertise includes digital economy issues, management, e-health, e-learning, privacy policy, and telecommunications policy, not-for-profit advocacy group management and governance.

**Gilbert Peterson**

Gilbert was for 15 years Communications Manager at the Employers & Manufacturers Association in Auckland. Prior to that he was for two years editor of TUANZ Topics magazine, 12 years at the NZ Manufacturers Federation in Wellington, and five years at the former DSIR. His experience includes feature writing, book and magazine publishing, editing and small business management

**Mavis Mullins (Rangitāne, Te Atihaunui-a-Paparangi and Ngāti Ranginui) MNZM**

Mavis is a recognised leader in Aotearoa's primary industry who has chaired a number of large Māori land based incorporations and is patron of [Agri-Women's Development Trust \(AWDT\)](#). Mavis is a passionate advocate for innovation and mentorship with a focus on equity, agribusiness and environmental issues. Her governance leadership within Hautaki Ltd and Te Huarahi Tika Trust saw the launch of 2degrees which busted the mobile phone duopoly of the day. She has received many honours and awards including Member of the New Zealand Order of Merit (NZMN), induction into the New Zealand Business Hall of Fame and Outstanding Māori Business Leader of the Year from the University of Auckland

