

Market study into the retail grocery sector

Final report

Date: 8 March 2022



Karakia

Nau mai e ngā hua	<i>Greetings to the gifts bestowed upon us</i>
o te wao	<i>from the sacred forests</i>
o te ngakina	<i>from the cultivated gardens</i>
o te wai tai	<i>from the sea</i>
o te wai māori	<i>from the fresh waters</i>
Nā Tāne	<i>The gifts from Tāne</i>
Nā Rongo	<i>from Rongo</i>
Nā Tangaroa	<i>from Tangaroa</i>
Nā Maru	<i>from Maru</i>
Ko Ranginui e tū iho nei	<i>I acknowledge Ranginui who is above,</i>
Ko Papatūānuku e takoto nei	<i>Papatuanuku who lies beneath</i>
Tuturu awhiti whakamaua	<i>Let this be my commitment to all!</i>
Kia tina! Hui e! TĀIKI E!	<i>Draw together! Affirm!</i>

This karakia is commonly used to acknowledge the different sources of 'kai'. In the context of this report, it acknowledges the sources of 'kai' that have been shared as part of the consultation process with the implication that this study is the 'hua' or fruit borne out of this process

He Whakataukī

Nāu te rourou, nāku te rourou, ka ora ai te iwi

with your food basket and mine we will sustain the people

This whakataukī describes the process and intention of this report in that it speaks to the bringing together of our many food baskets to contribute to the well-being of our people.

He mihi

E ngā mana, e ngā reo, e ngā rau Rangatira mā, tēnei te Komihana Tauhokohoko e mihi ana ki a koutou.

E ngā mate o te motu, he mihi aroha nui ki a koutou haere, haere, haere atu rā.

E te motu, mauri ora.

Greetings to all who have contributed to this report, the Commerce Commission acknowledges you and thanks you for your contribution.

The Commerce Commission also acknowledges the impact that COVID-19 is having on the nation, particularly acknowledging those who have passed beyond the veil.

Tēnā tātou katoa.

Contents

GLOSSARY	10
CHAPTER 1 INTRODUCTION AND PURPOSE	13
INTRODUCTION	13
THE MINISTER ISSUED THE TERMS OF REFERENCE FOR A RETAIL GROCERY MARKET STUDY ...	13
SCOPE OF OUR STUDY	14
OUR FRAMEWORK FOR ANALYSING COMPETITION	14
OUR PROCESS.....	20
NEXT STEPS.....	24
CHAPTER 2 MARKET CHARACTERISTICS AND SECTOR BACKGROUND.....	25
PURPOSE AND STRUCTURE	25
GROCERY CONSUMERS	25
GROCERY RETAILERS	26
MAJOR GROCERY RETAILERS' OFFERINGS	31
PRICING AND PROMOTIONAL PRACTICES.....	34
GROCERY SUPPLY CHAIN	36
OTHER SECTOR OBSERVATIONS.....	39
CHAPTER 3 MARKET OUTCOMES IN THE RETAIL GROCERY SECTOR	44
INTRODUCTION	45
PROFITABILITY OF GROCERY RETAILERS IN NEW ZEALAND	45
PRICE OUTCOMES	64
INNOVATION AND INVESTMENT.....	80
CHAPTER 4 THE NATURE OF COMPETITION IN THE RETAIL GROCERY SECTOR	99
INTRODUCTION	100
OUR APPROACH TO ANALYSING THE NATURE OF COMPETITION IN GROCERY RETAILING	101
THE DRIVERS OF STORE CHOICE AND CONSUMER SHOPPING BEHAVIOUR IN NEW ZEALAND	104
THE DIMENSIONS OF COMPETITION IN RETAIL GROCERY MARKETS	116
THE NATURE OF LOCAL, REGIONAL AND NATIONAL COMPETITION IN GROCERY RETAILING .	126
REGIONAL VARIATIONS IN THE GROCERY STORE OPTIONS AVAILABLE TO CONSUMERS.....	135
CHAPTER 5 COMPETITION AT THE RETAIL LEVEL	146
INTRODUCTION	147
HOW INTENSE IS COMPETITION AT THE RETAIL LEVEL?	149
WHAT IS THE EXTENT OF COMPETITION BETWEEN OTHER GROCERY RETAILERS AND THE	
MAJOR GROCERY RETAILERS?.....	153
WHAT IS THE EXTENT OF COMPETITION BETWEEN THE MAJOR GROCERY RETAILERS?.....	171
ARE GROCERY RETAILERS ACCOMMODATING EACH OTHER'S BEHAVIOUR?.....	182
HOW DOES THE STRUCTURE OF LOCAL GROCERY MARKETS AFFECT PRICE COMPETITION	
BETWEEN THE MAJOR GROCERY RETAILERS?.....	183
CHAPTER 6 CONDITIONS OF ENTRY AND EXPANSION.....	189
INTRODUCTION	190
OUR APPROACH TO ANALYSING CONDITIONS OF ENTRY AND EXPANSION.....	191
RECENT ENTRY AND PROSPECT OF IMMINENT ENTRY	194
IMPACT OF NEW ZEALAND'S SIZE AND GEOGRAPHY ON ENTRY AND EXPANSION.....	195
SITE AVAILABILITY AND DEVELOPMENT.....	200
COST ADVANTAGES AVAILABLE TO THE MAJOR GROCERY RETAILERS.....	223
WHOLESALE ACCESS TO GROCERY PRODUCTS	228
CONDUCT BY SUPPLIERS AND RETAILERS WHICH COULD POTENTIALLY AFFECT PRODUCT	
SOURCING	248
ACCESS TO CAPITAL.....	257
ALCOHOL LICENSING LAWS.....	260

LOYALTY PROGRAMMES	261
CHAPTER 7 CONSUMER-FACING ISSUES.....	266
INTRODUCTION	267
OUR APPROACH TO ANALYSING CONSUMER-FACING ISSUES.....	269
PROMOTIONAL MECHANISMS AND PRACTICES MAY AFFECT CONSUMERS' ABILITY TO COMPARE OFFERINGS AND PERCEPTIONS OF VALUE	278
PRICE COMPARISON WEBSITES MAY ASSIST CONSUMER DECISION MAKING	293
UNIT PRICING CAN LEAD TO MORE INFORMED DECISIONS AND DRIVE COMPETITION	294
LOYALTY PROGRAMMES MAY AFFECT CONSUMER DECISION MAKING AND REDUCE PRICE COMPETITION	298
LOYALTY PROGRAMMES MAY RAISE PERCEIVED SWITCHING COSTS FOR SOME CONSUMERS.....	310
LOYALTY PROGRAMMES MAY FACILITATE A FORM OF PRICE DISCRIMINATION	315
OTHER ISSUES WITHIN THE RETAIL GROCERY SECTOR RAISED BY CONSUMERS	317
CHAPTER 8 ACQUISITION OF GROCERIES BY RETAILERS	324
INTRODUCTION	325
OUR APPROACH TO ANALYSING THE ACQUISITION OF GROCERIES BY RETAILERS.....	327
DO GROCERY RETAILERS HAVE BUYER POWER IN THE ACQUISITION OF GROCERIES?	337
ARE RETAILERS EXERCISING BUYER POWER AND WHAT IS THE EFFECT?.....	346
WHAT EFFECT ARE PRIVATE LABEL PRODUCTS HAVING ON COMPETITION BETWEEN RETAILERS AND SUPPLIERS?.....	365
CHAPTER 9 RECOMMENDATIONS TO ENHANCE COMPETITION	378
OUR APPROACH	379
OVERVIEW OF OUR RECOMMENDATIONS	380
RECOMMENDATIONS TO IMPROVE CONDITIONS FOR ENTRY AND EXPANSION	382
RECOMMENDATIONS TO IMPROVE COMPETITION FOR THE ACQUISITION OF GROCERIES....	412
RECOMMENDATIONS TO IMPROVE THE ABILITY OF CONSUMERS TO MAKE INFORMED DECISIONS	427
OPTIONS TO DIRECTLY IMPROVE RETAIL COMPETITION IN GROCERY MARKETS	436
INSTITUTIONAL ARRANGEMENTS	439
MONITORING AND REVIEW	443
ATTACHMENT A ADDITIONAL MAPS OF GROCERY STORES	445
ATTACHMENT B OUR ASSESSMENT OF WACC AND ROACE PROFITABILITY.....	451
INTRODUCTION	451
OUR ESTIMATION OF NORMAL LEVELS OF PROFITABILITY FOR GROCERY RETAILING IN NEW ZEALAND.....	451
OUR ASSESSMENT OF THE ROACE FOR THE MAJOR GROCERY RETAILERS.....	468
ATTACHMENT C INTERNATIONAL PRICE COMPARISON	479
INTRODUCTION	479
DATASETS USED TO COMPARE GROCERY PRICES	479
METHODS USED IN INTERPRETING DATASETS.....	485
FURTHER ANALYSIS AND SENSITIVITY TESTING	493
ATTACHMENT D PROMOTIONS AND PRICING DATA ANALYSIS	501
INTRODUCTION	501
DESCRIPTION OF DATA PROVIDED	501
INITIAL DATA CLEANING.....	503
DATA LIMITATIONS.....	504
ANALYSIS OF PROMOTIONS	505
ANALYSIS OF PRICING BEHAVIOUR	514
ATTACHMENT E CONSUMER SURVEY	524
INTRODUCTION	524

ABOUT OUR CONSUMER SURVEY	524
HOW WE DESIGNED AND CONDUCTED THIS SURVEY	525
HOW WE HAVE USED THE RESULTS OF THIS SURVEY	530
SOME LIMITATIONS TO OUR CONSUMER SURVEY	531
COMPARISON OF SURVEY RESULTS WITH OTHER DATASETS.....	534
HOW WE CONDUCTED THE QUANTITATIVE ANALYSIS OF THIS SURVEY.....	539
SUMMARY OF OUR ANALYSIS OF SHOPPING BEHAVIOUR	545
HOW RESPONDENTS TOLD US THEY GET TO THEIR MAIN STORE	554
WHY RESPONDENTS CHOOSE TO SHOP AT THEIR MAIN STORE.....	557
HOW RESPONDENTS COMPARE AND CHOOSE GROCERY PRODUCTS.....	563
WHAT RESPONDENTS TOLD US ABOUT HOW THEY USE GROCERY LOYALTY PROGRAMMES .	567
WHAT RESPONDENTS TOLD US ABOUT THEIR EXPERIENCES SHOPPING FOR GROCERIES	574
QUESTION SCRIPT FOR OUR CONSUMER SURVEY	582
ATTACHMENT F SUPPLIER SURVEY	590
INTRODUCTION	590
HOW WE DESIGNED AND CONDUCTED OUR SUPPLIER SURVEY	590
OUR APPROACH TO CONFIDENTIALITY OF SUPPLIERS' INFORMATION.....	591
WHO RESPONDED TO OUR SUPPLIER SURVEY.....	592
HOW WE HAVE USED THE RESULTS OF OUR SUPPLIER SURVEY.....	594
QUESTION SCRIPT FOR OUR SUPPLIER SURVEY	595
ATTACHMENT G STORE DENSITY ANALYSIS	606
INTRODUCTION	606
FINDINGS OF OUR ANALYSIS.....	606

Glossary

ACCC	Australian Competition and Consumer Commission.
Delisting or delist	Where a grocery retailer: <ul style="list-style-type: none"> • removes a supplier's product(s) from the range of products it stocks across its store(s); or • reduces the distribution of a supplier's product(s) across its store(s), and that reduction has or is likely to have a material effect on the supplier.
Dry groceries	Product group consisting of non-perishable food products and certain non-food products. These are most grocery items excluding fresh, perishable products such as baked items, dairy, deli, meat, frozen foods, and fresh fruit and vegetables. Examples of dry groceries include biscuits, toilet paper, pasta, rice, dishwashing detergent and canned products.
Groceries or products	A range of food and drinks, including meat, fruit and vegetables, canned goods, dairy products, and a range of other household products, like toilet paper, cleaning products, pet food, alcohol and tobacco. These products can usually all be purchased at a supermarket, and many are available through other shops as well.
Grocery retailers	Businesses which sell grocery products directly to final consumers in New Zealand. Examples include: <ul style="list-style-type: none"> • Major grocery retailers (eg, Foodstuffs North Island Limited (Foodstuffs NI), Foodstuffs South Island Limited (Foodstuffs SI), Woolworths NZ Limited (Woolworths NZ)); • Other grocery retailers, which include: <ul style="list-style-type: none"> ○ International food stores (eg, Tai Ping, Japan Mart, Yogijis Food Mart); ○ Other supermarkets (eg, Farro Fresh, Moore Wilson's, Bin Inn); ○ Single-category or specialist grocery retailers (eg, greengrocers, butchers, bakeries, liquor stores, pet stores, pharmacies); ○ General merchandisers (eg, The Warehouse, Kmart, TheMarket); ○ Convenience stores (eg, dairies, petrol stations, Night 'n Day); ○ Meal kit providers (eg, Hello Fresh, My Food Bag); ○ Food box operators (eg, Foodbox, Oooby); ○ Online-only supermarkets (eg, The Honest Grocer, Supie); ○ Specialist online retailers (eg, Hypermeat).

Grocery wholesalers	Intermediaries who acquire products from suppliers and on-sell products to grocery retailers. Examples include fresh produce wholesalers/distributors (eg, T&G Fresh, MG Marketing, Fresh Direct), and foodservice wholesalers where they supply grocery retailers (eg, Trents, Gilmours and Bidfood).
International food stores	Stores specialising in grocery products from or relating to the cuisine of a particular country or region.
Main shop	A shop typically happening weekly or at another regular interval based on the convenience of using one grocery store to get all necessities in one place.
Major grocery retailers	<p>Grocery retailers that operate a large number of supermarkets. The major grocery retailers are Woolworths NZ, Foodstuffs NI, and Foodstuffs SI.</p> <ul style="list-style-type: none"> • Woolworths NZ's retail banners are Countdown, FreshChoice and SuperValue. • Foodstuffs NI's retail banners are PAK'nSAVE, New World, and Four Square. • Foodstuffs SI's retail banners are PAK'nSAVE, New World, Four Square, Raeward Fresh, and On the Spot.
MBIE	Ministry of Business, Innovation and Employment.
NBA	Natural and Built Environments Act, which is intended to replace the Resource Management Act as the primary statute regulating land use in the new resource management system.
NPF	National Planning Framework, which is intended to be the key source of national direction in the new resource management system.
NZFGC	New Zealand Food and Grocery Council (NZFGC) is an industry association that represents the manufacturers and suppliers of food, beverage, and grocery brands in New Zealand.
PQRS	Price, quality, range and service.
Private label	Also known as home brands, own brands, store brands or generic products. These are products that are manufactured for sale under a retailer's brand.
Product categories	Groups of products sold by grocery retailers that are of a similar type. For example, product categories may include fruit and vegetables, bread and cereals, and non-alcoholic beverages.

RMA	Resource Management Act 1991, which is the current statute that regulates land use in New Zealand.
Secondary shop	A visit to one or more store(s), other than the store the main shop is carried out at, to shop for specific products.
SPA	Strategic Planning Act, which is intended to require the development of long-term Regional Spatial Strategies to help coordinate and integrate decision making under the new resource management system.
Specialist grocery retailers	Retailers of grocery items in particular product categories, for example, meat (butchers) or fresh fruit and vegetables (greengrocers).
Supermarkets	Large grocery retailers selling a wide variety of foods (such as dry groceries, fresh produce), household goods, non-alcoholic beverages, and usually some alcoholic beverages.
Top-up shop	A quick shop for a small number of items that can be conducted for a range of reasons at one of a range of retailers.

Chapter 1 Introduction and purpose

Introduction

1.1 This report sets out the findings of the New Zealand Commerce Commission (Commission) market study into the retail grocery sector (our study) and our recommendations for change. In preparing this report, we have considered submissions and evidence from a wide range of parties.

The Minister issued the terms of reference for a retail grocery market study

1.2 On 17 November 2020, the Hon Dr David Clark, Minister of Commerce and Consumer Affairs (Minister), published a notice under section 51(1) of the Commerce Act 1986 (the Act) requiring the Commission to undertake a study into any factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand.

1.3 We must carry out our study in accordance with the terms of reference issued by the Minister. However, we may also consider any ancillary matters that are related to, but not explicitly covered by, the terms of reference.¹

1.4 On 24 September 2021 the Minister extended the date for provision of our final report on our study, and reissued the terms of reference to reflect the new date.

1.5 The updated terms of reference for our study are set out in the box below.²

Notice Amending the Public Release Date for the Final Report for the Competition Study into the Retail Grocery Sector

I, Dr David Clark, Minister of Commerce and Consumer Affairs, pursuant to section 51 of Part 3A of the Commerce Act 1986, require the Commerce Commission to carry out a competition study into any factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand. Matters to be considered in the study must include, but are not restricted to:

1. the structure of the grocery industry at the wholesale and retail levels;
2. the nature of competition at the wholesale and retail levels of the grocery industry;
3. the pricing practices of the major grocery retailers;
4. the grocery procurement practices of the major grocery retailers; and
5. the price, quality, product range and service offerings for retail customers.

The Commerce Commission should now make its final report for this study publicly available by **8 March 2022**.

Dated this 24th day of September 2021.

¹ Section 51A(4)(b) of the Act.

² New Zealand Gazette “Notice Amending the Public Release Date for the Final Report for the Competition Study into the Retail Grocery Sector” (24 September 2021) <https://gazette.govt.nz/notice/id/2021-go4155?year=2021>.

- 1.6 The high level of concentration in the sector, potential competition concerns and the prices consumers pay for their groceries were cited by the Minister in 2020 as reasons for asking us to undertake this study.^{3,4}

Scope of our study

- 1.7 Our study focuses on the retail supply of groceries to New Zealand consumers. This includes meat, fruit and vegetables, canned goods, dairy products, and a range of other household products like toilet paper, cleaning products and pet food. Our study also includes alcohol and tobacco where these are sold by grocery retailers.^{5, 6, 7}

Our framework for analysing competition

Competition that works well for consumers

- 1.8 Our study considers whether competition is working well for grocery consumers. Its purpose is to identify and assess factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand, and to make any recommendations that we consider may improve competition.⁸

³ Cabinet paper “Initiating a Commerce Commission market study into supermarkets” (13 November 2020) at [4], available at: <https://www.mbie.govt.nz/dmsdocument/12272-initiating-a-commerce-commission-market-study-into-supermarkets-proactiverelease-pdf>; Hon Dr David Clark “Supermarkets announced as Government’s second market study” (17 November 2020) <https://www.beehive.govt.nz/release/supermarkets-announced-government%E2%80%99s-second-market-study>.

⁴ Paragraph 18.1 of the Cabinet paper referenced above noted several indicators which may suggest there are lower levels of competition than would be expected in a workably competitive market: unequal bargaining power which may allow supermarkets to push prices unreasonably low for suppliers which could impede innovation and quality; research indicating most of the competition measures for supermarkets, grocery stores, and specialist food retailers have tended to trend downwards over time; the discounting practices of some supermarkets had been called into question by a Consumer NZ study, a practice which they indicated may mislead consumers; and concerns about the availability of suitable land for potential competitors to enter markets due to strategic land acquisitions by supermarkets.

⁵ We consulted on the scope of the category of ‘groceries’ we should consider for our study and some submitters suggested that our study scope should include alcohol and tobacco, which we initially excluded, for example: Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 1; The Warehouse Group “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 2; Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 8.

⁶ Alcohol and tobacco can usually be purchased at a supermarket, and consumers seeking to purchase them as part of their shopping basket might not consider shopping at grocery retailers that do not sell them. Our study has therefore included certain kinds of alcohol and tobacco where these are sold by grocery retailers.

⁷ Under s 58 of the Sale and Supply of Alcohol Act 2012, the holder of an off-licence issued for premises that are or form part of a supermarket or grocery shop and premises that can be reached from a supermarket or grocery shop without leaving it, can sell beer, mead, wine that is no more than 15% ethanol by volumes measured at 20 degrees Celsius.

⁸ Sections 48, 51A and 51B of the Act and our terms of reference.

- 1.9 Our study does not enquire into compliance with the provisions of the Act relating to anticompetitive conduct or mergers. Therefore, a conclusion that particular conduct affects competition, and may be the subject of a recommendation, is not a conclusion that it breaches provisions of the Act. We retain the ability to separately investigate anticompetitive conduct if information collected during our study, or outside of it, gives us reason to believe that anticompetitive conduct may be occurring. Similarly, we may separately investigate conduct which we consider could breach the Fair Trading Act 1986 (FTA).
- 1.10 Our study is focused on understanding competition in the grocery sector. It does not look at other factors which are unrelated to competition in the sector, such as the impact of Goods and Services Tax (GST) on grocery prices, or policy matters relating to healthy eating, alcohol consumption or environmental issues. In addition, we have heard that, while accessibility to healthy food is a priority for many consumers, some are struggling to afford food, with food insecurity disproportionately affecting Māori and Pacific consumers, as well as those with disabilities or lower incomes.⁹ We have not enquired into any specific effects of competition on consumers facing hardship, but we acknowledge the potential for these groups to feel some of these effects more acutely. We have also not enquired into any broader physical and mental health implications of food insecurity in New Zealand.
- 1.11 The overriding aim of our study is the same as the purpose of the Act itself: to promote competition in markets for the long-term benefit of consumers within New Zealand.¹⁰

⁹ For example: Health Coalition Aotearoa “Submission on Market study into grocery sector draft report” (2 September 2021) at 1-2; Christians Against Poverty “Submission on Market study into grocery sector draft report” (26 August 2021) at 1; Auckland Regional Public Health Service “Submission on Market study into grocery sector draft report” (2 September 2021) at [4]; FinCap “Submission on Market study into grocery sector draft report” (25 August 2021); Kore Hiakai Zero Hunger Collective “Submission on Market study into grocery sector draft report” (26 August 2021) at [3]; National Council of Women “Submission on Market study into grocery sector draft report” (23 August 2021) at [5]-[6]; The Salvation Army Te Ope Whakaora “Submission on Market study into grocery sector draft report” (26 August 2021) at [11].

¹⁰ Section 1A of the Act. This was emphasised by the Transport and Infrastructure Select Committee in its report-back to Parliament on the draft market studies legislation – Commerce Amendment Bill 2018 (45-2) (select committee report) at 1, available at: https://www.parliament.nz/en/pb/sc/reports/document/SCR_80263/commerceamendment-bill.

- 1.12 Competition is defined in the Act as meaning “workable or effective competition”.¹¹ It does not mean the theoretical concept of perfect competition. The Court has noted that there is no consensus on precise conditions that define workable competition, rather:¹²

... workable competition is a practical description of the state of an industry where government intervention to make the market work better is not justified because the socially desirable outcomes generated by competition already exist to a satisfactory degree.

A workably competitive market is one that provides outcomes that are reasonably close to those found in strongly competitive markets...

The degree of rivalry is critical. In a workably competitive market no firm has significant market power and consequently prices are not too much or for too long significantly above costs...

In our view, what matters is that workably competitive markets have a tendency towards generating certain outcomes...

...the tendencies in workably competitive markets will be towards the outcomes produced in strongly competitive markets.

- 1.13 We have developed [Market Studies Guidelines](#) to assist stakeholders to understand our approach to a market study.¹³ Our Market Studies Guidelines describe characteristics of competitive markets that are working well and those that may be observed in markets that are not working well. They also describe market features that could affect competition and that are relevant to our study.¹⁴ In summary, when markets work well for the long-term benefit of consumers, firms compete to win customers based on factors such as price, quality, choice, and service.

Our study is not a review of the grocery sector’s response to the COVID-19 pandemic

- 1.14 We are aware that the COVID-19 pandemic has had a major impact on many businesses operating in New Zealand. In the New Zealand grocery industry, at various times over the past two years there may have been:
- 1.14.1 short-term effects on prices, choice and availability of groceries; and
 - 1.14.2 collaboration between supermarkets to stabilise supply and protect consumers’ access to groceries.

¹¹ Section 3(1) of the Act.

¹² *Wellington International Airport Ltd and Others v Commerce Commission* [2013] NZHC 3289 at [13]-[15], [18] and [22], available at: <https://forms.justice.govt.nz/search/Documents/pdf/ido/53/alfresco/service/api/node/content/workspace/SpacesStore/1c117dea-b8ba-491e-ba1d-d4cd30dbe522/1c117dea-b8ba-491e-ba1d-d4cd30dbe522.pdf>.

¹³ Referred to as Competition Studies in Part 3A of the Act.

¹⁴ Commerce Commission “Market Studies Guidelines” (19 November 2020) at [12]-[20].

- 1.15 However, this study does not analyse or comment upon the grocery sector's response to the COVID-19 pandemic, its effects on competition, nor its effects on affordability of, or access to, food.
- 1.16 Rather, we are undertaking a wider assessment of competition in the sector. As part of this assessment, we have considered whether any issues that have emerged during the pandemic are likely to affect competition over a longer period.

Our approach to assessing competition in this market

- 1.17 Our task is to study the factors that may affect competition for the supply or acquisition of groceries by retailers in New Zealand, consider whether competition is working well for consumers, and to make any recommendations that we consider may improve competition.
- 1.18 As noted above, our Market Studies Guidelines describe the characteristics or expected outcomes of competitive markets that are working well, and market features that could affect competition.
- 1.19 To inform our assessment of whether competition is working well, we have considered a range of observable market outcomes and the nature of competition.
- 1.20 In relation to observable market outcomes, we have focused on commonly understood indicators of whether competition is working well or not. This includes the profitability of grocery retailers and the prices they charge to consumers, and also includes the extent of innovation that they engage in, as well as the quality, range and services that are offered to consumers.
- 1.21 We have considered whether these observed market outcomes are consistent with what we would expect in a workably competitive market, and if not, the extent to which they depart from what we would expect. In forming expectations of what we would expect in a workably competitive market, we consider a range of benchmarks including observations from other markets.
- 1.22 We have also looked at the nature of competition in the retail and wholesale grocery sectors, including market features such as the industry structure, the conditions under which entry and expansion can occur, and the behaviour of market participants.

- 1.23 We have considered the extent to which both market outcomes and the nature of competition that we observe, individually and collectively, may be affecting competition. Both are relevant to our assessment of competition and our final recommendations. We present a series of recommendations for improvements to the factors affecting competition that, in turn, we would expect to produce better long-term market outcomes for consumers, including the right prices, quality, range and service. Where possible, we have made high-level judgements about the likely scale of the costs and benefits of these measures. However, we consider that formal cost-benefit analysis falls outside the scope of our study. Policy makers may undertake that analysis while developing or giving effect to any Government decision about recommendations that it may wish to take forward after considering our final report.
- 1.24 In Chapter 2 we begin with a broad description of the characteristics of the New Zealand grocery sector to provide an overview of the sector we have considered. We introduce the key sector participants, focussing on providing details about the operations of the major grocery retailers. We provide an overview of several key features of the market, including other grocery retailers, the grocery supply chain, and other sector observations. This provides context for the discussion that follows later in the report.
- 1.25 In Chapter 3 we set out our observations on market outcomes in the retail grocery sector and our view on what these indicators can tell us about whether competition is working well or not. We explain our profitability assessment for the major grocery retailers, and compare New Zealand grocery prices with those seen overseas. We also discuss the innovation that we have observed among grocery retailers. Our conclusions in relation to these matters contribute to our overall assessment of whether competition is working well for consumers.
- 1.26 In Chapter 4 we draw on evidence gathered during our study to identify the dimensions upon which competition is occurring in the retail grocery market. We describe consumer product and shopping preferences, and how retailers offering groceries operate nationally and locally in different regions in New Zealand.
- 1.27 We build on this in Chapter 5 by further considering the intensity of competition along the dimensions of competition identified in Chapter 4. We draw some conclusions about the intensity of competition in retail grocery markets in New Zealand and identify features of the market that might be contributing to (or detracting from) the effectiveness of competition.
- 1.28 In Chapter 6 we consider longer-run competitive dynamics by assessing the ability of retailers to enter the sector and expand their operations, an important aspect impacting the effectiveness of competition. We draw conclusions in relation to a wide range of factors, including the nature of the sector and relevant regulations, the conduct of current retailers, and the availability of wholesale access to grocery products.

- 1.29 In Chapter 7 we consider how the major grocery retailers' pricing and promotional practices and loyalty programmes affect consumers' ability to seek out the best deals based on their preferences, and in turn stimulate competition among the major grocery retailers.
- 1.30 In Chapter 8 we discuss how competition is working for the acquisition of groceries by retailers from suppliers and growers. We discuss the relative bargaining position between retailers and their suppliers and the extent to which retailers may have buyer power over their suppliers. We then discuss the grocery procurement practices of the major grocery retailers and draw conclusions about the potential impact these procurement practices may have on competition.
- 1.31 In Chapter 9 we outline our recommendations to improve competition and produce better long-term market outcomes for consumers in terms of price, quality, range and service. Some recommendations are directed at the retail grocery industry, while many would require Government intervention.
- 1.32 We have included additional information in the attachments to our report:
- 1.32.1 *Attachment A: Additional maps of grocery retail stores* includes maps additional to those included in our report showing supermarket locations in New Zealand.
 - 1.32.2 *Attachment B: Our assessment of retail grocery profitability* provides details about how we have assessed profitability within the retail grocery sector, the analysis we have undertaken and our findings from this analysis.
 - 1.32.3 *Attachment C: International price comparison* provides details about the analysis we have conducted to compare the prices of groceries in New Zealand with prices internationally.
 - 1.32.4 *Attachment D: Promotions and pricing data analysis* provides details of our analysis of pricing and promotion data that has been provided by the major grocery retailers.
 - 1.32.5 *Attachment E: Consumer survey* provides further information about our consumer survey.
 - 1.32.6 *Attachment F: Supplier survey* provides further information about our supplier survey.
 - 1.32.7 *Attachment G: Store density analysis* provides details about the analysis we have conducted to compare store density in New Zealand with international comparators.
- 1.33 We also commissioned separate research which was published alongside our draft report (see paragraphs 1.44 to 1.45 below).

Our process

Papers we published

- 1.34 On 19 November 2020, we released our [statement of process](#), outlining the process we intended to follow over the course of our study.¹⁵
- 1.35 On 10 December 2020, we released our [preliminary issues paper](#), seeking responses from interested parties on the preliminary issues we intended to explore during our study.¹⁶ We received 13 submissions on our preliminary issues paper – public versions of submissions are published [on our website](#).
- 1.36 On 26 March 2021, we sought comments on submissions on our preliminary issues paper. We received comments from five parties – public versions of these comments are also published [on our website](#).
- 1.37 On 29 July 2021, we released our [draft report](#), seeking responses from interested parties on our draft findings.¹⁷ We received over 80 submissions on our draft report – public versions of submissions are published [on our website](#).

Information collection

- 1.38 The grocery sector services a diverse range of consumers, with different wants, needs, and demographics. We have therefore sought to collect information and documents from a wide range of sources and to meet with a wide range of parties.¹⁸ These parties include industry participants, grocery industry representatives, government agencies, and a range of consumer groups with differing perspectives on the sector. We have met with 89 parties in total.
- 1.39 We thank all these parties for the information they have provided, and for their ongoing engagement in our study. In particular, we appreciate the input we have received from the major grocery retailers, as we are aware our study has imposed an additional burden in a high-intensity period for them during New Zealand’s ever-evolving COVID-19 pandemic response.

¹⁵ Commerce Commission “Market Study into the Retail Grocery Sector – Statement of Process” (19 November 2020) at 3.

¹⁶ Commerce Commission “Market study into the retail grocery sector – Preliminary issues paper” (10 December 2020).

¹⁷ Commerce Commission “Market study into the retail grocery sector – Draft report” (29 July 2021).

¹⁸ We have issued some compulsory information notices under s 98 of the Act as well as being provided with information voluntarily by interested parties and sources.

- 1.40 On 4 March 2021, we asked consumers and suppliers of grocery retailers to complete surveys to help build a detailed picture of how competition is working at different levels of the grocery sector.^{19, 20} We received 12,269 responses to our consumer survey, and 126 responses to our supplier survey. The feedback we received was both valuable and important for informing our study and has contributed to the conclusions set out in this report.
- 1.41 From 21 October to 2 November 2021 we conducted a consultation conference to hear the further views of stakeholders. Over 100 parties attended our conference each day, and we received over 40 post-conference submissions.
- 1.42 We also consulted with a range of Māori partners and stakeholders following the publication of our draft report. As discussed below, this included private hui and a number of written submissions.
- 1.43 As a consequence of COVID-19 pandemic public health measures, including restrictions at Alert Levels 3 and 4 in the latter part of 2021, a significant proportion of our consultation took place online, including our consultation conference and hui. While we would have preferred to meet in person, these discussions provided valuable information and were useful for testing and better understanding stakeholders' views.

Expert advice and reports

- 1.44 We have also engaged experts to advise us in a number of areas:
- 1.44.1 We engaged Ipsos to undertake qualitative research to inform our understanding of consumers' behaviour when they shop for groceries.²¹

¹⁹ Commerce Commission "Market study into the grocery sector – Consumer fact sheet" (25 March 2021), available at:

https://comcom.govt.nz/_data/assets/pdf_file/0029/236918/Consumer-fact-sheet-closed.pdf.

²⁰ Commerce Commission "Market study into the grocery sector – Supplier fact sheet" (25 March 2021), available at: https://comcom.govt.nz/_data/assets/pdf_file/0030/236919/Supplier-fact-sheet-closed.pdf.

²¹ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) (Ipsos report), available at: https://comcom.govt.nz/_data/assets/pdf_file/0020/260381/Ipsos-Consumer-behaviour-and-preferences-in-the-NZ-retail-grocery-sector-Consumer-study-report-July-2021.pdf.

- 1.44.2 We engaged Frontier Economics to provide quantitative analysis to examine how local grocery market structures affect outcomes for consumers in New Zealand.²²
- 1.44.3 We engaged the New Zealand Institute for Business Research (NZIBR) at The University of Waikato through the Waikato Experimental Economics Lab (WEEL) to undertake experimental economics research into consumer decision making under complexity.²³
- 1.44.4 We engaged Professor Philip Gendall, an experienced survey designer, to provide advice on the design of our consumer survey.
- 1.45 Where these experts provided us with reports, we published these on our website alongside our draft report.

How we engaged with Māori

- 1.46 As an Independent Crown Entity, we are committed to supporting future-focused Māori-Crown relationships, through taking a good-faith, collaborative approach to engaging with Māori on our work.²⁴ To achieve this, we are building our understanding of our role as a treaty partner under Te Tiriti o Waitangi and doing work to better understand Te Ao Māori and what this means for our work.²⁵
- 1.47 Our commitment extends to engaging with Māori to acknowledge and strengthen our relationship with Māori, and to better understand, and reflect, Māori perspectives in our work. We acknowledge that effective engagement with Māori is key to realising the potential of this partnership, which will enable us to produce better quality outcomes for Māori.²⁶

²² Frontier Economics “Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission” (15 July 2021) (Frontier report), available at: https://comcom.govt.nz/_data/assets/pdf_file/0021/260382/Frontier-Economics-Econometric-analysis-of-the-NZ-retail-grocery-sector-Report-for-the-Commerce-Commission-15-July-2021.pdf; Frontier Economics “Response to HoustonKemp Report” (9 November 2021), available at: https://comcom.govt.nz/_data/assets/pdf_file/0038/269849/Frontier-Economics-Response-to-HoustonKemp-Report.pdf; Frontier Economics “Memo re HoustonKemp comments of 3 December 2021” (23 December 2021), available at: <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector?target=documents>.

²³ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) (WEEL report), available at: https://comcom.govt.nz/_data/assets/pdf_file/0023/260375/The-University-of-Waikato-Consumer-decision-making-under-complexity-May-2021.pdf.

²⁴ Hon. Grant Robertson “Enduring Letter of Expectations to Statutory Crown Entities” (15 October 2019), available at: <https://www.publicservice.govt.nz/assets/SSC-Site-Assets/System-and-Agency-Performance/Enduring-Letter-of-Expectations-to-statutory-Crown-entities-2019.pdf>.

²⁵ The Treaty of Waitangi/Te Tiriti o Waitangi is regarded as a founding document of government in New Zealand and is one of the major sources of New Zealand’s constitution.

²⁶ Te Arawhiti “Guidelines for engagement with Māori” (1 October 2018) at 2, available at: <https://www.tearawhiti.govt.nz/assets/Maori-Crown-Relations-Roopu/6b46d994f8/Engagement-Guidelines-1-Oct-18.pdf>.

- 1.48 We are committed to genuine engagement with Māori and acknowledge rangatiratanga and the status of Māori as Treaty partners. We also acknowledge the important role mātauranga Māori has in finding solutions to challenges we face as a nation.
- 1.49 Prior to the publication of our draft report, we had not heard specific perspectives from Māori on the retail grocery sector, from market participants or other parties, nor did we have a specific engagement plan for consulting with Māori. Following the release of our draft report this gap in our engagement became apparent.
- 1.50 To address this, we sought comment on our draft report from Māori. The purpose of this was to ensure Māori perspectives would be captured in the Market Studies process and be taken into consideration when we issued our final report. Through this engagement, we heard from Māori partners and stakeholders on our draft findings and options for recommendations through hui, written submissions, and other written comments.
- 1.51 On 1 December 2021 we held an initial day-long hui, inviting a range of Māori partners and stakeholders to share their insights on in the grocery sector. A range of individuals and organisations attended the hui from iwi and iwi-run businesses, urban Māori organisations, Māori advocacy organisations and Māori business owners, including some Māori supermarket owners.
- 1.52 We also participated in smaller hui, where these were requested. In addition, contributors were able to provide written submissions. Throughout this consultation with Māori, we received 18 written submissions, which are published on our website.
- 1.53 Hearing from Māori about their perspectives on the grocery sector has enabled us to better understand Māori perspectives, concerns, and aspirations regarding the grocery sector. However, we acknowledge that the comments we heard, and the submissions we received, do not represent the views of all Māori.
- 1.54 We also acknowledge the diversity in views and perspectives from those we did hear from. Hearing a range of Māori voices necessarily means there was a variety of perspectives expressed.

Confidential information shared with us

- 1.55 We have endeavoured to make our report as accessible to readers as possible. However, some information within this report must out of necessity be redacted from view, as is indicated by the use of square brackets like this: [].
- 1.56 Much of the information we have collected in the course of our study is considered confidential or commercially sensitive by the supplying party.
- 1.57 It is important that interested parties and others providing us with relevant information continue to feel confident participating in our study and supplying us with information that we can use to develop our views.

- 1.58 Accordingly, when deciding whether information provided to us is commercially sensitive and/or confidential or can be published, we consult with the party who has provided it and balance these considerations against our obligations to adhere to the principles of natural justice in the course of our study, operate as transparently as practicable, and comply with our legal obligations under the Official Information Act 1982 (OIA).
- 1.59 If we receive a request for any information referred to or collected in connection with this report, we will consider whether to make the information available in accordance with the OIA.
- 1.60 Our Market Studies Guidelines contain further information about how we protect confidential information provided to us during our study and how we respond to OIA requests related to our study.²⁷

Next steps

- 1.61 Our report sets out the findings of our study, and recommendations we have made to both industry, and to the Minister, to improve competition.
- 1.62 The Minister is required to respond to our final report within a reasonable time after it is made publicly available.²⁸

²⁷ Commerce Commission “Market Studies Guidelines” (19 November 2020).

²⁸ Section 51E of the Act.

Chapter 2 Market characteristics and sector background

Purpose and structure

- 2.1 This chapter provides a broad description of the characteristics of the New Zealand grocery sector. It introduces the key sector participants, focussing on providing details about the operations of the major grocery retailers, and provides an overview of other grocery retailers, the grocery supply chain, and other observations about the sector.
- 2.2 The chapter provides context for chapters later in this report, where we develop our discussion of these characteristics as part of our assessment of whether competition is working well within the retail grocery sector.
- 2.3 This chapter discusses the following:
- 2.3.1 grocery consumers;
 - 2.3.2 grocery retailers;
 - 2.3.3 major grocery retailers' offerings;
 - 2.3.4 pricing and promotional practices;
 - 2.3.5 grocery supply chain; and
 - 2.3.6 other sector observations.

Grocery consumers

- 2.4 Groceries are an essential purchase for all New Zealanders. In the year to September 2021, more than \$22 billion was spent at supermarkets and grocery stores.²⁹ In the year to June 2019, food was the second largest expenditure item for New Zealand households, with households spending an average of \$234 a week on it.³⁰
- 2.5 New Zealanders are a diverse group with different wants, needs, and demographics. Results from our consumer survey and Ipsos report suggest that convenience and price are the key considerations that inform choice of grocery store for most consumers.^{31, 32}

²⁹ Statistics NZ "Retail trade survey: September 2021 quarter" (23 November 2021) at Table 1, excludes GST, available at: <https://www.stats.govt.nz/assets/Uploads/Retail-trade-survey/Retail-trade-survey-September-2021-quarter/Download-data/retail-trade-survey-september-2021-quarter.xlsx>.

³⁰ Statistics NZ "Household Expenditure Statistics: Year ended June 2019", includes GST, available at: <https://www.stats.govt.nz/information-releases/household-expenditure-statistics-year-ended-june-2019>. Note this includes spend on restaurant and ready-to-eat food, and excludes alcoholic beverages and tobacco.

³¹ Paragraph E5 in Attachment E.

³² Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 8.

- 2.6 Consumers value the convenience of a wide range of groceries at a single location. A sufficiently wide range that accommodates one-stop shopping is therefore an important element of convenience, as well as the location and accessibility of a grocery store. Other elements of convenience include opening hours and access to car parks.
- 2.7 Our consultation with Māori indicated the ability to access competitive prices and a wide range of goods are important for many Māori, hapū and iwi in both urban and rural areas. However, location, accessibility and connectivity are also factors which may affect where and how some Māori, particularly those in rural areas, are able to shop for groceries.
- 2.8 Consumers undertake different types of shopping trips (or shopping missions) to purchase groceries, including a 'main shop' and other 'secondary' and 'top-up shops'.³³ Consumer shopping behaviour and drivers of store choice vary according to the type of shopping mission a consumer is engaged in. However, grocery stores that offer one-stop shopping at convenient locations cater to a wide range of different shopping missions and drivers of store choice.
- 2.9 Consumer shopping missions and the dimensions upon which competition takes place in the retail grocery sector to satisfy them are discussed further in Chapter 4 and Chapter 5.

Grocery retailers

- 2.10 There are many different types of grocery retailers operating across New Zealand. In addition to the three major grocery retailers there is a range of other grocery retailers, which includes specialist grocery retailers and international food stores. Major grocery retailers typically offer consumers the opportunity to shop for a wide range of grocery needs. Other grocery retailers provide a narrower range of offerings.
- 2.11 The three major grocery retailers operate retail banners with nationwide reach. They are Woolworths New Zealand Limited (Woolworths NZ), Foodstuffs North Island Limited (Foodstuffs NI), and Foodstuffs South Island Limited (Foodstuffs SI). The two Foodstuffs co-operatives do not compete in the same geographic market, so there are two major grocery retailers operating stores under national brands on each island – Woolworths NZ and one of the Foodstuffs co-operatives.
- 2.12 Other grocery retailers are typically located in urban areas and have a smaller number of stores, although this varies by retailer.

³³ A 'main shop' is a shop typically happening weekly or at another regular interval based on the convenience of using one grocery store to get all necessities in one place; a 'secondary shop' is a visit to one or more store(s), other than the store the main shop is carried out at, to shop for specific products; and a 'top-up shop' is a quick shop for a small number of items that can be conducted for a range of reasons at one of a range of retailers.

Woolworths NZ

- 2.13 Progressive Enterprises Limited (Progressive Enterprises) acquired a former Woolworths New Zealand entity in 2002, merging Woolworths, Big Fresh, Foodtown, Countdown, Price Chopper, SuperValue and FreshChoice brands into one entity.³⁴ Woolworths Group Limited (Woolworths Australia) acquired Progressive Enterprises in 2005 and later renamed it.³⁵
- 2.14 Initially, Big Fresh and many Price Chopper stores were converted to Countdown or Woolworths stores. In 2009, Progressive Enterprises announced it would also convert Woolworths and Foodtown stores to Countdown supermarkets over a five-year period.³⁶
- 2.15 Progressive Enterprises changed its name to Woolworths NZ in June 2018.³⁷ Its retail banners are shown in Figure 2.1 below.

Figure 2.1 Woolworths NZ's retail banners



- 2.16 Woolworths NZ operates and supplies more than 180 Countdown stores throughout New Zealand. Woolworths NZ also owns Wholesale Distributors Limited, which is the franchisor to 71 locally owned and operated SuperValue and FreshChoice stores.³⁸ In 2019, it estimated that three million customers were served at its Countdown stores every week.³⁹

³⁴ Commerce Commission “Decision No. 438, Application for clearance involving: Progressive Enterprises Limited and Woolworths (NZ) Limited” (13 July 2001), available at: https://comcom.govt.nz/_data/assets/pdf_file/0020/73073/438.pdf; Commerce Commission “Decision No. 448, Application for clearance involving: Progressive Enterprises Limited and Woolworths (NZ) Limited” (14 December 2001), available at: https://comcom.govt.nz/_data/assets/pdf_file/0016/73123/448.pdf.

³⁵ Progressive Enterprises Limited changed its name to Woolworths New Zealand Limited in June 2018. Countdown “Our history” <https://www.countdown.co.nz/about-us/our-history>.

³⁶ NZ Herald “Foodtown, Woolworths brands on way out” (21 September 2009) <https://www.nzherald.co.nz/nz/foodtown-woolworths-brands-on-way-out/ZARV4ZK5IYP7N3WXHVAKPO5IHQ/>.

³⁷ Countdown “Our history” <https://www.countdown.co.nz/about-us/our-history>.

³⁸ Information provided by major grocery retailers, as at 31 December 2020, [].

³⁹ Luke Kirkness “How do we shop for groceries? Supermarkets' highest stocked items shine light on how we spend” (February 2020) New Zealand Herald https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12304565.

Foodstuffs NI and Foodstuffs SI

- 2.17 The first Foodstuffs co-operative was formed in Auckland in 1922. Foodstuffs SI and two regional co-operatives in the North Island were formed as a result of various mergers of grocers over time. Foodstuffs NI was formed in 2013 as a result of the merger of Foodstuffs (Wellington) Ltd (Foodstuffs Wellington) and Foodstuffs (Auckland) Limited (Foodstuffs Auckland). Today Foodstuffs SI and Foodstuffs NI operate as separate co-operatives serving the South Island and North Island respectively.
- 2.18 Foodstuffs (N.Z.) Limited (Foodstuffs NZ), is a non-trading entity. It represents “the two co-operatives' interests on issues of national or grocery-specific importance”.⁴⁰ It owns the retail banner brands for all Foodstuffs stores and provides other shared services to both co-operatives. Its shares are owned by Foodstuffs NI and Foodstuffs SI. Foodstuffs NI and Foodstuffs SI also own Foodstuffs Own Brands Limited and a number of other entities. Foodstuffs Own Brands Limited manages private label products.
- 2.19 Retail stores are owner-operated franchises which are supplied by Foodstuffs co-operatives. Owner-operators own shares in, and provide funding to, their co-operative. Models for this funding differ across the two Foodstuffs co-operatives.
- 2.20 The Foodstuffs co-operatives own the land and buildings on which many stores are located, as well as supply chain infrastructure and IT assets. They also provide other services to their owner-operator members, including wholesale purchasing, warehousing and distribution of groceries, and they undertake marketing, IT, and a range of other support functions.⁴¹
- 2.21 More than 300 retail stores operate in the North Island under the New World, PAK’nSAVE and Four Square retail banners, and more than 100 in the South Island.⁴² Five Raeward Fresh and 85 On the Spot retail stores also operate in the South Island.⁴³

⁴⁰ Foodstuffs NI “Who we are” <https://www.foodstuffs.co.nz/about-foodstuffs/who-we-are/>.

⁴¹ This includes merchandising services including product sourcing, ranging and promotional planning, retail execution support, management of marketing, IT and digital systems development, developing and renting properties for owned retail stores, transactional shared services, HR and legal support.

⁴² As at 31 December 2020. Foodstuffs NI supplies 101 New World, one Fresh Collective by New World, 43 PAK’nSAVE, one PAK’nSAVE mini and 167 Four Square stores. Information provided by Foodstuffs NI. Foodstuffs SI supplies 42 New World, 12 PAK’nSAVE and 62 Four Square stores. Information provided by Foodstuffs SI, [].

⁴³ Foodstuffs also has other retail and wholesale brands, including Gilmours, Trents, Fresh Collective, Henry’s and Liquorland: Foodstuffs SI “Foodstuffs South Island Annual Report 2021” (2021) at 11, available at: https://www.foodstuffs-si.co.nz/-/media/Project/Sitecore/Corporate/Corporate-South-Island/Who-we-are/Annual-Reports/FOOD-J004626---2021-Annual-Report_Short_Form_5_JUL_Final_Spreads_DIGITAL.pdf.

2.22 Foodstuffs' retail banners are shown in Figure 2.2 below.

Figure 2.2 Foodstuffs' retail banners



2.23 Foodstuffs NI stores serve an average of 2.7 million customers every week through its physical stores or online shopping.⁴⁴ Foodstuffs SI's stores serve over 600,000 customers each week.⁴⁵

Other grocery retailers

2.24 Other grocery retailers operating in New Zealand include retailers operating in the following categories:

- 2.24.1 international food stores (eg, Tai Ping, Japan Mart, Yogiji's Food Mart);
- 2.24.2 other supermarkets (eg, Farro Fresh, Moore Wilson's, Bin Inn);
- 2.24.3 single-category or specialist grocery stores (eg, greengrocers, butchers, bakeries, liquor stores, pet stores, pharmacies);
- 2.24.4 general merchandisers (eg, The Warehouse, Kmart, TheMarket);
- 2.24.5 convenience stores (eg, dairies, petrol stations, Night 'n Day);
- 2.24.6 meal kit providers (eg, Hello Fresh, My Food Bag);
- 2.24.7 food box operators (eg, Foodbox and Ooooby);
- 2.24.8 online-only supermarkets (eg, The Honest Grocer, Supie); and
- 2.24.9 specialist online retailers (eg, Hypermeat).

2.25 They provide a range of different retail grocery offers, many of which are focused on specific shopping missions, product categories, or consumer groups.

⁴⁴ Foodstuffs NI "Our purpose" <https://www.foodstuffs.co.nz/who-we-are/our-purpose>.

⁴⁵ Foodstuffs SI "Foodstuffs South Island Annual Report" (2019) at 2, available at: https://www.foodstuffs-si.co.nz/-/media/Project/Sitecore/Corporate/Corporate-South-Island/Who-we-are/Annual-Reports/FSSI_AR_2019_Web.pdf.

- 2.26 They also include a number of new entrants. Chemist Warehouse entered as a single-category retailer in 2017.⁴⁶ Meal kit providers, food box operators, online-only supermarkets, and specialist online retailers have also entered with new retail grocery services.⁴⁷

There has been no large-scale retailer entry to the sector in the last decade

- 2.27 While the range of retail grocery offerings has expanded in recent years, no large-scale retail grocers with an offering comparable to PAK'nSAVE, Countdown or New World have entered the sector in the last decade.
- 2.28 The Warehouse launched its Warehouse Extra hypermarket format in 2006 and planned a chain of hypermarkets, which included grocery offerings. The company abandoned plans to continue with the format in 2008 and stores were converted back to the standard general merchandise stores.
- 2.29 Costco has confirmed that it intends to open one store in Auckland in 2022, and it appears that that it is actively looking for store sites in Christchurch and Wellington.⁴⁸ However the development of additional stores may depend on the success of its Auckland store.⁴⁹
- 2.30 Further discussion of entry and expansion in the retail grocery sector is provided in Chapter 6.

Māori historically played a strong role as food producers and providers

- 2.31 Our consultation with Māori indicated that Māori do not currently have a prominent role in the retailing of groceries. This differs from their role historically, where Māori, particularly hapū and iwi, were involved not only as food producers, but were also involved throughout all facets of the food supply chain, including as traders.⁵⁰

⁴⁶ Chemist Warehouse "Game changer: All Blacks great teams up with Chemist Warehouse" <https://www.chemistwarehouse.co.nz/CWH/media/Documents/Chemist-Warehouse-Release.pdf>.

⁴⁷ For example: Hello Fresh "We save you serious money" <https://www.hellofresh.co.nz/>; My Food Bag "Your answer to "What's for dinner?"" <https://www.myfoodbag.co.nz/>; Woop "Delicious Homemade dinners should take time. Just not yours" <https://woop.co.nz/>; Foodbox "Fresh, Seasonal, Local" <https://foodbox.co.nz/>; Ooooby "Local and organic food made easy and fair" <https://www.ooooby.org/>; The Honest Grocer "The Honest Grocer" <https://thehonestgrocer.co.nz/>; Supie "Supie" <https://supie.co.nz/>; Hyper Meat "Hyper Meat" <https://hypermeat.co.nz/>.

⁴⁸ Melanie Carroll "Costco delays its New Zealand launch, but is actively looking for additional sites" (29 October 2020) Stuff <https://www.stuff.co.nz/business/industries/123230944/costco-delays-its-new-zealand-launch-but-is-actively-looking-for-additional-sites>; []; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [24.4.1].

⁴⁹ RadioNZ "Costco experience opens in NZ mid-August" (9 February 2022) <https://www.rnz.co.nz/national/programmes/first-up/audio/2018829795/costco-experience-opens-in-nz-mid-august>.

⁵⁰ For example, National Māori Authority "Post conference submission on Market study into grocery sector" (November 2021) at 3.

- 2.32 Many Māori, hapū, and iwi have an aspiration to play a larger role in the retail part of the grocery sector. This aspiration is driven not only by the desire to produce and sell kai and see themselves reflected in all aspects of the grocery sector, but, for hapū and iwi, also the desire to embody mana motuhake and enable tino rangatiratanga. Central to this aspiration is the ability to determine what, and how, kai is provided to Māori, and other New Zealanders, in accordance with Māori values, tikanga and reo.⁵¹
- 2.33 Throughout our engagement with Māori we also heard about the importance of kai and its intrinsic link to wellbeing. For example, some contributors noted that "the provision of affordable, safe, nutritious kai is fundamental to whanau, community and national health and wellbeing". We heard that outcomes in the grocery sector intersect with a wider range of social factors which continue to impact Māori wellbeing, including health, education, community, employment and the environment.

Major grocery retailers' offerings

- 2.34 While they uniquely offer the convenience of one-stop shopping no matter the shopping mission, the major grocery retailers choose to emphasise different aspects of the retail grocery offer. The relative distribution of their stores varies across New Zealand.

The major retail grocery banners

- 2.35 Foodstuffs SI states its mission is to feed the South Island and to proudly serve local communities.⁵² Foodstuffs NI indicated that to make sure New Zealanders get the best out of life, it aims to be one of the most customer driven retailers in the world.⁵³ Their three main retail banners provide differentiated retail offerings:
- 2.35.1 PAK'nSAVE stores are the largest of the Foodstuffs groups' stores and are located generally in larger towns and cities. PAK'nSAVE's policy is to provide New Zealand's lowest food prices and to "look for ways to keep costs down in order to pass those savings on" to consumers.⁵⁴
- 2.35.2 Although New World stores are typically smaller, they are also located in high traffic areas. New World prides itself on its friendly staff and quality service.⁵⁵

⁵¹ For example, Ngahiwi Tomoana (Ngāti Kahungunu Iwi Incorporated) "Post conference submission on Market study into grocery sector" (24 November 2021) at 2.

⁵² Foodstuffs SI "Homepage" <https://www.foodstuffs-si.co.nz/>.

⁵³ Foodstuffs NI "Who we are" <https://www.foodstuffs.co.nz/who-we-are/our-purpose>.

⁵⁴ Foodstuffs SI "Our store brands" <https://www.foodstuffs-si.co.nz/our-brands/our-store-brands>.

⁵⁵ Foodstuffs SI "Our store brands" <https://www.foodstuffs-si.co.nz/our-brands/our-store-brands>.

- 2.35.3 “Four Square stores range from small neighbourhood shops in larger towns and cities, perfect for picking up last-minute ingredients for dinner or dessert, to larger grocery stores in rural and provincial regions that serve their communities’ everyday shopping needs”. Their product range varies depending on store size and location. The Four Square retail banner is positioned as “one of New Zealand’s iconic brands”.⁵⁶
- 2.35.4 Raeward Fresh offers customers “quality fresh fruit and vegetables, a full butchery range, and all [their] grocery essentials”.⁵⁷
- 2.35.5 On the Spot are either stand-alone stores or attached to fuel stations: “No matter where we are located, On the Spot stores cater to your everyday needs”.⁵⁸
- 2.36 Woolworths NZ states that its goal is to provide the best possible convenience, value, range and quality to the Kiwis it serves each week.⁵⁹ Its three retail banners also provide differentiated offerings:
- 2.36.1 Countdown stores are generally the largest stores, and operate in high traffic areas. Countdown positions itself as “New Zealand’s leading supermarket brand” and says it is committed to providing its “customers with choice, value and convenience, so they’ll enjoy the best overall shopping experience”.⁶⁰
- 2.36.2 FreshChoice and SuperValue stores are generally smaller than Countdown stores. Their product range varies depending on store size and location. They aim to provide “locals quick and friendly service with a range that has everything you want and is just what you need”.⁶¹

Major grocery retailer store locations across New Zealand

- 2.37 Figure 2.3 shows the locations of Woolworths NZ and Foodstuffs stores across the South Island of New Zealand. A further map of store locations across the North Island is provided in Attachment A. Chapter 4 provides further information on how major grocery retailers operate nationally and locally in different regions.
- 2.38 Larger supermarkets (such as Countdown, PAK’nSAVE and New World) appear to be typically located near larger populations, while smaller supermarkets (such as Four Square) appear more likely to be located in more remote areas. Most larger towns have a mix of larger supermarkets, as well as some smaller supermarkets. Many smaller and regional towns only have one supermarket.

⁵⁶ Foodstuffs NI “Our store brands” <https://www.foodstuffs.co.nz/our-brands/our-store-brands>.

⁵⁷ Foodstuffs SI “Our store brands” <https://www.foodstuffs-si.co.nz/our-brands/our-store-brands>.

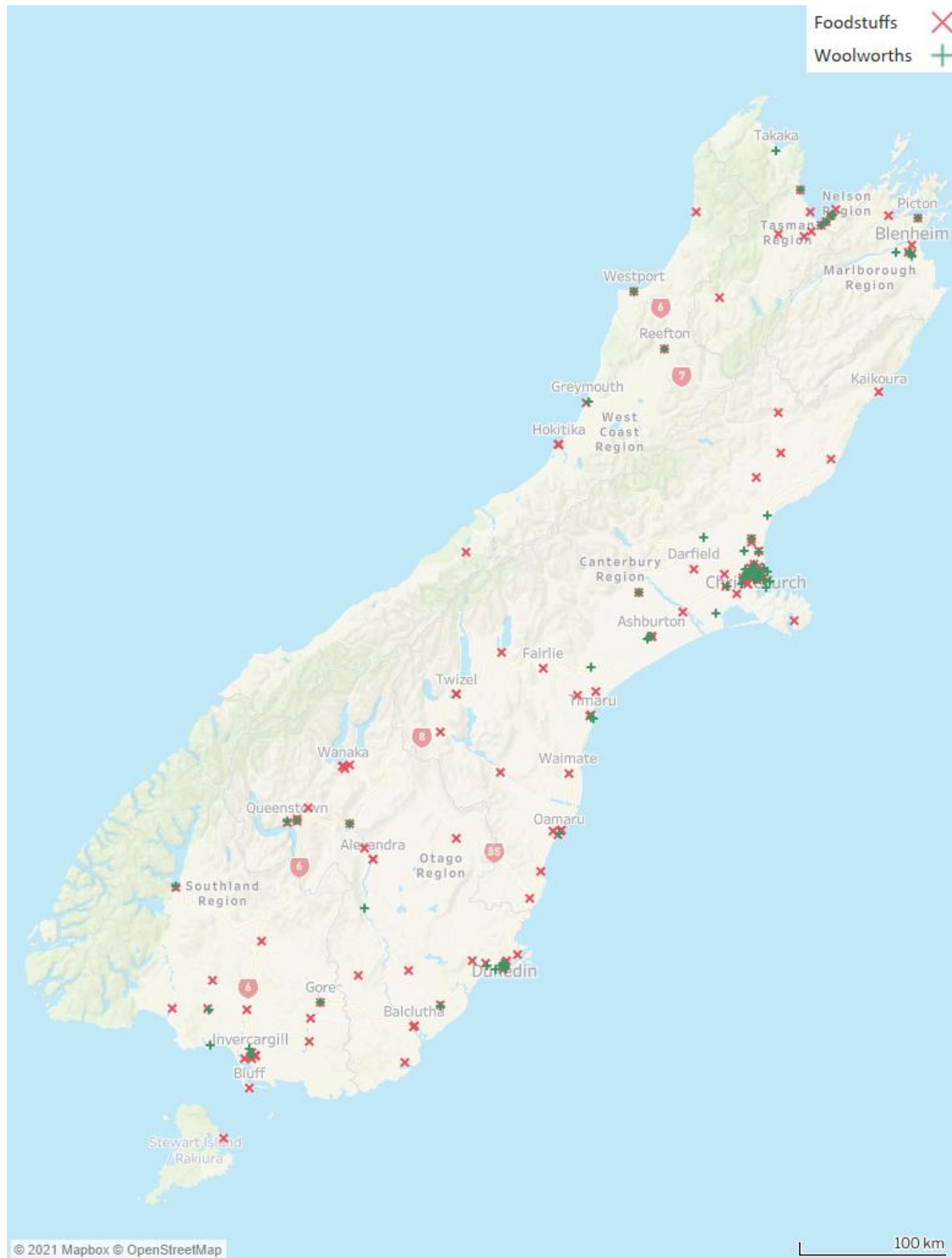
⁵⁸ Foodstuffs SI “Our brands” <https://www.foodstuffs-si.co.nz/our-brands>.

⁵⁹ Woolworths NZ “Home page” <https://www.woolworthsnz.co.nz/>.

⁶⁰ Countdown “Our company” <https://www.countdown.co.nz/about-us/our-company>.

⁶¹ FreshChoice “About FreshChoice Supermarkets” <https://www.freshchoice.co.nz/about/>; SuperValue “About SuperValue Supermarkets” <https://www.supervalue.co.nz/about/>.

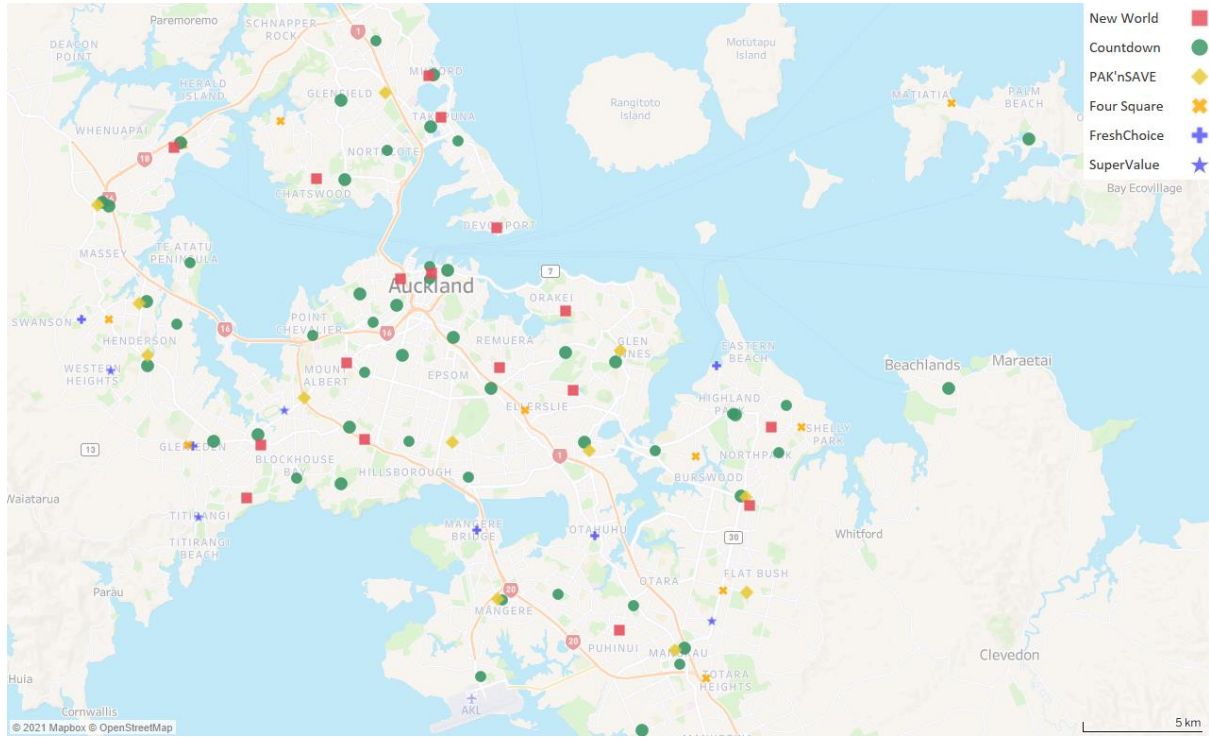
Figure 2.3 Major grocery retailer store locations in the South Island



Source: Commission analysis of information provided by major grocery retailers, as at December 2020.⁶²

- 2.39 Figure 2.4 shows locations of major grocery retailer stores by retail banner in Auckland. Attachment A provides further maps of Wellington and Christchurch.

Figure 2.4 Major grocery retailer store locations in Auckland by retail banner



Source: Commission analysis of information provided by major grocery retailers, as at December 2020.⁶³

- 2.40 This Auckland map shows relatively more Countdown supermarkets than PAK'nSAVE and New World supermarkets. Maps of Wellington and Christchurch included in Attachment A show relatively more PAK'nSAVE and New World supermarkets than Countdown supermarkets.
- 2.41 Chapter 4 provides further discussion on the regional variations in grocery store options available to consumers.

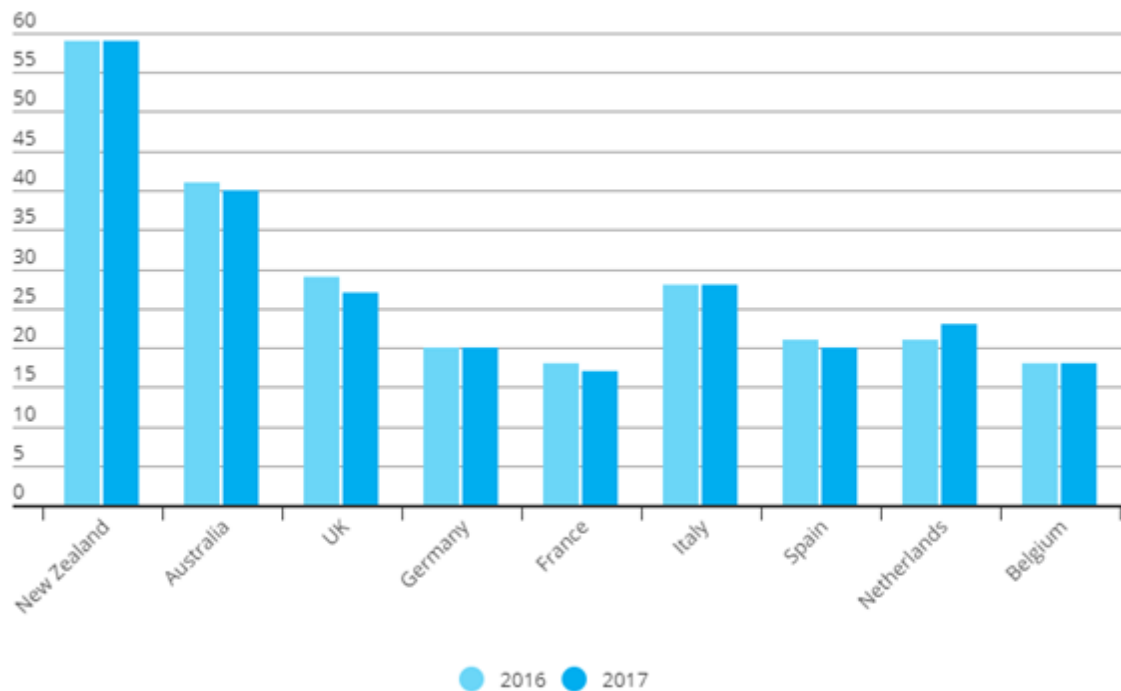
Pricing and promotional practices

- 2.42 Grocery retailers commonly use a range of discounting mechanisms to encourage consumers to shop at their stores and purchase certain products. It is also common for New Zealand grocery consumers to be members of loyalty programmes.

Promotional pricing is a feature of the New Zealand retail grocery sector

- 2.43 Promotional mechanisms used by major grocery retailers range from specials or short-term discounts, to multi-buys, loyalty programme member-only discounts, and everyday low prices (EDLP) where pricing strategy is based on offering a “low” price on certain products for an extended period. Any one store typically runs a number of these kinds of promotions at any one time, and quite frequently more than one offer can apply in relation to a single product.
- 2.44 A significant proportion of groceries in New Zealand are purchased on these promotions. Between around one and two thirds of total revenue earned by major grocery retailers in 2019 was from sales of products on promotion.⁶⁴ Promotions are relatively common for product categories such as alcohol, dairy, meat, frozen products, and general grocery.
- 2.45 Nielsen also reported that almost \$6 in every \$10 spent on groceries was spent on products sold on promotion in 2017. As shown in Figure 2.5, the proportion of groceries bought on promotion in New Zealand was ahead of other developed markets around the world.

Figure 2.5 Percentage of grocery products sold on promotion



Source: Nielsen Scantrack and Nielsen Homescan.⁶⁵

⁶⁴ Table D2 in Attachment D.

⁶⁵ Commerce Commission “Market study into the retail grocery sector – Preliminary issues paper” (10 December 2020) at Figure 4.

- 2.46 Chapter 7 discusses major grocery retailers' pricing and discounting practices, including their frequency and the number offered, and the potential effects on consumer decision making and competition.
- 2.47 Promotions can be funded by suppliers, when a supplier will contribute to discounts offered on their products (referred to as promotional funding or trade and marketing spend). We understand that discounts or rebates associated with supplier promotional funding can lead to a material reduction in the effective price retailers pay their suppliers for goods. We have been told that supplier-controlled promotional funding is a global dynamic and more pronounced with large multinational suppliers.
- 2.48 Chapter 8 describes the mechanics of promotional funding.

Loyalty programmes are offered by all major grocery retailers

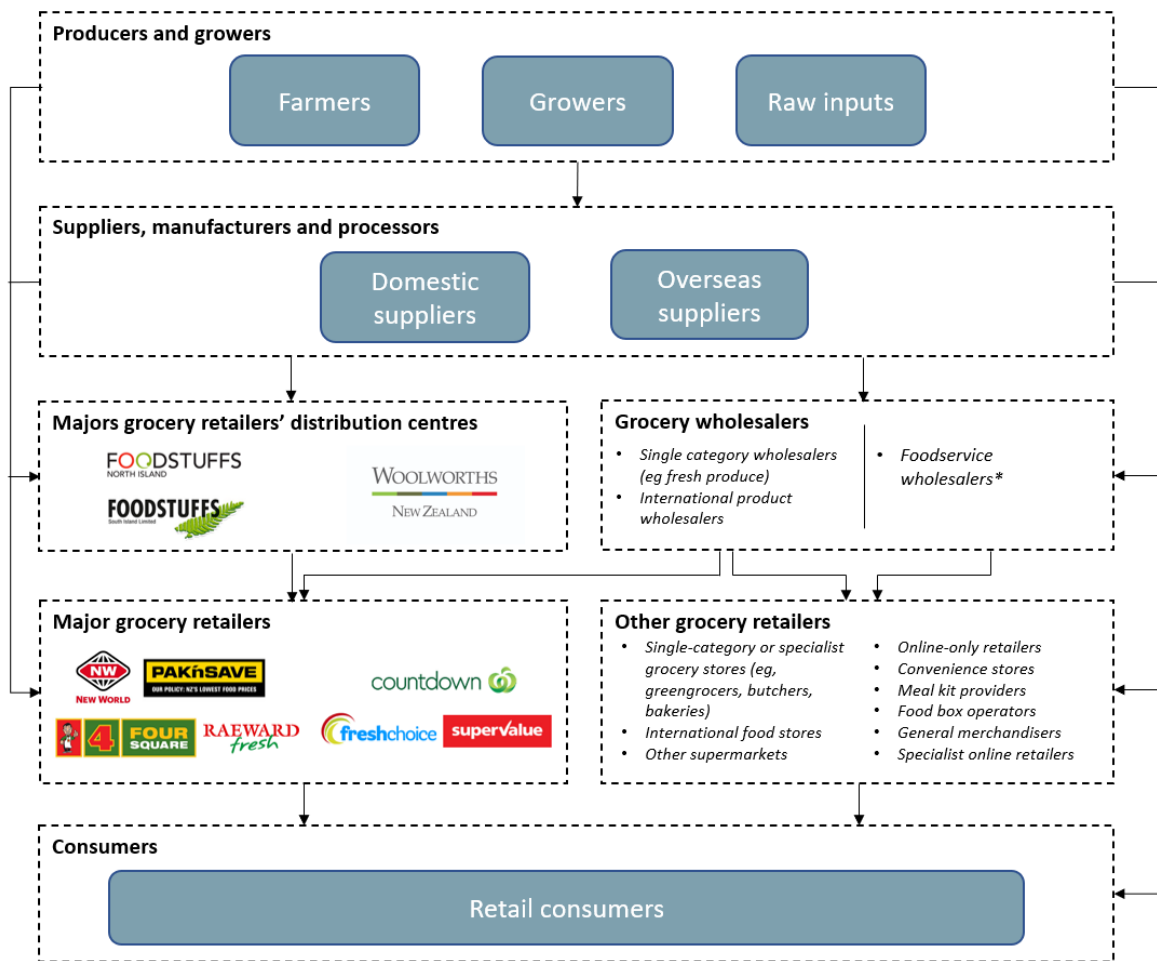
- 2.49 Both New World and Countdown offer loyalty programmes and most grocery consumers in New Zealand are members of at least one.
- 2.50 Key features of loyalty programmes include:
- 2.50.1 access to member-only discounts: instant discounts provided to loyalty programme members;
 - 2.50.2 accumulated rewards: fuel, food or other travel rewards such as Flybuys and Airpoints earned by loyalty programme members; and
 - 2.50.3 personalised offers: rewards or benefits that are more targeted at individual consumers.
- 2.51 Through these programmes, retailers can gather consumer data, including on consumers' preferences and purchasing behaviour. This data can be used to inform business decision making, for example, in relation to product ranges, and to offer a more personalised consumer experience.
- 2.52 Chapter 7 discusses the nature of loyalty programmes offered by the major grocery retailers and their potential effect on consumer decision making and competition. Chapter 6 discusses the extent to which loyalty programmes may provide a constraint on entry and expansion in the retail grocery sector.

Grocery supply chain

- 2.53 The grocery supply chain broadly consists of suppliers, wholesalers, and grocery retailers. Suppliers may be growers of fresh produce, farmers, manufacturers or processors. Grocery or produce wholesalers are intermediaries who acquire products from suppliers and on-sell them to grocery retailers. Retailers sell directly to consumers and may acquire products either from a wholesaler or directly from a supplier.

- 2.54 New Zealand’s major grocery retailers’ operations are vertically integrated, meaning that they have integrated wholesale functions, but largely only to service their own retail businesses and their franchisees. They own and operate central distribution centres which supply their retail stores throughout the country. Suppliers either deliver products to the major grocery retailers’ distribution centres or directly to their retail stores.
- 2.55 Figure 2.6 shows a simplified version of the supply chain for grocery products to retail consumers in New Zealand. The grocery supply chain is likely to be more complicated in practice, as it includes different supply chains for different types of products.

Figure 2.6 High-level summary of the supply chain for the NZ retail grocery sector



* For the purposes of this study, we are interested in wholesalers which supply retail grocery stores. We are aware that some foodservice wholesalers sell to some grocery retailers. We have therefore included them in Figure 2.6 even though this is not the focus of their business.

Wholesale access to grocery products

- 2.56 Wholesale access to a full range of grocery products and associated services at competitive prices in New Zealand appears to be limited.

- 2.57 However, there are some wholesale options for:
- 2.57.1 single product categories such as fresh produce (eg, T&G Fresh, Fresh Direct, MG Marketing), meat (eg, JR Wholesale Meats, Wholesale Meats Direct), and some categories such as bread and milk where a large supplier will perform a wholesale function through a “direct store delivery” model,^{66, 67} and
 - 2.57.2 international products (eg, Tai Ping, Wang Mart, MZ Holdings).
- 2.58 Retailers have also indicated that they are able to acquire some groceries from wholesalers of imported products. This appears to largely be the case for international products (eg, Indian, Chinese, Korean)⁶⁸ and some categories of globally branded products (eg, confectioneries).⁶⁹ However, we note that importing does not grant access to locally branded products.
- 2.59 Separate wholesalers also exist to supply to restaurants and other foodservice retailers (foodservice wholesalers). Two of these are part of the Foodstuffs group. Trents is owned by Foodstuffs SI and Gilmours store owners are part of the Foodstuffs NI group. Although their businesses focus on foodservice, they also supply some convenience stores and other grocery retailers.^{70, 71} There are also other independent foodservice wholesalers such as Bidfood and Service Foods.
- 2.60 Chapter 6 provides further analysis of the grocery supply chain and wholesale supply.

Māori play a significant role as food producers

- 2.61 Despite a current lack of prominence as retailers, Māori have a strong role in the grocery sector as growers and primary producers. In New Zealand, Māori own:⁷²
- 2.61.1 50% of the fishing quota;
 - 2.61.2 30% of lamb production;

⁶⁶ T&G Fresh “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 6; United Fresh “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 17; Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 53.

⁶⁷ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [5.5] footnote 63.

⁶⁸ []; [];

[].

⁶⁹ [];

[].

⁷⁰ []; [].

⁷¹ [].

⁷² Chapman Tripp “Te Ao Māori – Trends and insights” (Pipiri 2017) at 5, available at: <https://chapmantripp.com/media/j1slpr3f/te-ao-maori-2017-english.pdf>.

- 2.61.3 30% of sheep and beef production;
 - 2.61.4 10% of dairy production; and
 - 2.61.5 10% of kiwifruit.
- 2.62 The National Māori Authority submitted that given the significant proportion of Māori ownership of assets in the primary sector, Māori growers and primary producers provide for a reasonable percentage of consumers' weekly shopping basket through primary production.⁷³

Other sector observations

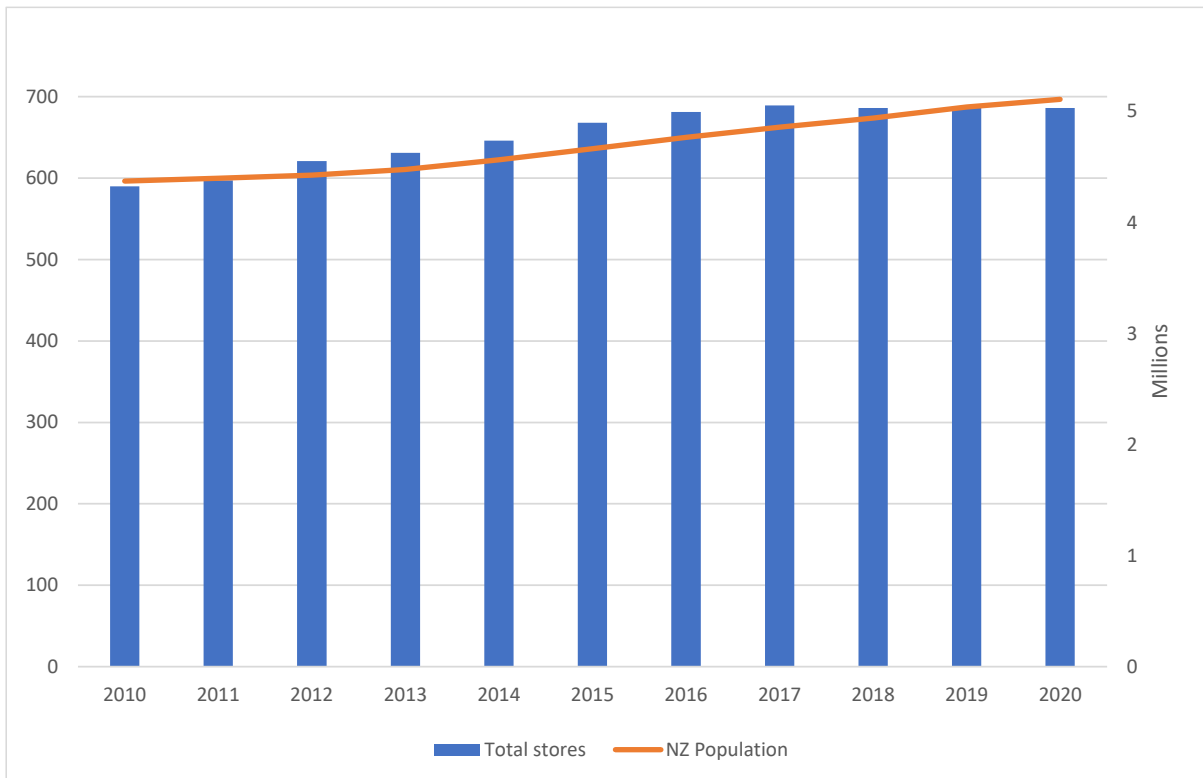
- 2.63 This section sets out other observations on the grocery sector. We have looked at the growth of the sector over the last 10 years, the impact of the COVID-19 pandemic and growth in online grocery sales.

Size of the grocery sector

- 2.64 The sector appears to have grown in line with growth in the New Zealand population, as seen in Figure 2.7 below.

⁷³ National Māori Authority "Post conference submission on Market study into grocery sector" (30 November 2021) at 4.

Figure 2.7 Total number of major grocery retailer stores

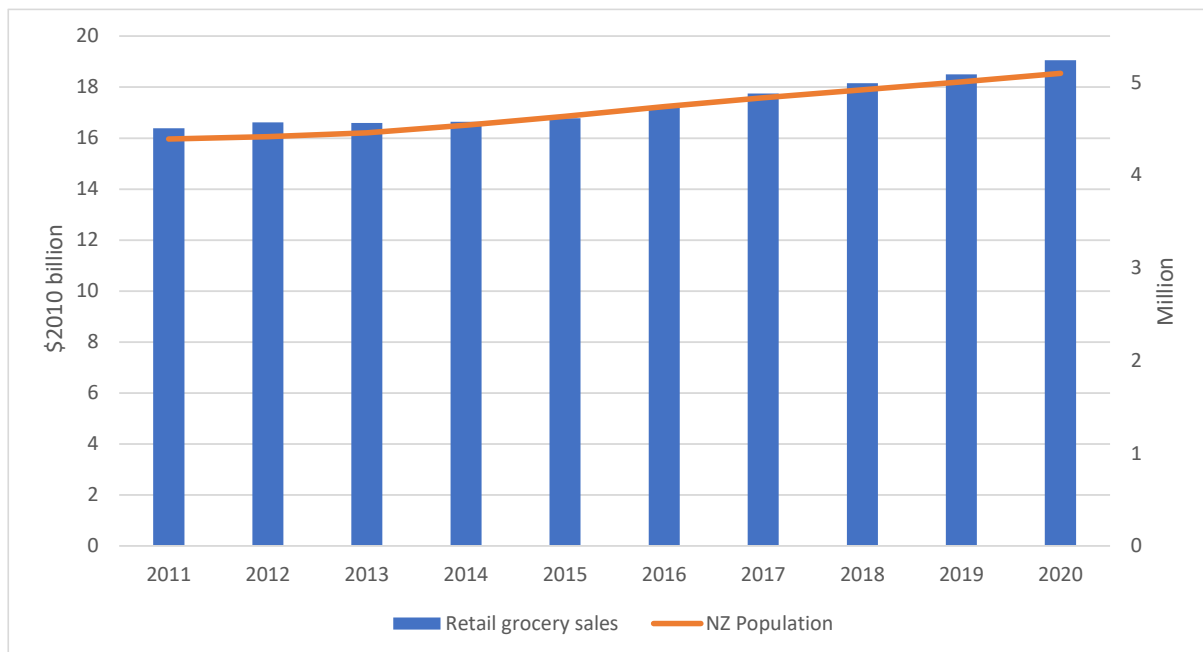


Source: Commission analysis of information provided by major grocery retailers.⁷⁴

- 2.65 There has been an increase in the total number of stores of the major grocery retailers in the last 10 years. This has stabilised from 2017. The flattening off from 2017 appears to reflect a number of Four Square stores exiting the Four Square retail banner, and others that have closed.⁷⁵
- 2.66 The average annual growth rate of the number of stores for the period 2010 to 2020 is 1.6%, while the average annual population growth over the same period has been 1.7%.
- 2.67 Figure 2.8 demonstrates an increase in supermarket and grocery store sales over the last 10 years. The average annual growth rate of retail sales for the period 2011 to 2020 is 1.7%.

⁷⁴ [].

⁷⁵ Chapter 6; [].

Figure 2.8 Supermarket and grocery store industry sales

Source: Statistics NZ “Retail trade survey” Supermarket and grocery stores sales (operating income), deflated at September 2010 quarter prices.⁷⁶

Impact of the COVID-19 pandemic on the retail grocery sector

- 2.68 As an essential service, supermarkets were able to operate during Government-mandated lockdown periods (including the Alert Level 4 lockdown periods from 25 March 2020, and 17 August 2021).
- 2.69 Many other grocery retailers, such as greengrocers and butchers, were significantly disrupted during those periods, including not being able to open, and being subject to other restrictions on trade. Some retailers that were not able to open have since changed their business models or ceased trading. However, some businesses who had not previously sold groceries to retail consumers began selling online during lockdowns.⁷⁷ The introduction of the Traffic Light system is more permissive, allowing a wider range of retail operations.

⁷⁶ Statistics NZ “Infoshare” <http://infoshare.stats.govt.nz>.

⁷⁷ For example: Bidfood <https://www.bidfood.co.nz/>; Service Foods <https://www.servicefoods.co.nz/>; Trade Me <https://www.stuff.co.nz/business/121373859/coronavirus-trade-me-launches-fresh-food-boxes>; Mighty Ape <https://mightymart.co.nz/>.

- 2.70 Night 'n Day (which operated during Alert Level 4 lockdowns) has noted that its wholesale supply arrangement with Woolworths NZ was impacted during the 2021 Alert Level 4 lockdown, and many of its stores were not supplied during the lockdown period.⁷⁸ In Woolworths NZ's view, the Night 'n Day example highlights the challenges of dealing with third parties in emergencies, such as while responding to the COVID-19 pandemic, and that it is important to understand the context in relation to that supply relationship.^{79, 80}
- 2.71 Concerns have been raised about price gouging. For example, during the Alert Level 4 lockdowns:
- 2.71.1 there was significant media coverage regarding price rises for several grocery products;⁸¹
 - 2.71.2 MBIE set up an online Price Watch service for consumers to report concerns about price increases for essential goods and services; and
 - 2.71.3 consumers complained that some stores may have temporarily stopped offering promotional discounts.
- 2.72 Many consumers changed their behaviour through the lockdown period, for example, by making larger, less frequent purchases, or by purchasing groceries online.⁸² It is unclear whether this trend will continue in future, with the change to a Traffic Light system which is more permissive for retailers, and in an evolving pandemic, including with the emergence of Omicron.
- 2.73 While many non-supermarkets likely lost sales during the COVID-19 pandemic (and in particular during the Alert Level 4 lockdown periods), sales appear to have recovered for many following lockdowns. Sales of some niche products also appear to have increased over the period as a consequence of disposable incomes not being spent on international travel.⁸³ Some changes in consumer behaviour influenced by the pandemic are likely to persist while others may be more transitory in nature.
- 2.74 However, this study does not analyse or comment upon the grocery sector's response to the COVID-19 pandemic, or its effects on competition.

⁷⁸ Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 36 (lines 14-23).

⁷⁹ Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 37 (lines 12-14).

⁸⁰ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [25.3].

⁸¹ For example: Cherie Howie "Price Gouging complaints pour in to Government's 'price watch' inbox" (3 April 2020) https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12322407; Susan Edmunds "'Four inquiries a day' about potential price gouging during lockdown: MBIE" (26 August 2021) <https://www.stuff.co.nz/business/300392282/four-inquiries-a-day-about-potential-price-gouging-during-lockdown-mbie>.

⁸² For example: [].

⁸³ [].

- 2.75 Rather, we have undertaken a wider assessment of competition in the sector. As part of this assessment, we have considered whether any issues that have emerged during the pandemic are likely to affect competition over a longer period.

Online trends

- 2.76 The majority of New Zealand consumers purchase groceries by visiting a retail store. However, there has been an increase in online sales, including an increase fuelled by the COVID-19 pandemic.
- 2.77 NZ Post indicated that online sales of specialty food, groceries and liquor increased by 47% to \$1.3 billion between 2019 and 2020, against an overall sector sales increase of 10%. At the same time, the total number of online consumers increased significantly, rising by 54% to 1.09 million. Customers also carried out 41% more online transactions in 2020 and online basket size increased by 5%.⁸⁴
- 2.78 Woolworths NZ has indicated Countdown's online penetration continues to grow, having increased from 3% total sales in FY2014 to over 13%.⁸⁵
- 2.79 Foodstuffs NI launched online shopping for its New World stores in 2017, offering delivery and click and collect, and has since added click and collect to its PAK'nSAVE stores.⁸⁶ Foodstuffs SI has very recently launched an online offering, which will be rolled out to all New World (click and collect and delivery) and PAK'nSAVE (click and collect only) by the end of 2022.⁸⁷
- 2.80 Other grocery retailers have launched online offerings, with a number being launched during or shortly after the COVID-19 pandemic Alert Level 4 lockdown in March 2020.⁸⁸
- 2.81 Chapter 3 provides further information about innovation and investment in online shopping services.

⁸⁴ NZ Post "The Full Download: 2021 New Zealand eCommerce Review" (2021) at 59, available at: https://thefulldownload.co.nz/sites/default/files/2021-05/NZPost_TheFullDownload_2021.pdf.

⁸⁵ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 18; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [15.5.6]; [].

⁸⁶ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [165.1]-[165.2].

⁸⁷ Karen Coltman "Foodstuffs steps up its South Island online shopping service" (21 July 2021) <https://www.stuff.co.nz/business/125796178/foodstuffs-steps-up-its-south-island-online-shopping-service>.

⁸⁸ []; []; []; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [28.6.1]; Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [72.1]-[72.10].

Chapter 3 Market outcomes in the retail grocery sector

Summary of findings

- Our analysis indicates that the major grocery retailers achieved higher levels of profitability than we would expect in a workably competitive market for at least the five years prior to the COVID-19 pandemic. We have assessed three profitability measures: return on average capital employed (ROACE), profit expectations in business cases for new investments, and profit to sales margins.
- Our ROACE estimates for the major grocery retailers, averaged across 2015 to 2019, are 12.8% for Foodstuffs SI, 12.7% for Woolworths NZ, and 13.1% for Foodstuffs NI. This is well above our estimate of a normal return for grocery retailing in New Zealand of 5.5%.
- Business cases for incremental investments in new and refurbished supermarkets were examined as a cross-check of this analysis. We examined the returns that the major grocery retailers expected to make on investments in new and refurbished stores, contained in a selection of business cases produced between 2014 and 2019. The information which was of evidential value shows average expected returns from these particular investment projects well above the hurdle rate which is our workable competition benchmark. It is not, however, possible for us to draw any inference regarding the overall profitability of a major grocery retailer's business from our assessment of those business cases.
- The three major grocery retailers' profit to sales margins are broadly consistent with those of a sample of overseas grocery retailers. However, we have not given significant weight to this observation, as to reach a robust conclusion from a direct comparison would require a detailed examination of each overseas retailer's business and operating context.
- While it is difficult to compare grocery prices internationally, it appears that New Zealand prices are relatively high by international standards based on comparisons using a range of data sources and a mix of market exchange rates and purchasing power parity (PPP) exchange rates.
- We have observed innovation in a range of areas including in customers' in-store experiences, in the distribution of grocery products, new products and online sales. However, our view is that the scale and pace of innovation in the New Zealand retail grocery sector appears lower than might be expected in a workably competitive market.
 - The major grocery retailers appear to be largely adopters of other retailers' or suppliers' innovations, rather than generating their own innovations.
 - Their buyer power can also weaken suppliers' incentives to invest in new products.
 - In addition, the benefits of supply chain efficiencies may not be shared with consumers to the same extent as would be likely if competition was stronger.
 - Some of the major grocery retailers have been slow to introduce online sales channels.
- None of these observed market outcomes is, on its own, a conclusive indicator that competition is not effective. However, viewed in the round, they suggest that competition is not working as well for consumers as it could.

Introduction

- 3.1 This chapter sets out our observations on market outcomes in the retail grocery sector and our view on what these indicators can tell us about whether competition is working well.
- 3.2 We focus on a range of observable outcomes that are indicative of whether competition is working well. This includes the profitability of grocery retailers and the prices they charge to consumers, but also includes the extent of investment and innovation that they engage in.
- 3.3 Looking across these observations we consider whether they are consistent with what we would expect in a workably competitive market and, if not, the extent to which they depart from what we would expect. In forming expectations of what we would expect in a workably competitive market, we consider a range of benchmarks including observations from other markets, such as those overseas or in other industries.
- 3.4 In a workably competitive market we would expect to see:
 - 3.4.1 levels of profitability which are not persistently above normal returns;
 - 3.4.2 prices which are lower in the long run than those in markets where competition is not working effectively; and
 - 3.4.3 firms which are innovating and investing in research and development to drive competitive advantage and further profitability by creating more efficient or attractive offerings for consumers.
- 3.5 The remainder of this chapter discusses:
 - 3.5.1 profitability of grocery retailers in New Zealand;
 - 3.5.2 price outcomes; and
 - 3.5.3 innovation and investment.

Profitability of grocery retailers in New Zealand

- 3.6 Although there are limited measures of economic profit available, our analysis indicates that the major grocery retailers have been able to achieve higher levels of profitability than we would expect in a workably competitive market for at least the five years prior to the COVID-19 pandemic.
- 3.7 For the period between 2015 and 2019 we have calculated average ROACE estimates of 12.8% for Foodstuffs SI, 12.7% for Woolworths NZ and 13.1% for Foodstuffs NI. These ROACE estimates are well above our estimate of a normal rate of return for grocery retailing in New Zealand of 5.5%.

- 3.8 Our ROACE analysis has been improved in response to submissions, and through information that we had requested from Foodstuffs NI and Foodstuffs SI which was not available at the time of our draft report. For example:
- 3.8.1 Following receipt of the data requested, our ROACE estimates for Foodstuffs NI and Foodstuffs SI are now calculated on a 'whole of business' basis. Whole of business ROACE estimates are for the entirety of Foodstuffs NI and Foodstuffs SI's businesses, including the centralised functions provided by the co-operatives and ownership of property used for retail stores.
 - 3.8.2 For Woolworths NZ we have now included right of use assets reflecting the value of its leased property.
- 3.9 We have examined the returns that the major grocery retailers expected to make on a selection of incremental investments in new and refurbished stores, contained in business cases produced between 2014 and 2019. The information which was of evidential value shows average expected returns from these particular investment projects well above the hurdle rate which is our workable competition benchmark. It is not, however, possible for us to draw any inference regarding the overall profitability of a major grocery retailer's business from our assessment of those business cases.
- 3.10 We also compared the major grocery retailers' ROACE and profit margins with 27 overseas grocery retailers. It is difficult to draw robust conclusions regarding whether the major grocery retailers' profitability is consistent with workable competition based on this analysis.
- 3.11 Data availability has restricted the range of profitability measures we have been able to consider in our study. For various reasons we have not been able to apply the range of profitability measures used in our retail fuel market study.
- 3.12 Our assessment of profitability is set out below, under the following headings:
- 3.12.1 persistently high profitability may indicate that competition is not working well;
 - 3.12.2 we have used three measures to assess profitability;
 - 3.12.3 we have estimated a normal rate of return for grocery retailing based on Weighted Average Cost of Capital (WACC);
 - 3.12.4 ROACE estimates for the major grocery retailers' are well above our WACC estimate;
 - 3.12.5 we have compared ROACE estimates for the major grocery retailers with overseas retailers;
 - 3.12.6 there is an alternative view regarding valuation of lease assets;

- 3.12.7 business cases show high returns for some projects; and
 - 3.12.8 it is difficult to draw robust conclusions from comparing profit to sales (profit margins).
- 3.13 Attachment B provides more details about how we have assessed profitability within the retail grocery sector.

Persistently high profitability may indicate that competition is not working well

- 3.14 In a workably competitive market we would not expect to see levels of profitability which are persistently above a normal return.
- 3.15 Levels of profit above normal returns that are temporary or particular to some firms can occur in a workably competitive market. Profits are a reward to businesses which can achieve lower costs than their rivals or attract additional customers by improving their offers.
- 3.16 High levels of profitability provide a signal for new entry or expansion in a market. When entry or expansion occurs, output increases and prices should subsequently fall, so that profit returns to normal levels. If high profitability is persistent in a competitive market, it will generally be confined to a subset of firms that have some form of enduring competitive advantage such as relatively lower costs.
- 3.17 However, if all firms in a sector are persistently earning above a normal return, this suggests that competition is not working well for consumers. In a workably competitive market, we would expect that over time, firms would tend to earn normal rates of return and prices would reflect efficient costs.
- 3.18 Conversely, the absence of profitability persistently above normal levels is not necessarily evidence that competition is working effectively. Profitability can still be at or around normal levels without workable competition. This could be due to inefficiency and a lack of innovation by market participants, caused by the lack of competition.

We have used three measures to assess profitability

- 3.19 We have assessed profitability between 2015 to 2019. We have excluded 2020 onwards to avoid the effects of the COVID-19 pandemic. For example, given supermarkets were allowed to keep trading during lockdown (while many other retailers were not), the period from 2020 onwards might not be representative of underlying performance and profitability.
- 3.20 Our analysis has focused on the major grocery retailers: Woolworths NZ, Foodstuffs NI and Foodstuffs SI. We have analysed the Foodstuffs co-operatives individually as this reflects their business structure. Woolworths NZ and the Foodstuffs co-operatives operate under different business models. This has meant our approach has differed slightly by company.

- 3.21 We have used three approaches when assessing the profitability of the grocery retailers in New Zealand:
- 3.21.1 our primary profitability measure is ROACE;
 - 3.21.2 we have examined forward-looking expectations of anticipated profitability contained in business cases for investments in new and refurbished stores; and
 - 3.21.3 we have also examined profit margins that the major grocery retailers have earned over time.
- 3.22 We have compared each of these profitability measures against relevant benchmarks to assess the level of profitability and its persistence over time.
- 3.23 Data availability has restricted the range of profitability measures we have been able to consider in our study. We have not been able to apply the range of profitability measures used in our retail fuel market study, primarily due to the lack of available information. For example:
- 3.23.1 none of the major grocery retailers in New Zealand are separately publicly listed, which has prevented us from using the Tobin's Q measure in our assessment;⁸⁹
 - 3.23.2 we have not had access to high frequency data on margins, over a long time period, as we did in the retail fuel market study; and
 - 3.23.3 we have also not been able to source data to perform an internal rate of return (IRR) or a truncated internal rate of return (TIRR) from the financial data provided by the major grocery retailers.
- 3.24 Limitations of our profitability analysis are discussed further below.

Return on average capital employed

- 3.25 ROACE derives an annual return based on the amount of earnings a company has made in a financial year relative to the value of the assets that were employed in that year to generate those earnings. The specific ROACE formula we have used in this study is shown in Figure 3.1 below. This is broadly the same formula that was used in our retail fuel market study.

⁸⁹ Although Woolworths Group Limited is publicly listed in Australia, Woolworths NZ is only a component of this business.

Figure 3.1 Our ROACE formula

$$\text{ROACE} = \frac{\text{Net Profit after Tax} + (\text{Net Interest Expenses} \times (1 - \text{Corporate Tax}))}{\text{Average Assets Employed}}$$

Where: Net Interest Expenses = Interest Expenses - Interest Income

Average Assets Employed = (Total Assets - Goodwill - Current Liabilities + Interest Bearing Current Liabilities)
taken at the start and end of the financial year

- 3.26 The value of assets employed in the ROACE measure should reflect the market value (or opportunity cost) of the assets, or the amount of capital being employed. Given we are estimating profitability for grocery retailers, any assets and earnings that relate to non-grocery activities were excluded.
- 3.27 Assets should ideally be valued at their depreciated replacement cost. However, this is not always straightforward, particularly for some intangible assets like brands and organisational capital, which reflect things such as customer contracts, supplier relationships, a trained workforce and transport contracts.
- 3.28 While this means there are some limitations of the ROACE measure, it is nonetheless useful in measuring profitability. In particular, ROACE is a good and well-known measure of economic profit. Economic profit is a better measure of profitability for competition analysis than accounting profit. This is because it focuses on the economic costs of the resources used in the business and can be compared to the opportunity cost of investing those resources elsewhere. The Competition and Markets Authority (CMA) and the Australian Competition and Consumer Commission (ACCC) also use various forms of return on capital in their own market studies (for example, the CMA Funeral Study and ACCC Cattle and Beef Study).⁹⁰
- 3.29 A summary of our approach to measuring ROACE for Woolworths NZ and the two Foodstuffs co-operatives is provided below. This includes how we have dealt with the difficulties associated with ROACE and issues that have been raised in submissions. Further detail is included in Attachment B.

⁹⁰ Competition & Markets Authority “Funerals Market Investigation – Final report – Appendix S: Profitability of funeral directors” (18 December 2020), available at: https://assets.publishing.service.gov.uk/media/5fdb2461e90e071be1015708/Appendix_S_-_Profitability_of_funeral_directors_18.12.20.pdf; Australian Competition & Consumer Commission “Cattle and beef market study – Final report” (March 2017) at 29, available at: <https://www.accc.gov.au/system/files/ACCC%20Cattle%20and%20beef%20market%20studyFinal%20report.pdf>.

Approach to calculating ROACE for Woolworths NZ

- 3.30 When calculating ROACE for Woolworths NZ, we have included estimated values of capitalised leases and the associated interest expenses. Woolworths NZ leases most of the land and buildings used for its retail stores. This approach is based on one of the economic functions of a lease being to provide an alternative to debt when financing the acquisition of an asset, “the lease...relieves the firm of having to finance the asset from other sources”.⁹¹ Including right of use assets for leases in capital employed is consistent with standard financial practice. Recent changes to international accounting standards mean the value of these assets is now available in financial accounts.
- 3.31 Woolworths and its advisors, in their submissions on our draft report, argued for this approach to be adopted.
- 3.32 We have adjusted Woolworths NZ’s asset base upwards to reflect our estimates of the current market value of land and buildings it owns. This is to capture the actual amount of capital that is being employed by the company and its opportunity cost. We have removed development properties from Woolworths NZ’s assets employed because these assets are not being used for grocery retailing.
- 3.33 We have excluded the intangible asset relating to goodwill from Woolworths NZ’s asset base.⁹² We have removed goodwill because it is not an asset that is employed in generating earnings – rather, it reflects future expected earnings. Therefore, including goodwill may capture the expectation of excessive profits in the future.
- 3.34 We have also excluded two non-grocery subsidiaries Woolworths NZ owned during the 2015 to 2019 period when calculating ROACE, given our analysis is focused on the profitability of grocery retailing.
- 3.35 We have included the book value of intangible assets relating to brands in Woolworths NZ’s assets employed. In our draft report we excluded this intangible asset because of its similarities to goodwill and we tested the sensitivity of our results to this exclusion. Submissions made by Woolworths NZ and their economic advisors proposed that brands should be included in the assets employed.⁹³ We have concluded that this asset has a value that should be recognised when estimating ROACE.⁹⁴

⁹¹ *Stewart C Myers, David A Dill and Alberto J Bautista “Valuation of financial lease contracts” The Journal of Finance Vol XXXI, No 3, June 1976, 799-819 at 800.*

⁹² Woolworths NZ submitted that it did not agree with our exclusion of goodwill assets from its asset base, Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [27.7.8].

⁹³ Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [5.4.8]; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [27.7.5].

⁹⁴ We have included brands at book value in the asset base, which reflects the price a party was willing to pay for the asset. This approach aligns our estimation of the ROACE for the sample of overseas grocery retailers, which include the value of acquired brands in the asset employed. It is also consistent with the approach in our retail fuel market study.

Approach to calculating ROACE for the Foodstuffs co-operatives

- 3.36 Our ROACE estimates for Foodstuffs NI and Foodstuffs SI are based on a ‘whole of business’ approach. The whole of business ROACE for each co-operative is a consolidation of its retail stores, and includes the centralised functions provided by the co-operatives. Most of the land and buildings used for their retail stores is owned by the co-operatives.
- 3.37 Applying a whole of business approach is a change from our draft report. Our estimates in our draft report focused on the profitability of Foodstuffs NI and Foodstuffs SI’s retail stores, noting that the land and buildings used for retail stores is leased by individual owner-operators from the co-operatives. In our draft report, our focus was on the individually owned and operated companies that directly engage in grocery retailing.
- 3.38 Based on submissions and new information provided, we have now assessed the profitability of the two Foodstuffs co-operatives on a whole of business basis. Foodstuffs NI and Foodstuffs SI submitted that each co-operative and its retail businesses are fully integrated in terms of their operations, and trying to assess profitability for the individual parts of the group was artificial as it does not reflect the reality of their business.⁹⁵
- 3.39 At the time of our draft report, we did not have a complete picture of the co-operatives’ land and buildings, including the market value of these investments and any gain in value these investments have earned. This made estimating profitability on a whole of business basis problematic, given their significant investments in property.
- 3.40 Following consultation on our draft report we now have information from both of Foodstuffs NI and Foodstuffs SI which estimates the market value of their property investments. We have also used this information to estimate the annualised capital gains that both co-operatives have earned over 2015 to 2019.

Profit expectations for new investments

- 3.41 Our second profitability measure is the returns that the major grocery retailers expected to earn from proposed new investments, and the level of financial return that they require for new business cases to be approved.
- 3.42 Consistent with our approach to ROACE, we examined the forecast profitability of the two Foodstuffs co-operatives based on the whole of business approach, rather than focussing on the profitability of the retail businesses (as we did in our draft report).

⁹⁵ Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [21]; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [25].

Profit margins

- 3.43 Our third profitability measure is profit margins of the three major grocery retailers. Profit margins measure profit as a percentage of annual sales revenue.
- 3.44 We have used three measures of profit margin: gross profit (GP) margin, earnings before interest, tax, depreciation, amortisation and rent (EBITDAR) margin, and net profit after tax (NPAT) margin. We have assessed trends in profit margins over time, and relative to a sample of international grocery retailers.

We have estimated a normal rate of return for grocery retailing based on WACC

- 3.45 We have benchmarked ROACE and profit expectations for new investments against our estimate of a normal rate of return for firms in the New Zealand retail grocery sector.
- 3.46 Our estimate of a normal rate of return is the estimated WACC. WACC is the expected financial return that investors require for an investment given the riskiness of that investment. We consider that the WACC is the best available benchmark of returns expected under workable competition.⁹⁶ ROACE is comparable to a post-tax WACC.

⁹⁶ We note submissions from major grocery retailers on this point. Foodstuffs NI submitted that seeking to benchmark ROACE against WACC is prone to error and is consequently not a sound basis for comparison and that Foodstuffs NI's profit margins are consistent with the international sample, Foodstuffs NI "Submission on Market Study into grocery sector draft report" (10 September 2021) at [52] and [64]. Peter Harris submitted for Woolworths that "firms under conditions of perfect competition might expect to see their returns on capital competed down to a level just above WACC. But the Commission by its own standard in the Study recognises that perfect competition is not the appropriate standard. Workable competition, where returns are going to be materially higher than a WACC, is that standard", Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 1 - Peter Harris AO - Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand" (25 November 2021) at [9]-[21]. WACC measures the cost of capital of an efficient firm; while we agree that there can be deviations from the normal returns an efficient firm could expect we nonetheless consider it the most suitable benchmark. As indicated by the court in *Wellington International Airport Ltd and Others v Commerce Commission*, "workably competitive markets have a tendency towards generating certain outcomes. These outcomes include the earning by firms of normal rates of return, and the existence of prices that reflect such normal rates of return, after covering the firms' efficient costs", *Wellington International Airport Ltd and Others v Commerce Commission* [2013] NZHC 3289 at [18]-[22].

- 3.47 Our central estimate of post-tax WACC for firms in the New Zealand retail grocery sector for the time period between 2015 and 2019 is 5.5%. As a sensitivity, we also estimated WACC based on the views of various submissions on behalf of the major grocery retailers on inputs to the WACC, various commercial research, and our own previous work on WACC inputs.⁹⁷ In our view, this gives a higher estimate of post-tax WACC of 6.6%.
- 3.48 WACC is estimated using certain input parameters. Some of these inputs have been estimated using a sample of 27 overseas grocery retailers. These retailers are from a variety of OECD countries, including the United Kingdom, the United States, Canada, Israel, and Turkey. The sample of overseas grocery retailers is described in greater detail in Attachment B.
- 3.49 We have reviewed our WACC estimate in response to submissions. A number of submissions on our draft report challenged our estimate of the parameter values and our overall WACC. The main adjustments we have made to our WACC estimate are:
- 3.49.1 We have removed three companies from the sample of overseas grocery retailers, in response to submissions from Foodstuffs and Woolworths NZ.⁹⁸ This increased our central asset beta estimate to 0.47.
- 3.49.2 We have also adopted an asset beta of 0.6 for our higher WACC estimate (compared to 0.5 in our draft report). Reasonableness checks we have undertaken, alongside the other evidence before us, suggest using this higher asset beta for our higher WACC estimate is appropriate.

⁹⁷ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at 75-91; Commerce Commission “Input Methodologies review decisions: Topic Paper 4: Cost of capital issues” (20 December 2016) at [590]-[595.7], available at: https://comcom.govt.nz/_data/assets/pdf_file/0021/60537/Input-methodologies-review-decisions-Topic-paper-4-Cost-of-capital-issues-20-December-2016.pdf; Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020) at [6.896]-[6.899], available at: https://comcom.govt.nz/_data/assets/pdf_file/0022/226507/Fibre-Input-Methodologies-Main-final-decisions-reasons-paper-13-October-2020.pdf; Professor Aswath Damodaran “Data Archives” Damodaran Online https://pages.stern.nyu.edu/~adamodar/New_Home_Page/dataarchived.html#discrate; Grant Samuel “Independent Expert Report in Coles Group Limited: Scheme Booklet Supplement” (21 September 2007), available at: <https://www.asx.com.au/asxpdf/20071001/pdf/314w5y3fgt938l.pdf>.

⁹⁸ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix A - Incenta Review of grocery retailing: Comment on the Commerce Commission’s analysis of profitability” (10 September 2021) at [86], [95] and [96]; Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at iii.

- 3.50 In addition, we have updated leverage to 17% when calculating both our WACC estimates. This is the average leverage of the overseas comparator sample. We had previously included a leverage figure of 30% for our higher WACC estimate in our draft report. However, our estimate of cost of capital uses a zero debt beta. Using the average leverage of the comparator sample set for both our estimates of WACC avoids the anomaly of WACC increasing with leverage.⁹⁹
- 3.51 We have also removed debt issuance costs from our WACC estimate. We had included debt issuance costs in our WACC estimate for our draft report. However, estimated firm-level profits are net of debt issuance costs, so including them in WACC would double count these costs. Consequently, we have excluded this for our final report. This is consistent with our approach in the retail fuel market study.
- 3.52 As a result of these changes, our central WACC estimate has increased from 5.3% to 5.5% since our draft report, and our higher estimate has increased from 6.1% to 6.6%. Attachment B provides further details on how we estimated WACC, including evidence supporting that our estimates are commercially realistic.

ROACE estimates for the major grocery retailers are well above our WACC estimate

- 3.53 For the period between 2015 and 2019 we have calculated average ROACE estimates of 12.8% for Foodstuffs SI, 12.7% for Woolworths NZ, and 13.1% for Foodstuffs NI. These ROACE estimates are well above our WACC estimate for New Zealand grocery retailers. This is illustrated in Figure 3.2.

⁹⁹ Commerce Commission “Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper” (22 December 2010) at Appendix H, available at: https://comcom.govt.nz/_data/assets/pdf_file/0019/62704/EDB-GPB-Input-Methodologies-Reasons-Paper-Dec-2010.pdf.

Figure 3.2 Average ROACE for each major grocery retailer in New Zealand compared to WACC (2015-2019)

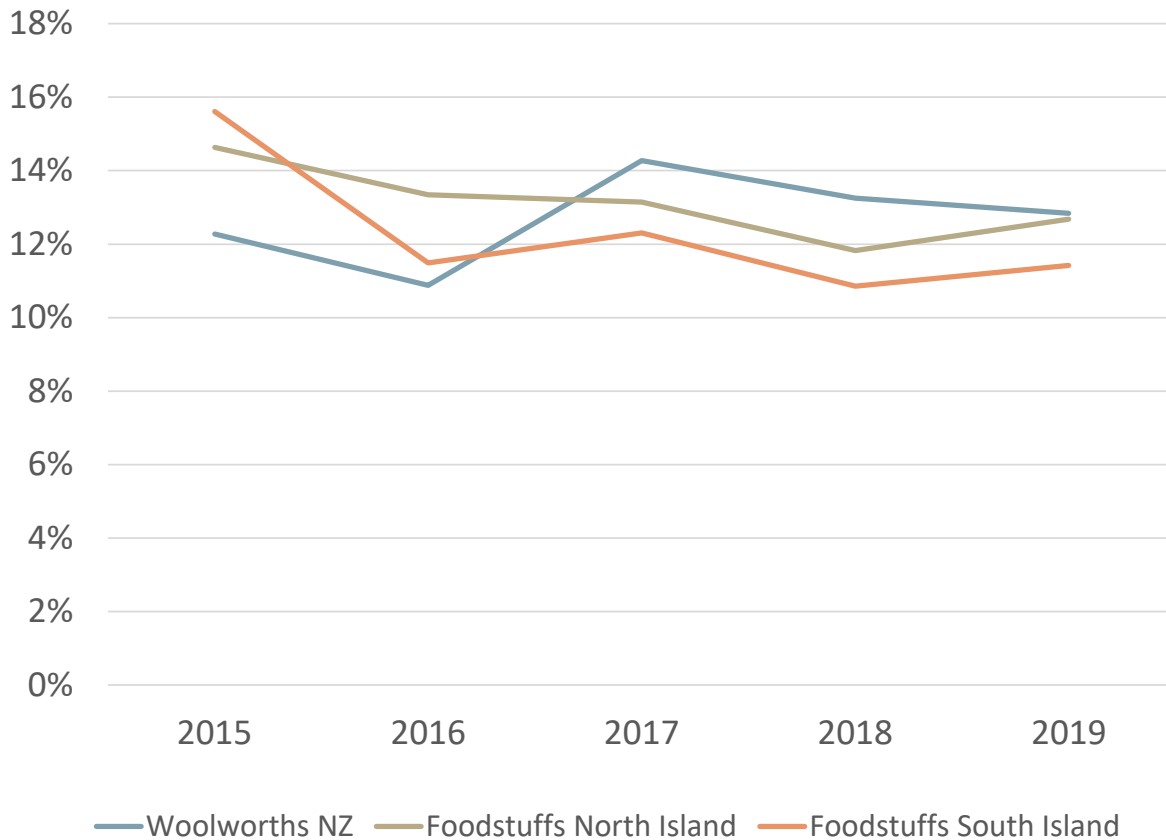


Source: Commerce Commission profitability analysis.¹⁰⁰

- 3.54 We have estimated the excess returns earned by the major grocery retailers in dollar terms, based on the ROACE and WACC estimates above. The average ROACE for the major grocery retailers is 12.9%. If the average ROACE was 5.5% (our central estimate of WACC), the major grocery retailers' profits would reduce by approximately \$430m per year.¹⁰¹
- 3.55 We have also examined ROACE for the three major grocery retailers for each year between 2015 to 2019. This is illustrated in Figure 3.3 below. Overall these ROACE estimates are relatively stable, showing no clear upwards or downwards trend. There are no clear indications that the ROACE estimates for the major grocery retailers exceeding WACC is temporary.

¹⁰⁰ []

¹⁰¹ If the major grocery retailers' average ROACE was 6.6% (our higher WACC estimate), their profits would reduce by approximately \$365m per year.

Figure 3.3 Annual ROACE for each major grocery retailer in New Zealand (2015-2019)

Source: Commerce Commission profitability analysis.¹⁰²

- 3.56 Our ROACE estimates are lower than those in our draft report, due to improvements in our calculations in response to submissions, additional information we have received, and refinements to the scope of the grocery businesses we have assessed.¹⁰³ The ROACE estimates for the major grocery retailers contained in our draft report ranged from 21.6% and 23.8%, when averaged across 2015 to 2019. The most material changes were moving to a whole of business approach for Foodstuffs NI and Foodstuffs SI, and including right of use assets associated with leases for Woolworths NZ.¹⁰⁴

¹⁰² [].

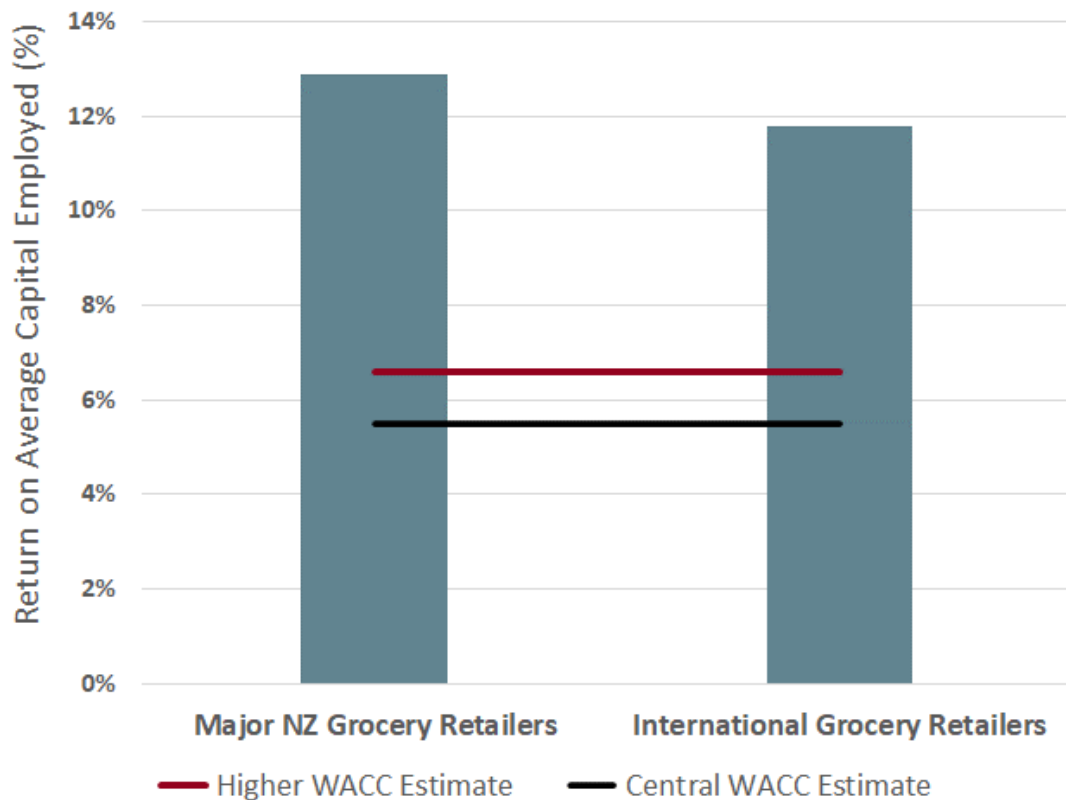
¹⁰³ See paragraphs 3.30 to 3.40 above for further discussion of our approach to estimating ROACE for Woolworths NZ and the Foodstuffs co-operatives.

¹⁰⁴ Updated 'retail' ROACE estimates for Foodstuffs, focusing on the overall profitability of retail stores, are 21.9% for Foodstuffs NI and 21.7% for Foodstuffs SI. These retail estimates reflect the updates we have made between the draft and final reports, except the change to reporting ROACE for Foodstuffs on whole of business basis. They do not include the capitalisation of leases as a right of use asset.

We have compared ROACE estimates for the major grocery retailers with overseas retailers

3.57 We compared the average ROACE for the three major grocery retailers with the average ROACE observed for a sample of overseas grocery retailers over the same time period.¹⁰⁵ As shown in Figure 3.4 below, the average ROACE for the three major grocery retailers is slightly higher than, but similar to, the average ROACE for the overseas comparator companies.

Figure 3.4 Average ROACE for the major grocery retailers in New Zealand compared with overseas grocery retailers (2015-2019)



Source: Commerce Commission profitability analysis.¹⁰⁶

3.58 However, it is difficult to draw firm conclusions regarding whether the major grocery retailers' ROACE is consistent with workable competition by comparing with overseas grocery retailers.

¹⁰⁵ The formula used for calculating the ROACE for our sample of international grocery retailers is the same that we used for calculating the ROACE for the New Zealand grocery retailers. It removes goodwill from the assets employed. The overseas companies used in our sample are the same used in determining our estimate of WACC, which is described in Attachment B.

¹⁰⁶ [].

- 3.59 To do so would require a close examination of the overseas grocery retailers' businesses and the competitive context in which each of them operates. For example, the extent to which the overseas grocery retailers are operating in workably competitive markets is unclear.
- 3.60 There is large variation in ROACE observed for the overseas retailers. The 5-year average ROACE for the overseas sample does range from 2.7% to 36.9%.¹⁰⁷ Submissions also noted that the results from the overseas sample showed significant variability and volatility.¹⁰⁸ This could reflect differences in competitive constraints, and other economic and operating differences.
- 3.61 ROACE estimates depend crucially on asset values and we have not adjusted the international comparator ROACE estimates to be consistent with our New Zealand analysis, including assessing the market value of property or adding right of use assets associated with leases. For example, if right of use assets for leased property are not included, ROACE is likely to be higher.¹⁰⁹ However, adjusting the asset values retrospectively would require detailed specific enquiry into each company to assess the individual adjustment required.

There is an alternative view regarding valuation of lease assets

- 3.62 Unlike the position outlined in the section above, our draft report did not add the value of capitalised leases to retailers' asset values when calculating returns and estimating the profitability of the grocery retailers.
- 3.63 If we had persisted with the approach used in our draft report, we would have sought to adopt economic valuation concepts such as depreciated replacement cost (DRC) or market value. Under this approach the initial value of any lease asset, based on DRC, would be the sum of the search, negotiation and contracting costs, because these activities provide benefits over the life of the lease. While we do not have data regarding these costs for the major grocery retailers, the resulting value would inevitably be small relative to the total value of all future lease payments.
- 3.64 The reasons for preferring the approach in our draft report might include that it would:
- 3.64.1 help separate out the economic profits available to grocery retailers and property investors; and
 - 3.64.2 more accurately signal the economic profit available to a capital-constrained entrant.

¹⁰⁷ [].

¹⁰⁸ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [27.5.3].

¹⁰⁹ We note that Woolworths NZ ROACE, averaged across 2015 to 2019, reduced from 21.0% to 12.7% when right of use assets for leases were included.

- 3.65 The overall effect of the approach in our draft report was to decrease the value of the grocery retailers' assets employed. This would increase retailers' ROACE estimates from those quoted in Figure 3.2 and Figure 3.3. In the case of Woolworths NZ, the change would be to levels cited in Footnote 109, given the significant role that leases play in its business model. For Foodstuffs NI and Foodstuffs SI, if their ROACE has been measured on a whole of business basis, the increase would be much more modest.

Business cases show high returns for some projects

- 3.66 Analysis of business cases for new investment projects can provide insight into the forward-looking profit a company expects to earn from new investments. We also used this form of analysis in the retail fuel market study.
- 3.67 It is common for firms to set profit targets for new investment capital at a "hurdle rate" which is higher than their WACC. We would expect this in workably competitive markets and note that hurdle rates apply to extra capital invested, not the ROACE across the firm as a whole. For our business case analysis we used internal hurdle rates above the WACC as the benchmark.
- 3.68 The major grocery retailers provided us with information on 116 new investment projects, less than half of which included internal modelling from which we could assess profit expectations. In our view, most of this information has no value as evidence for this study.
- 3.69 The information that is of evidential value shows average expected returns from these particular investment projects well above the hurdle rate which is our workable competition benchmark.
- 3.70 We acknowledge Woolworths NZ's submission that we have only assessed "growth" projects that relate to investments in new stores, that this only represents some of its capital expenditure and that a large proportion of its remaining 'business as usual' spending on maintaining and upgrading existing investments does not generate returns itself.¹¹⁰ This is a limitation of our business case analysis – we have not examined the significant amount of investment that relates to 'business as usual' spending on maintaining and upgrading existing investments.

¹¹⁰ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [27.10].

- 3.71 Each of the major grocery retailers operates an integrated business which includes not simply the retailing outlets but also distribution centres and head office systems. It can therefore be expected to have a range of investment projects with varying levels of expected returns depending on the nature and risk of the projects being undertaken. Consequently, it is not possible for us to draw any inference regarding the overall profitability of a major grocery retailer's business from the assessment of those business cases we have analysed.

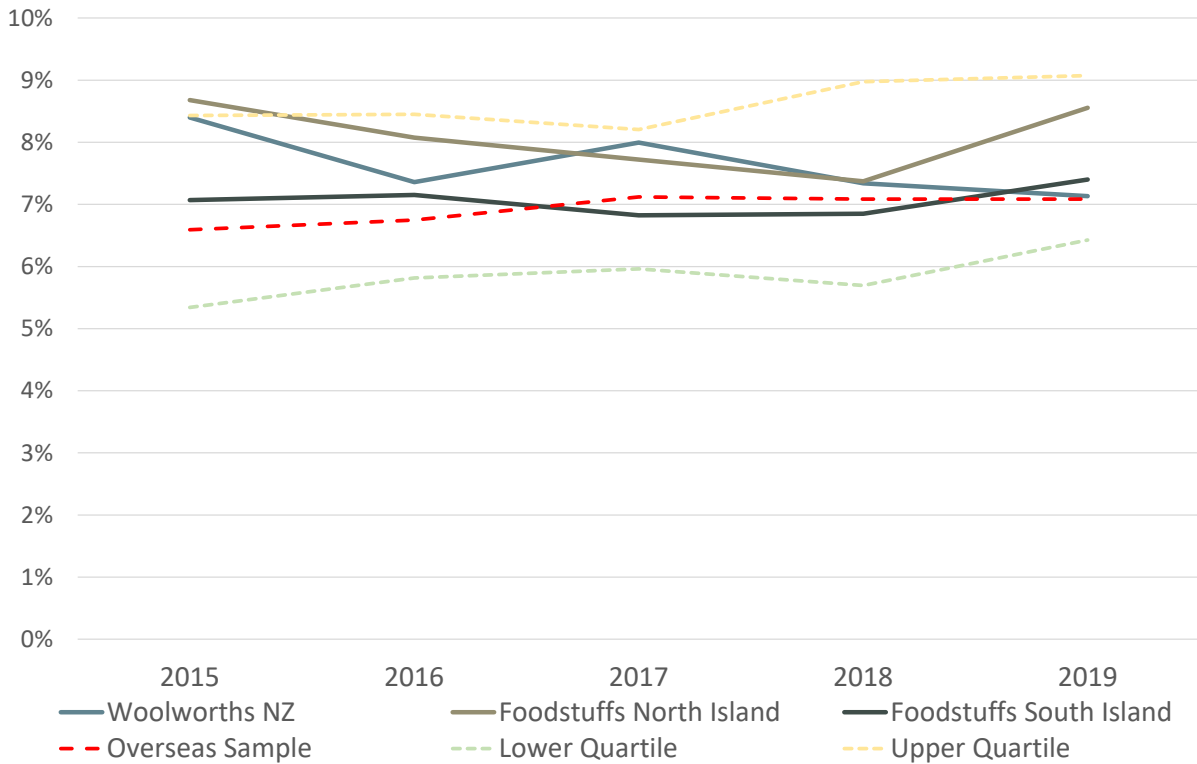
It is difficult to draw firm conclusions from comparing profit margins with overseas grocery retailers

- 3.72 We have examined the profit margins of the three major grocery retailers. This enabled us to observe trends over time and to compare profit margins with a sample of 27 overseas grocery retailers. These are the same comparator companies that we used when developing our WACC estimate.
- 3.73 Profit margins are assessed using accounting measures of profit as a percentage of the annual sales turnover. Three profit margins were assessed:
- 3.73.1 **EBITDAR margin:** EBITDAR is the profit a company has made before the interest expenses on debt, the tax on its profit, depreciation, amortisation, and rent have been paid. The EBITDAR margin is the total EBITDAR divided by total sales for a financial year.
- 3.73.2 **NPAT margin:** NPAT is a company's profit after all costs, including taxation have been paid. The NPAT margin is the total NPAT divided by total sales for a financial year.
- 3.73.3 **GP margin:** GP margin is the gross profit a company makes after deducting the costs associated with purchasing its products and making them ready for sale. In other words, it is the total sales revenue the company receives, less the total cost of the goods sold. The GP margin is the total GP divided by total sales for a financial year.
- 3.74 Our analysis shows that profit margins for New Zealand's major grocery retailers are broadly consistent with the sample of overseas grocery retailers. While in some instances the profit margins for the major New Zealand grocery retailers are higher than the average overseas comparators, there is large variation amongst the overseas sample.

- 3.75 However, it is difficult to draw firm conclusions regarding whether the major grocery retailers' profit margins are consistent with workable competition by comparing with overseas grocery retailers. Similar concerns to our international comparisons of ROACE (see paragraph 3.58 above) also apply to profit margins. In particular:
- 3.75.1 it is difficult to ensure a robust comparison of profit margins with New Zealand's major grocery retailers, given challenges in understanding the overseas grocery retailers' businesses and the competitive context in which each of them operates; and
 - 3.75.2 there is large variation in profit margins observed for the overseas retailers.
- 3.76 There are some additional caveats around the comparability of profit margins between businesses in different countries, including differences that arise from different tax regimes, whether the stores own or lease their land and buildings, and the relative scale of their typical operations.
- 3.77 We have made several changes to our analysis of profit margins in response to submissions on our draft report. These include:
- 3.77.1 Using the EBITDAR margins instead of EBIT margins. This is in response to the submission from Incenta (for Foodstuffs NI and Foodstuffs SI), which presented an example showing how different profit margins could be affected by ownership versus renting of assets.¹¹¹ Incenta noted that the GP Margin and the NPAT margin are not impacted by this effect.
 - 3.77.2 We have converted profit margins for Foodstuffs NI and Foodstuffs SI to a whole of business basis, consistent with our approach to ROACE. Our draft report presented profit margins for the Foodstuffs co-operatives based on retail stores. Foodstuffs NI and Foodstuffs SI submitted that profit margins should be developed based on the whole of business approach.
- 3.78 Figure 3.5 below shows the EBITDAR margin for the three major grocery retailers from 2015 to 2019, compared to the sample of international grocery retailers. Woolworths NZ and Foodstuffs NI's EBITDAR margins are slightly above the overseas sample average, while Foodstuffs SI is broadly similar.
- 3.79 With the exception of one data point, the major grocery retailers' EBITDAR margins fall within the interquartile range of the overseas sample. This is illustrated in Figure 3.5.

¹¹¹ Foodstuffs SI "Submission on Market study into grocery sector draft report: Appendix A - Incenta - Review of grocery retailing: Comment on the Commerce Commission's analysis of profitability" (10 September 2021) at 13 (Table 2); Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix A - Incenta - Review of grocery retailing: Comment on the Commerce Commission's analysis of profitability" (10 September 2021) at 13 (Table 2).

Figure 3.5 EBITDAR margin for the major grocery retailers relative to overseas grocery retailers (2015 to 2019)

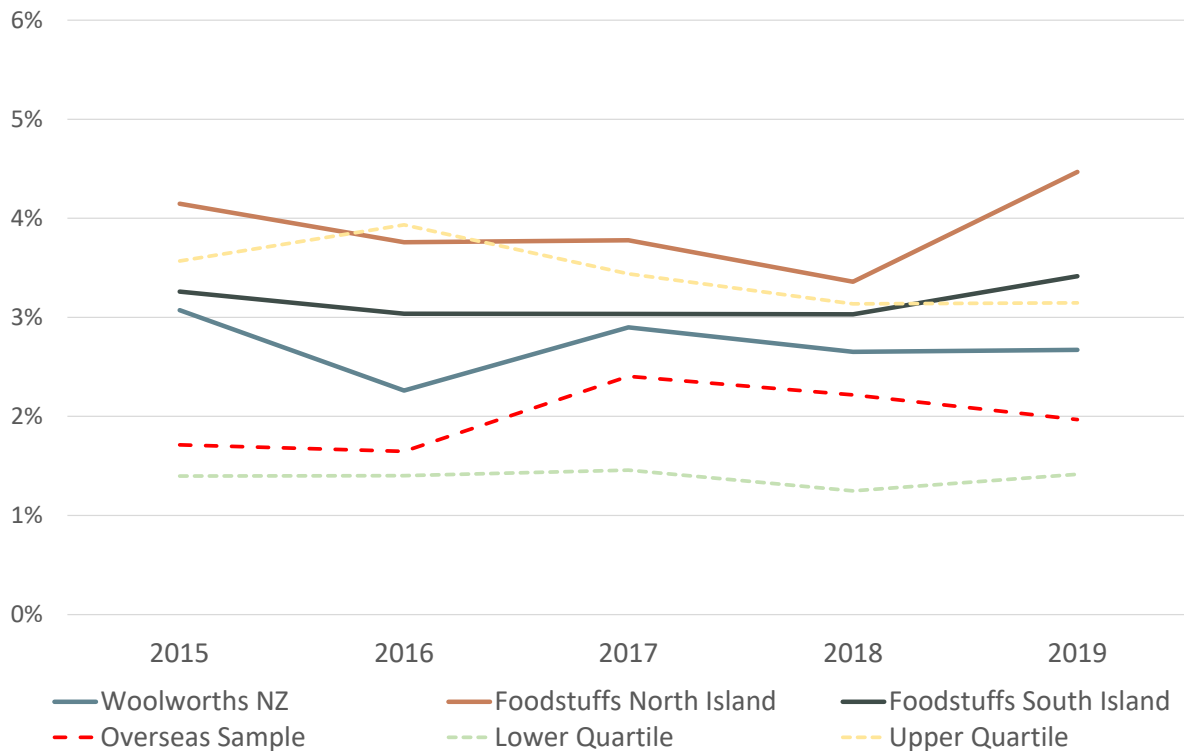


Source: Commerce Commission profitability analysis.¹¹²

3.80 Figure 3.6 below compares the major grocery retailers' NPAT margins to the overseas sample. This shows that Foodstuffs NI, Foodstuffs SI and Woolworths NZ generally have higher NPAT profit margins than the international sample. However, most of these NPAT margins are still within the interquartile range of the overseas sample.

¹¹² [].

Figure 3.6 NPAT margin for the major grocery retailers relative to overseas grocery retailers (2015 to 2019)



Source: Commerce Commission profitability analysis.¹¹³

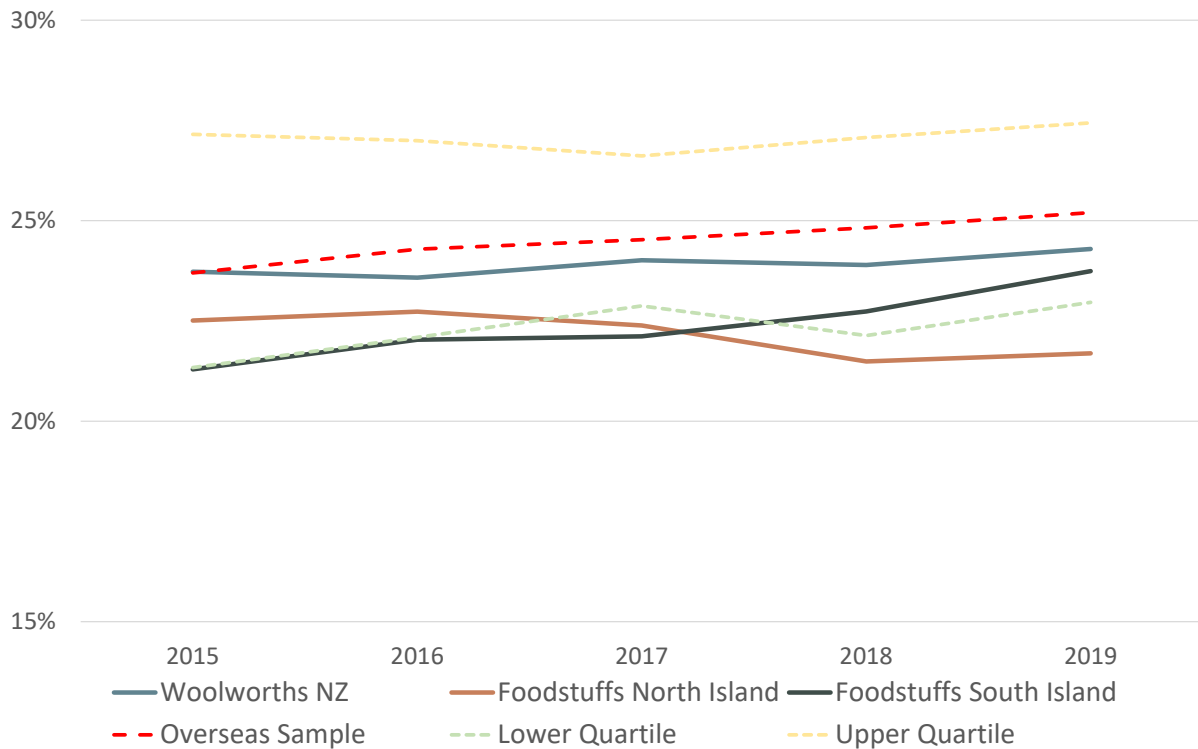
3.81 Figure 3.7 below shows the GP margin for the three major grocery retailers from 2015 to 2019, compared to the sample of overseas grocery retailers. Each of the major grocery retailers' GP margins are below the average of the overseas sample.

3.82 In response to Woolworths NZ's submission, we have removed the UK grocery retailers from the overseas sample for GP margins, because their accounting standards around reporting of gross profit differs materially from the other countries in the sample.¹¹⁴

¹¹³ [].

¹¹⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix A - Incenta - Review of grocery retailing: Comment on the Commerce Commission's analysis of profitability" (10 September 2021) at [131].

Figure 3.7 GP margin for the major grocery retailers relative to overseas grocery retailers (2015 to 2019)



Source: Commerce Commission profitability analysis.¹¹⁵

Price outcomes

- 3.83 When competition in a market is not working well, firms have weakened incentives to compete on price, and in the long run we would expect prices to be higher than in a market where competition is working effectively.
- 3.84 Even in competitive markets, prices are likely to be impacted by a range of factors in addition to the level of competition. These include factors such as input costs and scale economies.
- 3.85 In the terms of reference, the Minister asked us to consider price outcomes in our market study.¹¹⁶ Some participants in our consumer research perceived the overall price of groceries in New Zealand to be high.¹¹⁷ Complaints made to the Commission include complaints that grocery prices in New Zealand are unreasonably high, including in comparison with overseas.¹¹⁸

¹¹⁵ [].

¹¹⁶ New Zealand Gazette “Notice Amending the Public Release Date for the Final Report for the Competition Study into the Retail Grocery Sector” (24 September 2021).

¹¹⁷ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 13.

¹¹⁸ Paragraph 7.210.2.

- 3.86 To test whether these perceptions are accurate we considered international price comparisons provided to us by participants in our study and conducted our own analysis. Our analysis suggests that New Zealand's grocery prices are relatively high by international standards. A number of datasets that we have considered show that New Zealand ranks highly in terms of the prices of grocery products and consumer expenditure on groceries.
- 3.87 When we compare New Zealand to a smaller subset of potentially more comparable countries, New Zealand still ranks highly (although is not the highest).

International price comparisons

- 3.88 Given the link between prices and competition, we sought to understand how New Zealand's grocery prices compare with other countries.
- 3.89 There are several methodological challenges to overcome when comparing prices in different countries. Some of these were discussed in submissions on our draft report from the grocery retailers and third parties, particularly the exchange rate that should be used to convert international prices to a common currency to facilitate comparisons. We have taken these submissions into account in finalising our analysis and summarise the findings below. Attachment C provides further information about our approach to comparing international grocery prices.
- 3.90 Our analysis of OECD, International Comparisons Program (ICP), Numbeo, and US Department of Agriculture (USDA) datasets using a blended approach to converting exchange rates suggests that New Zealand grocery prices are high relative to some overseas countries.¹¹⁹
- 3.91 Out of OECD countries, New Zealand ranked 5th highest in terms of grocery prices, as well as 4th highest in terms of grocery expenditures in the OECD and ICP datasets respectively. We consider these datasets to be the most reliable datasets of grocery prices due to their use of official data sources. New Zealand therefore ranked within the top five most expensive grocery markets out of all 38 OECD countries in 2017.
- 3.92 While this data is several years old, we are not aware of any reason why the rankings would have changed significantly in that time.

¹¹⁹ The blended approach uses a combination of market exchange rates and purchasing power parity to convert international grocery prices.

Our approach to making international price comparisons

- 3.93 In our retail fuel market study we noted several factors may complicate price comparisons.¹²⁰
- 3.93.1 The choice of currency conversion method can potentially distort comparisons. Annual average exchange rates were used in our retail fuel market study to control for this rather than PPP.
 - 3.93.2 Factors other than competition are likely to affect prices relative to other countries. Examples of these for New Zealand may include our geographic isolation, biosecurity regulations, labour and distribution costs.
 - 3.93.3 Differences in methodologies used to collect prices for national datasets, may decrease the accuracy of results.
 - 3.93.4 Taxation on products, may differ across countries.
- 3.94 Further, grocery products are not homogeneous. Lack of homogeneity makes international comparison of grocery prices more difficult because:
- 3.94.1 prices of potentially thousands of heterogeneous products need to be combined into a single average price for that country;
 - 3.94.2 variation of quality and range of goods across grocery products may mean that apparently similar price levels mask substantially different outcomes for consumers;
 - 3.94.3 consumer preferences and availability of different products in different countries likely further decreases the comparability of prices, as different countries may be consuming different goods; and
 - 3.94.4 taxation rates may differ between different grocery products, making comparisons more complex.

¹²⁰ Commerce Commission “Market Study into the retail fuel sector – Final report” (5 December 2019) at 121, available at: https://comcom.govt.nz/_data/assets/pdf_file/0028/193915/Retail-fuel-market-study-Final-report-5-December-2019.PDF.

- 3.95 Recognising the many factors that can influence price, NERA Economic Consulting (NERA, on behalf of Woolworths) and HoustonKemp (on behalf of Foodstuffs NI and Foodstuffs SI) told us that it is difficult to use price to assess the level of competition in the supply of groceries.¹²¹ We agree that there are difficulties in both the measurement of price differences and the interpretation of the results but remain of the view that prices are relevant to our overall assessment of competition.
- 3.96 Acknowledging the difficulties outlined above, we have focused our analysis on any insights that could be gained from existing international datasets of grocery prices. These are presented as price-level indices for grocery items. We also considered existing datasets of per capita expenditure on groceries.
- 3.97 Price-level indices, which are averages of the prices paid by consumers, can be compared to other countries. Expenditures are the amount that an average consumer would spend on a range of products over a given year. When prices are higher, we would expect that consumer expenditure would also be higher.
- 3.98 When comparing prices between countries, prices need to be converted into a common unit as different countries use different currencies. Prices can be converted either using the market exchange rate, or by using PPP.
- 3.98.1 The market exchange rate is the rate of conversion between currencies that is offered on the foreign exchange market. This rate is used to convert currencies involving transactions overseas, as it reflects the actual prices paid by importers and exporters for foreign goods.
- 3.98.2 PPP is a widely-used rate for converting currencies that aims to remove the effect of price differences between countries. This means that when prices are converted using PPP, the same amount of currency in one country would be able to purchase, on average, the same amount of goods in all other countries. PPP is often used when comparing the relative size of economies because it compares all currencies in terms of the amount of goods that an economy can purchase.
- 3.99 NERA and HoustonKemp submitted that using PPP for price conversion purposes is more appropriate than using market exchange rates because:
- 3.99.1 grocery retailing, and costs associated with retailing such as labour, are non-tradable;¹²²

¹²¹ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [115]; Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (10 September 2021) at [33]-[35].

¹²² Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [124a]; Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (10 September 2021) at [57a].

- 3.99.2 grocery expenditure accounts for 8% of Gross Domestic Product (GDP), which is a relatively small component of GDP which implies that grocery expenditure will not have an undue effect on PPP;¹²³ and
- 3.99.3 the Commerce Commission used PPP rates to convert prices for other price comparison exercises for retail mobile telecommunications services.¹²⁴
- 3.100 We agree with NERA and HoustonKemp that the grocery retailing component of price is non-tradable and therefore PPP is the appropriate rate to convert the grocery retailing component of grocery prices. However, we are of the view that grocery products are tradable and therefore the market exchange rate is the appropriate rate to convert that component of grocery prices.
- 3.101 Accordingly, we have used a “blended approach” to convert international prices to a common unit. This approach converts each grocery price component (tradable and non-tradable) using the appropriate rate (market exchange rate and PPP respectively). Further details on our methodology are included in Attachment C.

Datasets we considered for this analysis

- 3.102 We used four datasets for our analysis. These are those produced by:
- 3.102.1 the OECD – price and expenditure statistics;¹²⁵
- 3.102.2 the ICP – price and expenditure statistics;¹²⁶
- 3.102.3 Numbeo – price statistics;¹²⁷ and
- 3.102.4 the USDA – expenditure statistics.¹²⁸
- 3.103 These datasets include a range of products sold at supermarkets, but some datasets exclude some categories of products such as personal health or cleaning products. Further details on the product lists included in datasets is provided in Attachment C.

¹²³ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [124b]; Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (10 September 2021) at [57b].

¹²⁴ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [130].

¹²⁵ OECD.Stat “2017 PPP Benchmark results” (2020) <https://stats.oecd.org/Index.aspx?DataSetCode=PPP2017>.

¹²⁶ World Bank “Databank | ICP 2017” (2020) <https://databank.worldbank.org/source/icp-2017>.

¹²⁷ Numbeo “Groceries Index by Country 2017” (2017) https://www.numbeo.com/cost-of-living/rankings_by_country.jsp?title=2017&displayColumn=3.

¹²⁸ USDA “Data on expenditures on food and alcoholic beverages in selected countries: 2013-2018” (2019) https://www.ers.usda.gov/media/10271/2013-2018-food-spending_update-april-2019.xls.

- 3.104 We consider that the OECD and ICP datasets are likely to be the most reliable sources for price comparisons because they are created with price data collected from stores by national statistical organisations over a long period of time. In contrast, data contained in other datasets are not collected by national statistical organisations and may include crowd-sourced price data. The OECD and ICP datasets also provide extensive documentation detailing their process for collecting prices. Further detail on why we consider the OECD and ICP to be the most reliable sources is included in Attachment C.
- 3.105 The most recent pricing datasets from the OECD and ICP are available for 2017, and from Numbeo for 2021. The latest expenditure datasets that include New Zealand are available for 2019 from the OECD dataset, 2018 for the USDA dataset, and 2017 for the ICP dataset.
- 3.106 Our approach was to compare prices and expenditures for the most recent year where all datasets were available. We then tested our pricing analysis against more recently available datasets.
- 3.107 We also considered the analysis NERA conducted on grocery prices.¹²⁹ NERA used a dataset created by the Economist Intelligence Unit (EIU) that had data from as recently as 2020, while the most recent data included in the datasets we used is for 2017. We understand the EIU data is collected by twice-yearly price surveys.¹³⁰ NERA used this dataset to compare grocery prices for the cities of Wellington and Auckland with cities overseas.
- 3.108 We have considered NERA's submissions on the suitability of this dataset and remain of the view that this dataset is not as suitable for the purposes of comparing New Zealand's grocery prices with overseas countries as the OECD and ICP datasets. In particular, we have seen only limited documentation about how the dataset is compiled and how key variables such as stores and cities are defined. In addition the dataset is limited to two New Zealand cities. We discuss the reasons for our view further in Attachment C.^{131, 132}

New Zealand's grocery prices rank highly among OECD countries

- 3.109 When using the blended approach to grocery price conversions New Zealand generally ranks highly among OECD countries in terms of prices of grocery items using each of the OECD, ICP and Numbeo datasets.

¹²⁹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021).

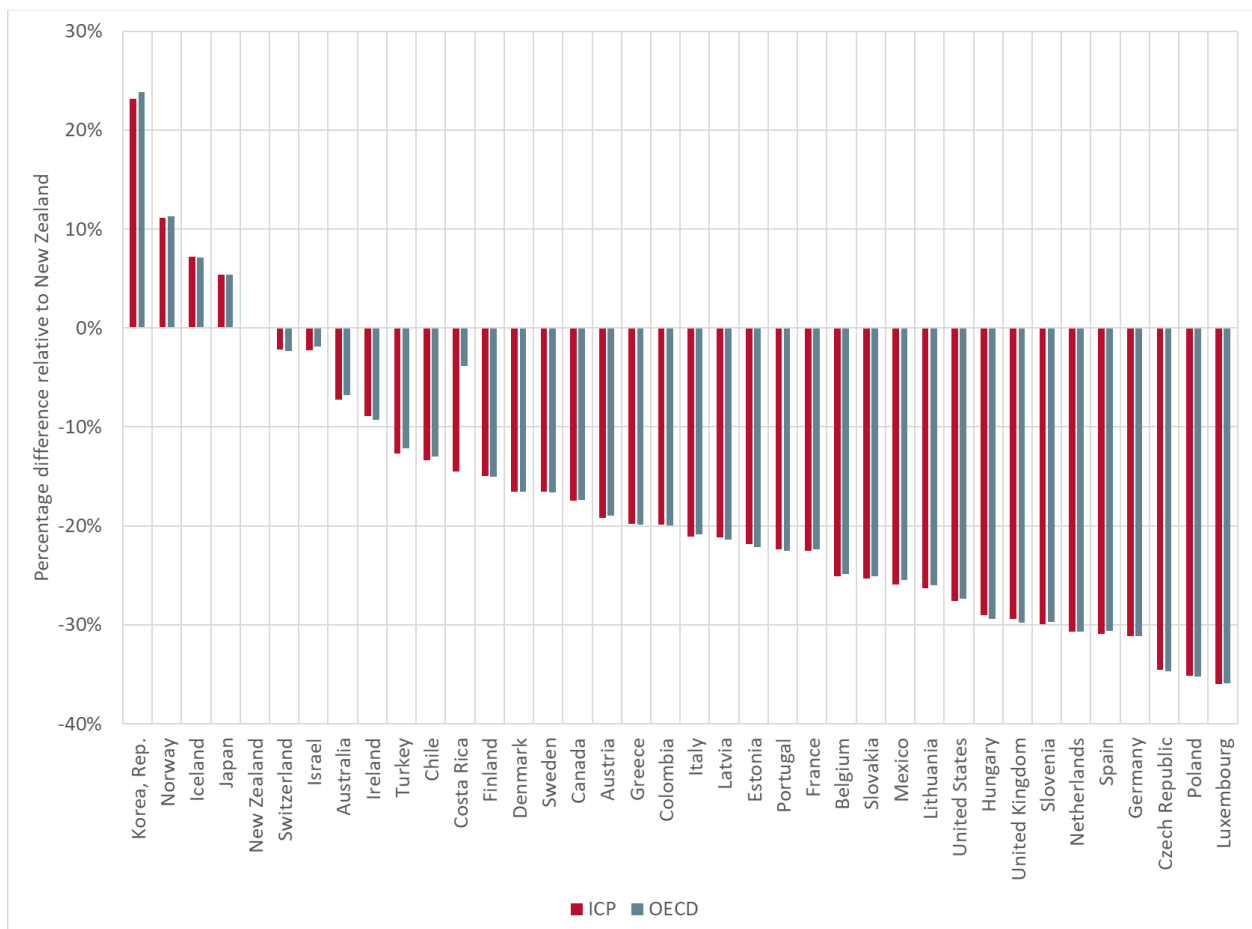
¹³⁰ Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021) at [5].

¹³¹ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [137].

¹³² Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-conference report" (25 November 2021) at Appendix C.

- 3.110 Price levels for food and beverages (alcoholic and non-alcoholic) for OECD countries using the ICP and OECD datasets for 2017 are shown in Figure 3.8, as a percentage difference compared to New Zealand's price level.
- 3.111 We also examined price levels shown by the Numbeo dataset, between 2016 and 2020, which is shown in Attachment C.
- 3.112 Although relative price levels differ between the ICP, OECD, and Numbeo, all three datasets appear to be generally consistent in whether or not OECD countries have more or less expensive grocery prices than New Zealand.

Figure 3.8 Percentage difference in food, beverages (alcoholic and non-alcoholic) and tobacco prices compared to New Zealand (NZ = 0, blended approach, 2017)



Source: Commission analysis of ICP and OECD datasets.¹³³

- 3.113 The ICP and OECD datasets indicate that New Zealand was the fifth most expensive grocery market in the OECD in 2017. In Figure 3.11, when alcohol and tobacco are excluded, New Zealand's ranking from the ICP dataset is seventh. This suggests that while alcohol and tobacco prices may be relatively high in New Zealand, this is not a significant factor in New Zealand's overall high ranking.

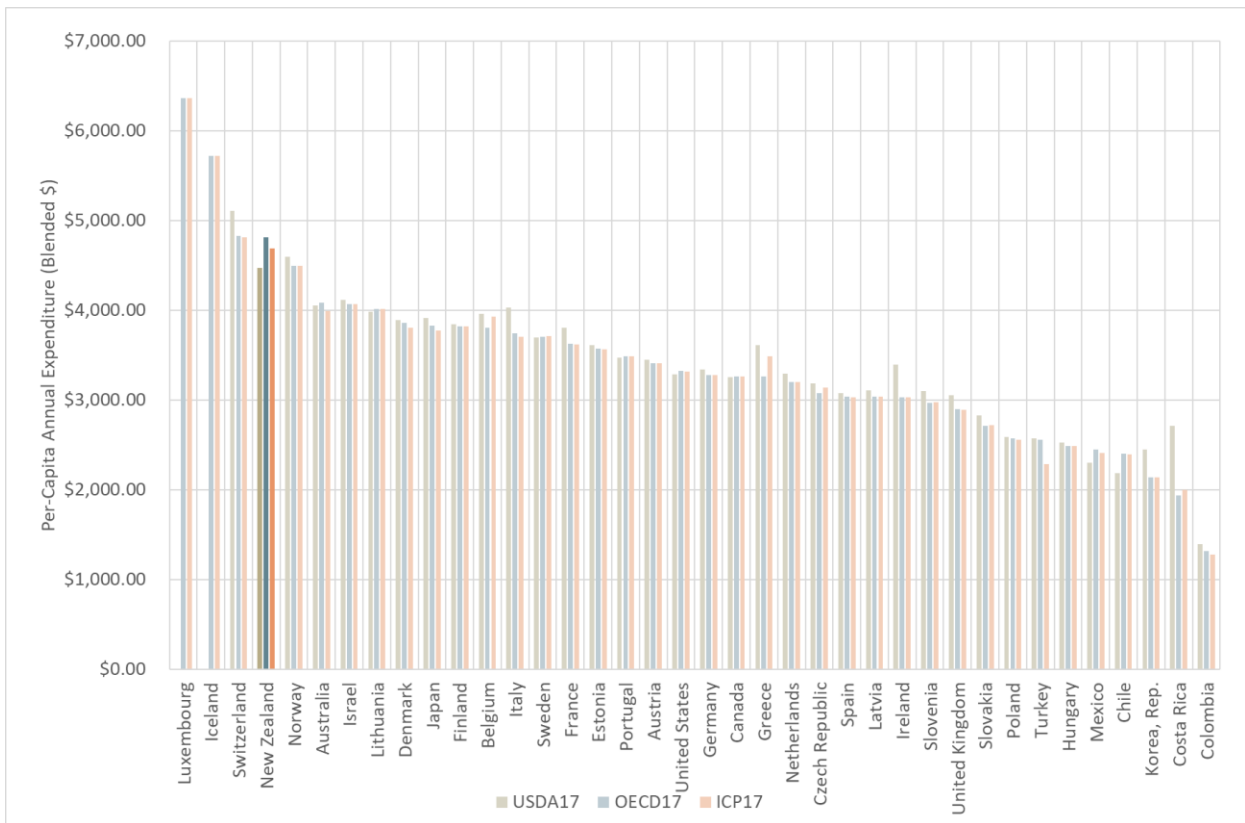
3.114 In the Numbeo dataset between 2016 and 2020, New Zealand ranked between sixth and 12th highest out of OECD countries included. This provides some evidence that New Zealand’s grocery price rankings have not changed significantly since 2017. These rankings can be found in Attachment C.

New Zealand’s expenditure per capita on groceries also ranks highly among OECD countries

3.115 New Zealand also ranked highly among OECD countries in terms of expenditures on grocery items using each of the OECD, ICP and USDA datasets. Regardless of the dataset used, New Zealand’s expenditure per capita on grocery products was at least the fifth highest in the OECD in 2017.

3.116 Figure 3.9 below shows per capita spending on food, beverages, and tobacco in 2017 for the OECD, ICP, and USDA datasets.

Figure 3.9 Per capita expenditures on food, beverages (alcoholic and non-alcoholic) and tobacco (blended approach \$, 2017)



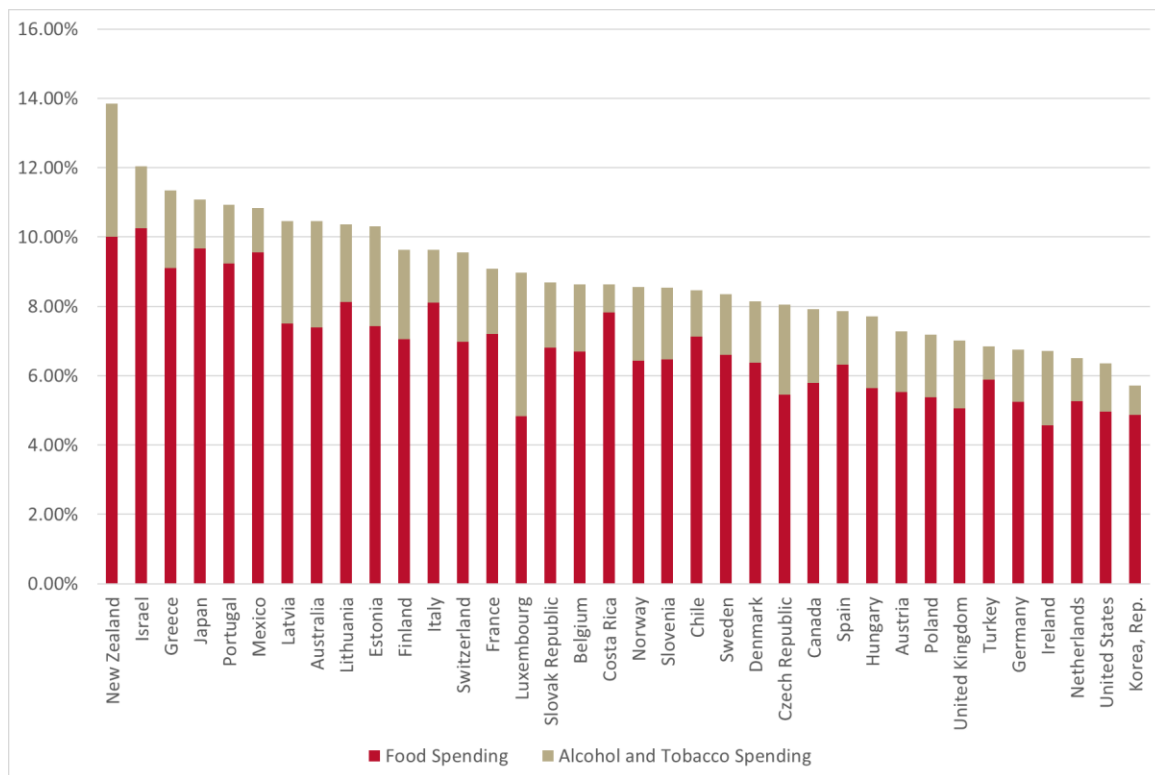
Source: Commission analysis of ICP, OECD and USDA datasets.¹³⁴

3.117 Our findings on expenditure are consistent with our findings using price-level datasets. New Zealand’s relatively high per capita spending on food potentially indicates that prices in New Zealand are high relative to other countries.

¹³⁴ World Bank “Databank | ICP 2017” (2020) <https://databank.worldbank.org/source/icp-2017>; [].

- 3.118 In Attachment C, we show that New Zealand’s grocery expenditures relative to other countries remains relatively high even when looking at more recent datasets.
- 3.119 We also compared average grocery expenditure as a proportion of income in OECD countries using an OECD dataset on grocery expenditures and Net National Income data obtained from OECD.¹³⁵ Our analysis suggests that on average, New Zealanders spend a relatively large share of their income on groceries compared with consumers in some other OECD countries.
- 3.120 Figure 3.10 shows that, on average, New Zealanders spent the highest proportion of income on groceries out of OECD countries in 2017.
- 3.121 We obtain similar results when conducting additional sensitivity analysis using a range of income measures and other datasets. Attachment C provides further information on the sensitivity analysis we have done to compare average grocery expenditure as a proportion of income between different countries.

Figure 3.10 Share of Net National Income per capita spent on food, beverages (alcoholic and non-alcoholic) and tobacco (OECD, 2017)



Source: Commission analysis of OECD datasets.¹³⁶

¹³⁵ In response to submission from Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [138]-[139].

¹³⁶ OECD.Stat “2017 PPP Benchmark results” (2020) <https://stats.oecd.org/Index.aspx?DataSetCode=PPP2017>; [].

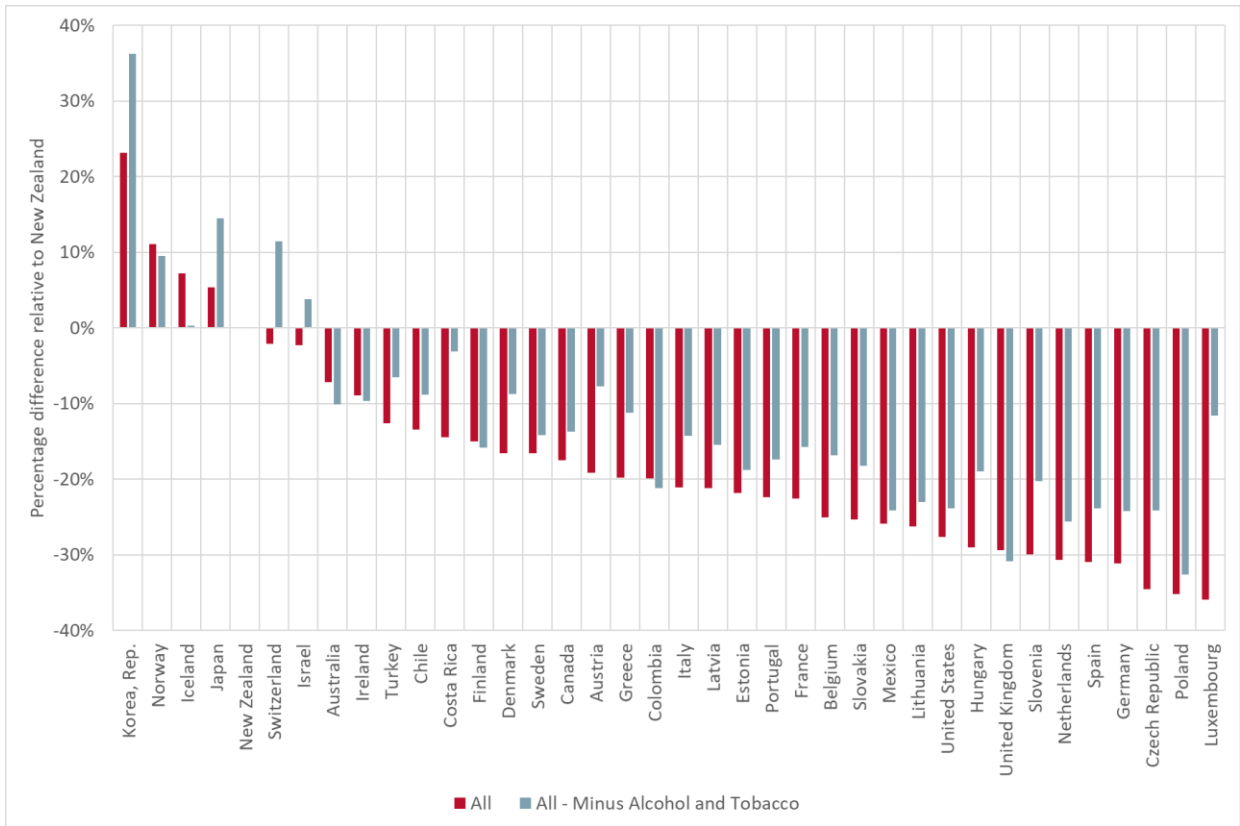
New Zealand's grocery prices remain comparatively high when alcohol and tobacco are removed

- 3.122 NERA told us that alcohol and tobacco should be excluded from comparisons because they are highly taxed, and not sold at supermarkets in other countries.¹³⁷ However, our analysis shows that New Zealand grocery prices and expenditure are still relatively high in comparison to other OECD countries, even when alcohol and tobacco are removed.
- 3.123 We considered this effect in both the ICP and OECD datasets, and found that the removal of alcohol and tobacco had similar effects in both datasets. We present data from the ICP dataset in Figure 3.11 and Figure 3.12 below, and from the OECD dataset in Attachment C.
- 3.124 When alcohol and tobacco are removed from comparisons, New Zealand has the seventh most expensive grocery prices in the OECD, in both the OECD and ICP datasets. New Zealand also spends the third and fifth most on groceries in the OECD when alcohol and tobacco are removed, in the OECD and ICP datasets respectively.
- 3.125 Figure 3.11 below shows a price level for groceries calculated with and without alcohol and tobacco using the ICP dataset. This graph compares the price level of food and non-alcoholic beverages with the price level for food, beverages (alcoholic and non-alcoholic), and tobacco for 2017.
- 3.126 Figure 3.12 below shows per capita grocery expenditures, calculated with and without alcohol and tobacco using the ICP dataset. This graph shows the division of grocery expenditure between those two categories for 2017.
- 3.127 When tobacco is removed, New Zealand's grocery prices become relatively higher. We also note that since 2017, there have been changes to New Zealand's taxes on tobacco, which may mean that the relative price levels that include tobacco could have changed since 2017.¹³⁸

¹³⁷ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [118].

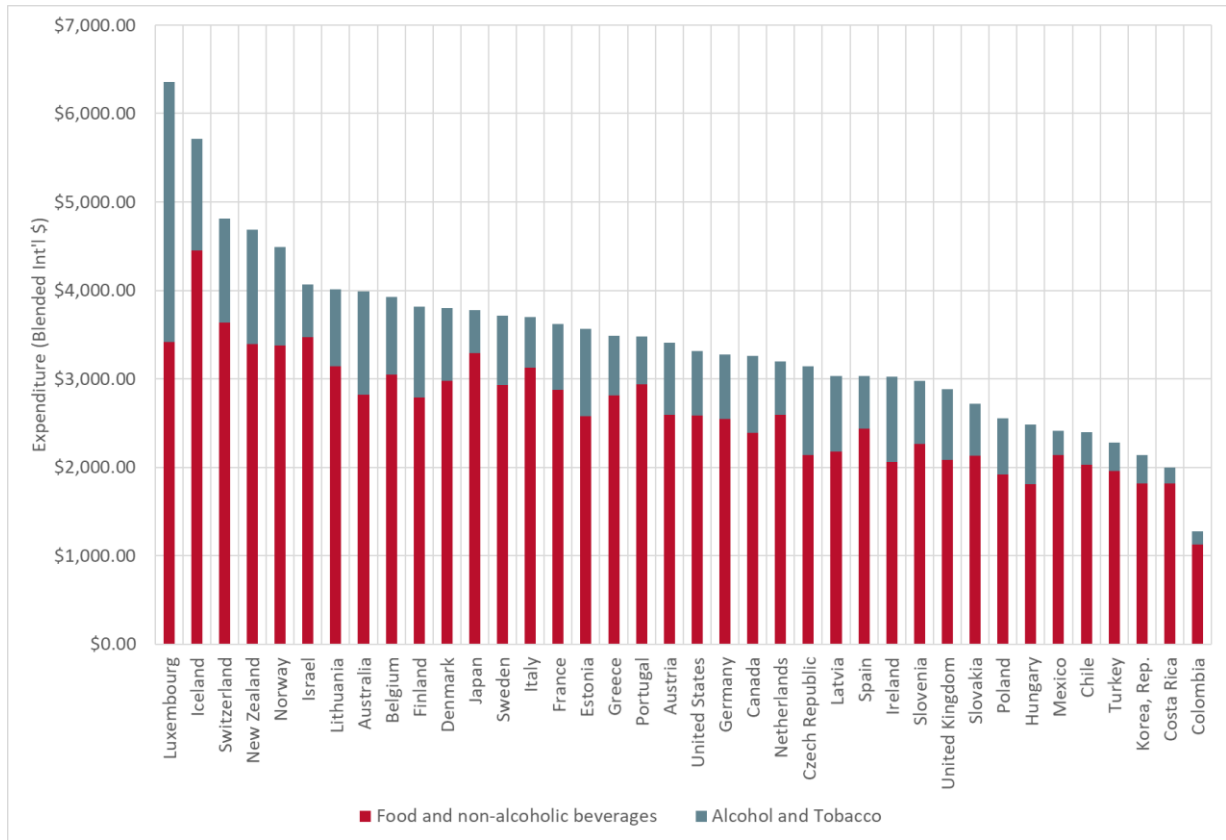
¹³⁸ Office of the Associate Minister of Health "Cabinet Paper - 1 January 2020 Tobacco Excise Tax Increase", available at: <https://www.health.govt.nz/system/files/documents/information-release/cabinet-paper-1-january-2020-tobacco-excise-tax-increase-redacted.pdf>.

Figure 3.11 Percentage difference in grocery prices, inclusive and exclusive of alcohol (NZ = 0, blended approach, 2017)



Source: Commission analysis of ICP dataset.¹³⁹

Figure 3.12 Per capita grocery expenditures, inclusive and exclusive of alcohol and tobacco (blended approach, 2017)



Source: Commission analysis of ICP dataset.¹⁴⁰

3.128 Figure 3.12 suggests that the relatively high grocery prices in New Zealand are unlikely to be driven by higher alcohol and tobacco prices. Further detail can be found in Attachment C.

Comparison to a subset of countries likely to be more similar to New Zealand

3.129 NERA and HoustonKemp told us that even if grocery prices in New Zealand are high, other factors aside from competition may explain why that is the case.^{141, 142}

3.129.1 HoustonKemp told us that even if major grocery retailers made zero profits, prices would still be high in New Zealand by international standards.¹⁴³

¹⁴⁰ [].

¹⁴¹ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [115].

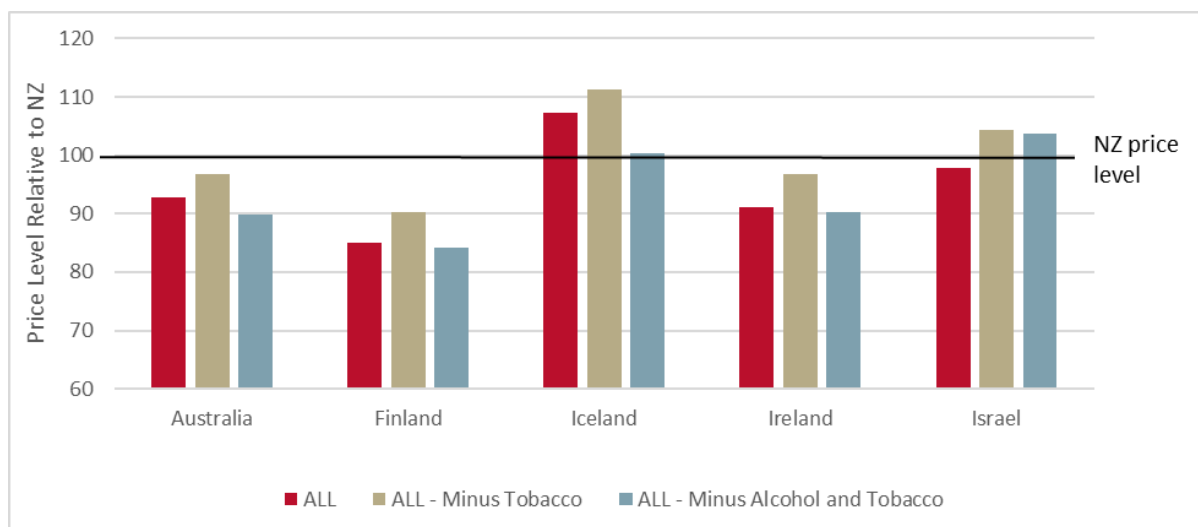
¹⁴² Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (10 September 2021) at Section 2.2.

¹⁴³ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (10 September 2021) at [71]-[84].

- 3.129.2 NERA told us that New Zealand’s overall price level is high, so other factors may explain why grocery prices are perceived to be high when compared internationally.¹⁴⁴
- 3.130 We agree that there are many factors that can affect grocery prices, such as a country’s scale and size.
- 3.131 However, prices can also be high in markets that are not workably competitive, whether or not profits are also high. For example, firms in markets that are not workably competitive may have a reduced incentive to find ways to lower cost, resulting in prices being high without earning excess profits.
- 3.132 Our view is that it is not possible to determine exactly how much of the price differences we observe can be attributed to inter-country differences in competition or any other factors. However, to gain further insight we compared New Zealand prices to a smaller subset of countries that we considered likely to be most comparable to New Zealand in terms of scale and size.
- 3.133 We selected comparators by looking for OECD countries that, on the face of it, could face similar demand and supply factors to New Zealand. The countries we selected were:
- 3.133.1 Australia;
 - 3.133.2 Finland;
 - 3.133.3 Iceland;
 - 3.133.4 Ireland; and
 - 3.133.5 Israel.
- 3.134 Figure 3.13 below shows a comparison of New Zealand prices with this smaller set of countries using the ICP dataset for 2017. New Zealand prices are still higher than the average for this smaller comparator group, although the result varies depending on whether alcohol and tobacco are included.

¹⁴⁴ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at 32.

**Figure 3.13 Comparing price levels across different categories
(NZ=100, tax inclusive, 2017)¹⁴⁵**



Source: Commission analysis of ICP dataset.¹⁴⁶

- 3.135 Overall, Figure 3.13 shows that Iceland is the only country out of our set of comparators with more expensive grocery prices than New Zealand in all categories. Israel has more expensive grocery prices than New Zealand when tobacco, or alcohol and tobacco, are removed. Moreover, New Zealand has more expensive grocery prices than Australia, Finland, and Ireland, regardless of which categories are excluded.
- 3.136 More detail of the process we used to select comparators can be found in Attachment C.

NERA/Woolworths NZ analysis of grocery prices

- 3.137 NERA submitted analysis that compared grocery prices internationally. Instead of creating an average price like the agencies compiling the other datasets, NERA uses a ranking system at the grocery product level, then presents the distribution of grocery price ranks.¹⁴⁷
- 3.138 Figure 3.14 and Figure 3.15 below show the analysis that was presented in the NERA report.¹⁴⁸ These figures show the distribution of product price rankings for each city as a box and whisker plot. They are sorted by the median ranking of product prices that a city receives.

¹⁴⁵ "ALL" refers to: food, beverages (alcoholic and non-alcoholic), and tobacco.

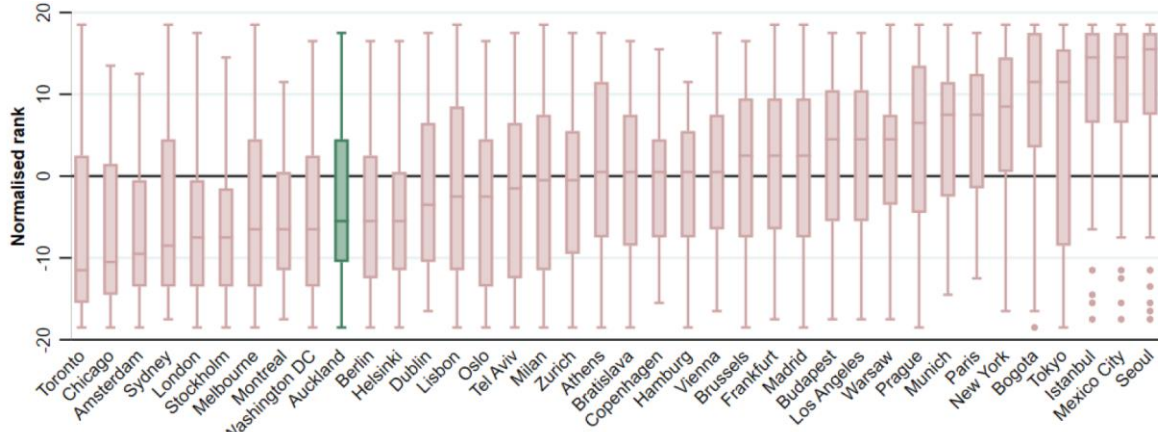
¹⁴⁶ [].

¹⁴⁷ Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021) at [15].

¹⁴⁸ Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021) at [5.3] and [5.6].

3.139 Figure 3.14 shows that Auckland has a relatively inexpensive grocery market in comparison to cities that the EIU considers to be “metro” cities, while Figure 3.15 shows the same for Wellington, in comparison to cities that the EIU considers to be “non-metro” cities.

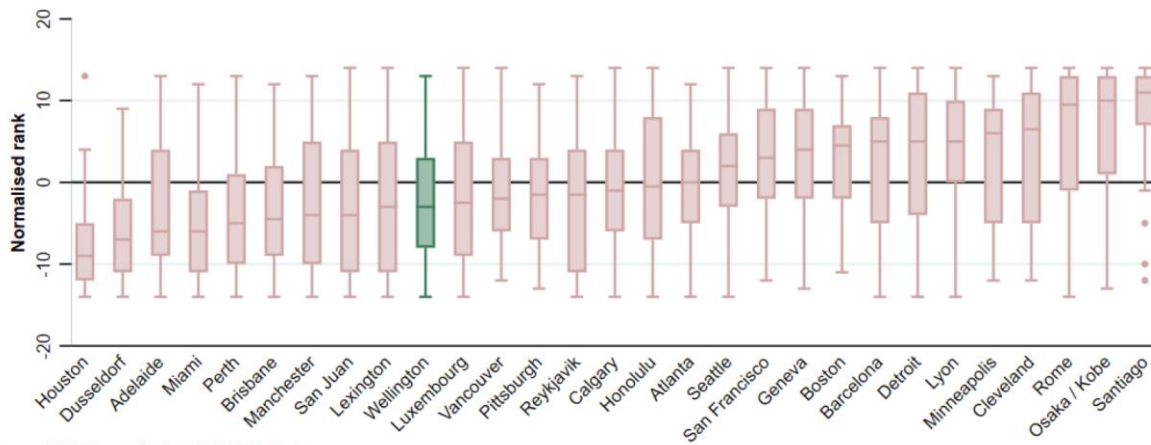
Figure 3.14 Distribution of average product price ranks in PPP for available OECD cities By cities with prices collected in the metro area, 2020



Source: NERA analysis of EIU CityData.

Source: NERA report on grocery price benchmarking.¹⁴⁹

Figure 3.15 Distribution of average product price ranks in PPP for available OECD cities By cities with prices collected in the non-metro area, 2020



Source: NERA analysis of EIU CityData.

Source: NERA report on grocery price benchmarking.¹⁵⁰

¹⁴⁹ Woolworths NZ “Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking” (4 February 2021) at Figure 5.3.

¹⁵⁰ Woolworths NZ “Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking” (4 February 2021) at Figure 5.6.

- 3.140 NERA considered it most appropriate to use a PPP to convert prices into a common currency. However, as discussed in paragraphs 3.97 to 3.101, we consider that the blended approach is the most appropriate method of conversion into a common unit.¹⁵¹
- 3.141 Furthermore, it is unclear whether the ranking mechanism used by NERA is appropriate for making pricing comparisons. The ranking mechanism may limit the influence of very cheap or expensive goods that might be a large share of expenditure, meaning that the median ranking of prices may not represent consumer experiences at grocery stores.
- 3.142 NERA told us that its use of a ranking mechanism is appropriate because it does not consider a fixed basket of goods, but rather considers the range of items as this avoids the need for defining a typical basket of goods purchased by consumers in New Zealand.
- 3.143 We note that the significant overlap of all box and whisker charts in Figure 3.14 and Figure 3.15 shows that almost all cities rank as the most expensive for some grocery products and the least expensive for others. This means that using the distribution of prices for the purposes of doing international comparisons will lead to a conclusion that prices are neither high nor low in all cities surveyed.¹⁵²
- 3.144 We consider that NERA's analysis is not informative of the price ranking of any particular city included in the EIU dataset.
- 3.145 Our view is therefore that limited weight can be placed on the analysis in the NERA report when considering how New Zealand grocery prices compare internationally, due to the dataset not being produced by National Statistic Agencies, the use of PPP as opposed to a blended approach and its use of a ranking mechanism. We discuss this further in Attachment C.

Other observations on grocery prices

- 3.146 Some stakeholders and participants in our consumer research told us about their own perceptions and anecdotal observations on grocery prices.
- 3.147 Some participants in our consumer research perceived the overall price of groceries in New Zealand to be high.^{153, 154} For example, comparisons were made by some participants to lower prices being available in other countries they have lived in, such as Australia and the UK. Further, some participants told us that they thought a lack of competition was the reason for prices being high.¹⁵⁵

¹⁵¹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021) at [12].

¹⁵² Woolworths NZ "Submission on retail grocery market study preliminary issues paper: Attachment 1 - NERA Economic Consulting, Grocery price benchmarking" (4 February 2021) at [135].

¹⁵³ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 13.

¹⁵⁴ Paragraph E170.

¹⁵⁵ Paragraph E188.

- 3.148 Complaints made to the Commission include complaints that grocery prices are unreasonably high. Complainants allege that some products are significantly more expensive in New Zealand than they are overseas or that they are sold at “too high” a profit.¹⁵⁶
- 3.149 We agree with Peter Harris AO (on behalf of Woolworths NZ) that perceptions and anecdotal observations should not be used to decide the contested question of whether or not prices are higher than we would expect in a workably competitive market.¹⁵⁷ They do not provide evidence that prices are in fact higher than we might expect in a workably competitive market. However, they do provide us with a view of consumers’ confidence that a market is well-functioning.
- 3.150 We also received the following submissions from stakeholders comparing New Zealand’s grocery prices internationally:
- 3.150.1 Consumer NZ based its finding of high prices on a price comparison of 20 identical “Homebrand” and “Woolworths Select” products sold in both New Zealand and Australia.¹⁵⁸ It is unlikely that we can infer an overall price difference for groceries from this comparison; and
- 3.150.2 Coriolis told us that there is a price difference between New Zealand and the US of approximately 2-6% that is driven by competition factors (“duopoly premium” and “lack of retail format diversity”).¹⁵⁹ However, we agree with Woolworths NZ¹⁶⁰ that the usefulness of this analysis is limited due to a lack of supporting evidence for the data, quantification and underlying assumptions used to compare grocery prices between New Zealand and the US.

Innovation and investment

- 3.151 The scale and scope of innovation and investment in a sector gives insights into the dynamics of the competitive process and the extent to which there are incentives to supply the products and services that consumers want, when they want them and at the lowest possible cost.

¹⁵⁶ Paragraph 7.210.2.

¹⁵⁷ Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 1 - Peter Harris AO - Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand" (25 November 2021) at [2]-[5].

¹⁵⁸ Consumer NZ "Submission on the retail grocery market study preliminary issues paper" (4 February 2021) at [25]-[28].

¹⁵⁹ Coriolis Ltd "Post conference submission on Market study into grocery sector" (18 November 2021) at Exhibit 06.

¹⁶⁰ Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-conference report" (25 November 2021) at Appendix D.

- 3.152 In a workably competitive market, we would expect to see firms investing and innovating in the expectation of earning additional profits by meeting consumer demands both now, and in the future. In turn, we would also expect high margins and profits derived from innovation and investment to attract new entry and expansion and then be competed down to competitive levels.
- 3.153 While the relationship between innovation and competition is complex, in general we would expect workable competition to provide strong incentives for innovation and investment.¹⁶¹ However, differences in market structure, the characteristics of innovations, and the dynamics of research and development processes all affect the theoretical relationship between competition and incentives to innovate.¹⁶² For example, in some circumstances, oligopolistic markets can deliver high innovation rates to the benefit of consumers.¹⁶³ However, in general, competition encourages innovation by fostering entrepreneurship and ‘outside of the box thinking’.¹⁶⁴
- 3.154 Globally, innovation in food retailing has been rapidly advancing in recent years. Technological advancements are changing the way many grocery retailers operate, while fast-moving trends related to consumer behaviour, product preference and spending motivations are leading to greater investment by grocery retailers in an effort to maintain and grow market share.¹⁶⁵

¹⁶¹ Hexis Quadrant "Post conference submission on Market study into grocery sector" (1 December 2021) at 55.

¹⁶² We note that studies considering whether more competition results in greater investment by firms in innovation have presented mixed results. In some cases, the literature suggests a positive relationship (more competition, more innovation), a negative relationship (more competition, less innovation) or an inverse U-shaped relationship (low innovation levels if high/low competition, high innovation levels if medium competition). For example: Philippe Aghion, Reda Cherif and Fuad Hasanov "Competition, Innovation and Inclusive Growth" (19 March 2021) *IMF Working Paper WP21/80*, available at: <https://www.imf.org/en/Publications/WP/Issues/2021/03/19/Competition-Innovation-and-Inclusive-Growth-50269>; Øystein Moen Tord Tvedten & Andreas Wold | Len Tiu Wright (Reviewing editor) "Exploring the relationship between competition and innovation in Norwegian SMEs" (2018) *Cogent Business & Management*, 5:1, available at: <https://www.tandfonline.com/doi/full/10.1080/23311975.2018.1564167>.

¹⁶³ NZ Initiative "Submission on Market study into grocery sector draft report" (26 August 2021) at [2.12]-[2.13].

¹⁶⁴ Hexis Quadrant "Post conference submission on Market study into grocery sector" (1 December 2021) at 55.

¹⁶⁵ For example: Mike Troy, Abby Kleckler and Lynn Petrak "2020 Grocery Innovation Outlook" (1 February 2020) *Progressive Grocer* <https://progressivegrocer.com/2020-grocery-innovation-outlook>; Tricia McKinnon "The Future of Retail: 9 Ways Alibaba is Redefining Retail Stores" *Indigo9Digital* <https://www.indigo9digital.com/blog/futureofretailalibaba>.

- 3.155 Innovation appears relevant to competition in the retail grocery sector, both internationally and in New Zealand. For example, the major grocery retailers submitted that they frequently monitor each other's innovations, alongside price and other non-price competition measures such as product range and customer satisfaction levels.¹⁶⁶
- 3.156 As we discuss below, it is difficult to find suitable benchmarks to assess the scale and scope of innovation in the New Zealand retail grocery sector. Nevertheless, the pace and scale of innovation in the New Zealand retail grocery sector appears to be less than we might expect in a workably competitive market. While there is innovation in the grocery sector, including by the major grocery retailers, it is primarily focused on range and service, rather than price. Further, the scale and pace of innovation we have observed appears insufficient to help explain the level of profit enjoyed by the major retailers between 2015 and 2019 (see above).
- 3.157 This section discusses investment and innovation by grocery retailers in New Zealand under the following topics:
- 3.157.1 innovations aimed at improving consumers' in-store shopping experience;
 - 3.157.2 investments aimed at creating efficiencies through the supply chain;
 - 3.157.3 innovations in new products, including private label brands; and
 - 3.157.4 digital and technological advances and their effect on competition.
- 3.158 We then set out our conclusions on what this level of innovation tells us about how competition is working in the retail grocery sector.

Innovations aimed at improving consumers' in-store shopping experience

- 3.159 Demand for groceries is differentiated, and consumer preferences can vary by shopping mission. While consumers appear to care most about convenience (including range, location and store familiarity) and price, factors such as quality and service are also important.
- 3.160 In a workably competitive market, we would expect firms to compete to satisfy this diverse range of preferences. Innovation aimed at differentiation can be beneficial to consumers, particularly where there are many firms competing. However, in concentrated markets, the benefits of differentiation can tend to accrue to retailers, rather than consumers, because it may enable retailers to limit their level of direct competition with other retailers.

¹⁶⁶ For example: Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 17; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 26; Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 61.

- 3.161 The major grocery retailers have invested in innovation that is intended to improve consumers' in-store shopping experiences.¹⁶⁷ For example, Foodstuffs NI's PAK'nSAVE stores in the lower North Island offer SHOP'nGO which allows consumers to scan their groceries off the shelf with a hand-held barcode scanner.¹⁶⁸ Foodstuffs SI has also introduced SHOP'nGO to its PAK'nSAVE stores and some New World stores for Sticky Club members.¹⁶⁹ Woolworths NZ offers a contactless "Scan & Go" service at six stores.¹⁷⁰ Foodstuffs NI has recently trialled Zoom trolleys in a number of locations and plans to roll these trolleys out in New World stores from 2022.¹⁷¹ In addition, Woolworths NZ offers drive through options at 19 Countdown stores and is rolling out eLockers.
- 3.162 The majors have also invested in new store formats. Both Woolworths NZ and Foodstuffs NI have opened new smaller Metro format stores in recent years that mainly cater for increased consumer demand for convenient shopping locations.^{172, 173, 174} Woolworths NZ stated that it also has a pipeline of store renewals planned.¹⁷⁵

¹⁶⁷ For example: Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 2-3; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 38-41; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 34-35; Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 17-18 (lines 27-41 and 1-10).

¹⁶⁸ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [138].

¹⁶⁹ Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 35.

¹⁷⁰ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 112.

¹⁷¹ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 38.

¹⁷² Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 24.

¹⁷³ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [13.3].

¹⁷⁴ We note that the 2019 pricing data we received from the major grocery retailers show that [

], Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 24 and 38.

¹⁷⁵ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 115.

- 3.163 The in-store innovations discussed above can be expected to benefit consumers who value them. However, our consumer research shows that some consumers would prefer innovations that enhance price competition rather than product and service differentiation. Food discounter business model innovations such as offered by Aldi overseas (see paragraph 5.146.2) have not occurred in New Zealand. Food discounters, such as Aldi, aim to offer low prices on a very narrow assortment of mostly private label goods.¹⁷⁶ Foodstuffs NI submitted that PAK'nSAVE is a price-focused supermarket.¹⁷⁷ However, PAK'nSAVE offers a wider range of SKUs, and a larger proportion of branded products, than Aldi.
- 3.164 Given price is known to be a key driver of store choice for many consumers, this indicates there may not be strong incentives for retailers to innovate and invest to win consumers on this dimension.
- 3.165 As discussed further in Chapter 4, the pattern and impact of retail offer differentiation on consumers will depend on the extent of competition between grocery stores across the full retail offer.

Investments aimed at creating efficiencies through the supply chain

- 3.166 In a workably competitive market, innovations and investments that improve efficiency in the supply chain, and other logistical aspects, can be beneficial to consumers. This is because, when competition is working well, firms are incentivised to share the benefits of these investments, such as reduced costs, with consumers in the form of lower prices.
- 3.167 In recent years the major grocery retailers have invested in improving supply chain and distribution networks to reduce costs and enhance the efficiency and resilience of the grocery supply chain in New Zealand. However, when viewed in the context of other market observations, such as the levels profitability and pricing discussed above, consumers do not appear to be benefitting from these cost-saving investments as much as might be expected if competition was stronger.
- 3.168 In addition to its investments in eStores Woolworths NZ has also made the following investments in recent years to improve supply chain efficiencies:¹⁷⁸
- 3.168.1 developing a new purpose-built 38,000 sqm lower North Island distribution centre;

¹⁷⁶ For example, in the US, a typical Aldi offers about 1,500 SKUs, with approximately 90% of these being private label products, Sanford Stein "Aldi, Right Moves - The German Grocer Sending Shock Waves Throughout Walmart and Kroger" Forbes (25 October 2019) <https://www.forbes.com/sites/sanfordstein/2019/10/25/aldi-right-movesthe-german-grocer-sending-shock-waves-throughout-walmart-and-kroger/?sh=562af70c1bf7>.

¹⁷⁷ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 52.

¹⁷⁸ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 114-115.

- 3.168.2 partnering with Hilton Food Group to establish a new \$100 million meat processing plant in Auckland;
 - 3.168.3 partnering with Americold to establish a \$65 million investment by Americold in expanding its temperature-controlled warehousing facility in Auckland; and
 - 3.168.4 developing a new 20,000 sqm produce distribution centre in Auckland to help service all of Countdown's North Island stores with fresh fruit and vegetables direct from local growers.
- 3.169 At the retail level of the supply chain, Woolworths NZ's new stores include many sustainability features intended to reduce emissions and save water, paper and energy.¹⁷⁹
- 3.170 In 2015 Foodstuffs SI opened a new ambient distribution centre in Christchurch, adding an additional 31,587 sqm to the existing 14,000 sqm warehouse. It has also invested in:¹⁸⁰
- 3.170.1 a temperature-controlled distribution centre in Hornby Christchurch;
 - 3.170.2 Cross Dock which enables the same day arrival in the distribution centre and distribution of products to store; and
 - 3.170.3 advances in Repack picking systems which improves the ability to distribute small numbers of many products across the retail store network.
- 3.171 Foodstuffs NI has:
- 3.171.1 Recently invested more than \$100 million to build a 77,500 sqm central distribution centre in Auckland that stocks groceries for over 150 of its stores.¹⁸¹ Foodstuffs NI considers this distribution centre to be 'state of the art'.¹⁸²

¹⁷⁹ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 115.

¹⁸⁰ Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 39.

¹⁸¹ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 46.

¹⁸² Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 52.

- 3.171.2 Implemented the Blue Yonder Warehouse Management System in all of its distribution centres, as well as the Blue Yonder Transport Management System. It has indicated that these investments improve the accuracy at Foodstuffs NI's distribution centres, provide real time visibility of deliveries to stores and improve the availability of products in store to consumers.
- 3.172 Further investments were also made to improve the resilience of grocery supply chains in New Zealand for the benefit of New Zealanders during the COVID-19 pandemic.¹⁸³ This enabled grocery retailers to continue to supply essential grocery items to New Zealanders despite the significant increase in demand at the time.

Innovations in new products, including private label brands

- 3.173 In a workably competitive market, we would expect retailers to be responsive to changing consumer demands, and to compete by innovating to adjust their product range to meet these changing demands. However, retailers' ability to adjust their product offering depends somewhat on the level of competition between suppliers. If competition between suppliers is not working well, suppliers may not have the ability or incentives to introduce new and innovative products.
- 3.174 Competition among suppliers is likely to vary across product categories and many of the factors affecting competition at the supplier level are beyond retailers' control. However, grocery retailers can impact suppliers' incentives to innovate, given they are often the primary way for suppliers to access customers, through their decisions about which products to range, including specialty and private label products.
- 3.175 Foodstuffs SI and Foodstuffs NI submitted that they engage in material product innovations.¹⁸⁴ They pointed to the number of products ranged across their banners and the number of new products introduced in 2020, which suggests new products accounted for around 10% of total products ranged in that year.¹⁸⁵

¹⁸³ For example, Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [2.4.4.3].

¹⁸⁴ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 43; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at 38.

¹⁸⁵ Foodstuffs NI ranges 81,812 different products across its retail banners and Gilmours and in 2020 introduced 9014 new products across its store, Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 43); Foodstuffs SI ranged 82,473 different products across its retail banners and Trens and introduced approx. 8,800 products into store in 2020, Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at 38.

- 3.176 Foodstuffs SI and Foodstuffs NI also pointed to several examples of investments they had made by changing their product range.¹⁸⁶ These included increasing the availability of healthy/organic product offerings, responding to offerings from meal kit providers, health and wellbeing products, ethnic products, personal care products, gourmet products and ready meals.¹⁸⁷
- 3.177 There are differences in views about the effect of retailers' private label products on the incentive to invest in product innovations. NZFGC considered that the major grocery retailers' control over the channels to markets means that for many product categories private labels will support a strong negotiating position for retailers and reduce suppliers' incentives to invest and innovate.¹⁸⁸ Castalia argued that in concentrated retail markets, an imbalance in negotiating position enables retailers to take advantage of research and development by label brands and discriminate in favour of their private labels. According to Castalia, this type of behaviour discourages supplier entry, investment and innovation to the detriment of consumers.¹⁸⁹ Supie also noted that the current imbalance in negotiating position between major grocery retailers and suppliers stifles suppliers' innovation.¹⁹⁰
- 3.178 In contrast, Woolworths NZ submits that New Zealand suppliers are highly innovative and that its private label products make a positive contribution to this innovation.¹⁹¹ Further, its private label range often leads innovations that drive competitive responses from branded suppliers.¹⁹²
- 3.179 Both Foodstuffs SI and Foodstuffs NI consider that private label products are themselves innovative. They note that private label brands were first developed in response to suppliers of commoditised products having a strong negotiating position. As private label brands have gained greater acceptance, supermarkets including Foodstuffs SI and Foodstuffs NI have extended the model to items that are less commoditised (for example, Pams Finest).¹⁹³

¹⁸⁶ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 43-44; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 38.

¹⁸⁷ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 43; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 38.

¹⁸⁸ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.38].

¹⁸⁹ NZFGC "Submission on Market study into grocery sector draft report: Attachment - Castalia - Private Labels, Buyer Power and Remedies in the NZ Grocery Sector" (26 August 2021) at 9.

¹⁹⁰ Supie "Post conference submission on Market study into grocery sector" (23 November 2021) at [2.1.2].

¹⁹¹ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at 43 and 54.

¹⁹² Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at 43-45. This submission also includes a list of Woolworths NZ's private label innovations.

¹⁹³ Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at 44; Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 64.

- 3.180 In contrast, HoustonKemp considered the effect of private label brands on innovation is likely to be limited. According to HoustonKemp, private label brands are more common in homogeneous products that require limited innovation, such as flour and milk. In contrast, private label products are less prevalent in categories with high innovation.¹⁹⁴
- 3.181 Chapter 8 of this report discusses in more detail how, where there are imbalances in negotiating positions in favour of the retailer, suppliers' may face reduced ability and incentives to invest in innovative new products. Chapter 9 discusses recommendations to address imbalances in negotiating position.
- 3.182 We also discuss private labels in more detail in Chapter 8. We find that consumers can benefit from lower prices and greater choice offered by private label products, but that private labels can also distort competition between suppliers. The overall long-term impact of private labels on outcomes for New Zealand consumers is unclear but we consider that some aspects could dampen competition between suppliers.

Digital and technological advances and their effect on competition

- 3.183 Some New Zealanders are increasingly opting to do their grocery shopping online rather than in store, taking advantage of the convenience and time saving aspects of online shopping.¹⁹⁵ This trend is supported and enabled by increased consumer confidence in conducting transactions over the internet and better internet connectivity across large parts of the country.¹⁹⁶ However, limited availability of online services can reduce options for consumers in some areas.¹⁹⁷ The COVID-19 pandemic may have also accelerated the demand for online grocery services.

¹⁹⁴ Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Private label products in retail grocery markets" (3 December 2021) at 10.

¹⁹⁵ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 25.

¹⁹⁶ For example: Ibis World "Online Shopping in New Zealand" (4 November 2021) <https://www.ibisworld.com/nz/industry/online-shopping/1905/>; Reseller "Fibre dominates NZ broadband for first time as fixed wireless slows" (12 March 2020) <https://www.reseller.co.nz/article/671791/fibre-dominates-nz-broadband-first-time-fixed-wireless-slows/>.

¹⁹⁷ For example, Ngati Porou Holding Company Ltd "Post conference submission on Market study into the grocery sector" (23 November 2021) at 1.

- 3.184 Woolworths NZ processed its first e-commerce orders in the 1990s.¹⁹⁸ Click and collect is available nationwide across Countdown stores and delivery is available to 99% of the population.¹⁹⁹ To accommodate the growth of its digital sales channels Countdown opened New Zealand's first ever purpose-built and permanent e-store in Auckland in April 2020. The 8,800 sqm store includes a partially-automated micro fulfilment unit and operates 24 hours a day, seven days a week. It currently has the capacity to fulfil more than 7,500 online orders a week.^{200, 201} Countdown has also recently opened two additional dedicated eStores in Wellington and Christchurch.^{202, 203}
- 3.185 Online ordering options are available at selected SuperValue and FreshChoice stores nationally.²⁰⁴
- 3.186 Foodstuffs NI's New World stores launched click and collect and online deliveries in 2017, more than 20 years after online grocery shopping was first launched in other countries and also by Countdown in New Zealand.²⁰⁵
- 3.187 Foodstuffs NI's PAK'nSAVE customers only have a click and collect option, with no options for home delivery, while Foodstuffs NI's Four Square stores currently do not offer any online purchasing options. Foodstuffs NI intends to launch online shopping at Four Squares, although it has prioritised rollout at New World and PAK'nSAVE.²⁰⁶

¹⁹⁸ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 110.

¹⁹⁹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 19.

²⁰⁰ This unit means personal shoppers can easily access packaged goods without having to walk up and down store aisles as it picks and moves the most popular grocery items to personal shoppers on a conveyor belt meaning to enhance efficiency and timeliness of orders, Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 37.

²⁰¹ Woolworths Group "2020 Annual Report" (2020) at [31], available at: https://www.woolworthsgroup.com.au/icms_docs/195794_annual-report-2020.pdf.

²⁰² Countdown "Wellington's first eStore opens to cater for online shopping demand" (29 September 2020) <https://www.countdown.co.nz/news-and-media-releases/2020/september/wellington-s-first-estore-opens-to-cater-for-online-shopping-demand>.

²⁰³ Countdown "Countdown delivers the latest online shopping tech to Christchurch shoppers" (29 March 2021) <https://www.countdown.co.nz/news-and-media-releases/2021/march/countdown-delivers-the-latest-online-shopping-tech-to-christchurch-shoppers>.

²⁰⁴ SuperValue <https://www.supervalue.co.nz/>; FreshChoice <https://www.freshchoice.co.nz/>.

²⁰⁵ Anne Gibson "First glimpse of New World online shopping" (18 July 2017) NZ Herald <https://www.nzherald.co.nz/business/first-glimpse-of-new-world-online-shopping/27KFC5DA7WWFHVYSCYZST4AYY/>; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 46.

²⁰⁶ PAK'nSAVE "Click & Collect is now available at 38 PAK'nSAVE stores in the North Island" <https://www.paknsave.co.nz/shop/online-shopping>; <https://www.foursquare.co.nz/>; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at 46.

- 3.188 Foodstuffs SI began rolling out online shopping options in July 2021. This process is continuing across its New World and PAK'nSAVE retail banners on a town-by-town basis.²⁰⁷ Click and collect is being made available in both New World and PAK'nSAVE. However, delivery is only available from New World.²⁰⁸
- 3.189 Specific technological innovations cited by the major grocery retailers to improve the online shopping experience for consumers in New Zealand include:
- 3.189.1 investment in putting in place the necessary processes and infrastructure to support online retailing;²⁰⁹
 - 3.189.2 offering targeted promotions and offers to individual consumers (see Chapter 7); and
 - 3.189.3 smartphone apps such as myCountdown and the New World app to make it easier for consumers to place online orders, browse weekly mailers and personalised specials and create shopping lists.
- 3.190 Technological advancements and the overall growth of online retailing in New Zealand have also supported recent new entry by meal kit providers and online-only grocery retailers such as The Honest Grocer and Supie. Other supermarkets and specialist grocery retailers such as Farro Fresh, Fruit World and The Mad Butcher have also recently launched online purchasing and delivery options for consumers in Auckland. However, many other grocery retailers in areas outside Auckland currently have no online presence.
- 3.191 The COVID-19 pandemic has contributed significantly towards speeding up the growth of online shopping in New Zealand (and elsewhere), including online retail grocery shopping. Some estimates show that the COVID-19 pandemic may have pushed retailers about six years ahead from where they would likely have been absent the pandemic in terms of growth in online sales.²¹⁰

²⁰⁷ Tong Van "Foodstuffs South Island launches online shopping – town by town" (7 July 2021) Inside Retail <https://insideretail.co.nz/2021/07/07/foodstuffs-south-island-launches-online-shopping-town-by-town/>.

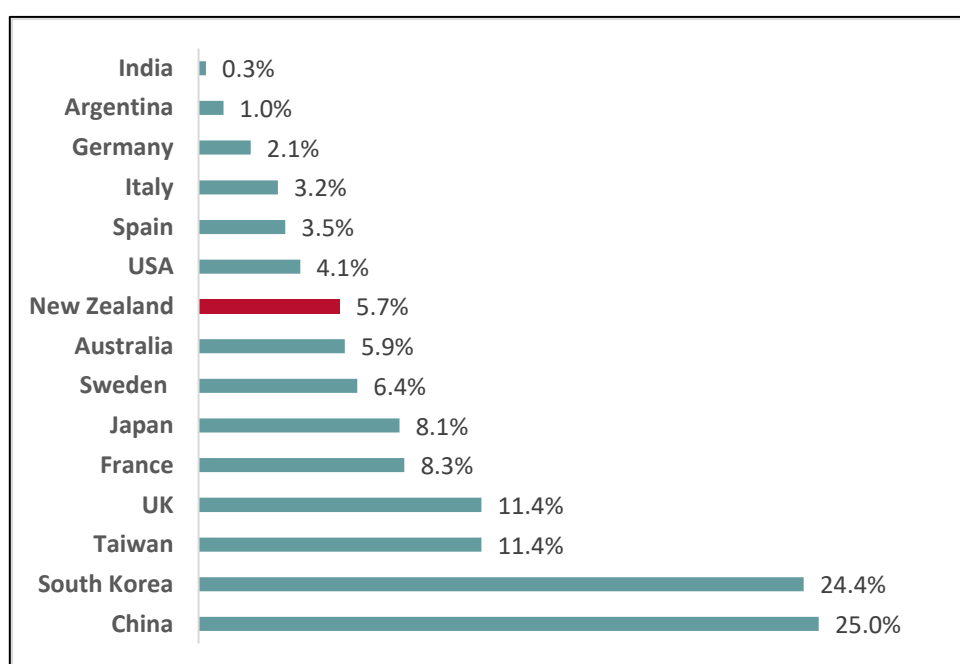
²⁰⁸ Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at 39.

²⁰⁹ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 14.

²¹⁰ Debrin Foxcroft "Online shopping emerges as the big winner in the first six months of 2020" (5 August 2020) Stuff <https://www.stuff.co.nz/business/122349826/online-shopping-emerges-as-the-big-winner-in-the-first-six-months-of-2020>.

- 3.192 Woolworths NZ has indicated its online penetration increased from 3% total sales in FY2014 to over 13% in the current financial year to date.²¹¹ More specifically, demand for Countdown’s online shopping grew by 74% between April and June 2020, accounting for 11% of total sales during this period.²¹²
- 3.193 Foodstuffs NI saw an acceleration in online shopping as a result of the COVID-19 pandemic and expects this to continue.²¹³
- 3.194 Figure 3.16 below shows online grocery sales as a percentage of total grocery sales in New Zealand compared to selected other countries in 2020.

Figure 3.16 Online grocery sales as a percentage of total grocery sales in selected countries (2020)



Source: Kantar Worldpanel; NZ Post; Statistics NZ; IRI Australia.²¹⁴

²¹¹ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18; and Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [15.5.6].

²¹² Countdown “Wellington’s first eStore opens to cater for online shopping demand” (29 September 2020) <https://www.countdown.co.nz/news-and-media-releases/2020/september/wellington-s-first-estore-opens-to-cater-for-online-shopping-demand>.

²¹³ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18.

²¹⁴ [].

- 3.195 Despite growth in online grocery sales, New Zealand has a comparably low level of online sales penetration. This is despite there not being any evidence to suggest that New Zealand has differing preferences for online grocery services than other countries. Although Countdown has relatively high levels of online sales penetration as an individual retail grocery banner, New Zealand’s overall online grocery sales as a percentage of total sales was only around 5.7% of total grocery sales in 2020. This places New Zealand ninth out of the 15 countries shown in Figure 3.16. This is comparable to Australia and ahead of countries such as the USA, Germany, Spain and Italy.²¹⁵ However, New Zealand’s online sales are low in comparison with other countries such as the UK, Japan and South Korea.
- 3.196 We acknowledge that the online sales figures for 2020 in Figure 3.16 may have been affected by differences in national responses to the COVID-19 pandemic, in particular the scale and length of lockdowns.²¹⁶ However, Foodstuffs NI considered it is impossible to separate the impacts of the pandemic from the overall trend in consumer behaviour.²¹⁷
- 3.197 Woolworths NZ does not consider Figure 3.16 shows a fair or “like-for-like” comparison but it uses these data to claim that when population density is taken into account New Zealand’s online penetration is close to world leading.²¹⁸ We agree that higher population densities are likely to increase the viability and uptake of online retailing. However, our view is the rate of urbanisation more accurately controls for this viability, as it accounts for countries which have large areas of uninhabited land such as New Zealand.^{219, 220} A high rate of urban density indicates a large proportion of a country’s population is concentrated in urban areas where a retailer may more easily be able to spread delivery costs over a large customer base.
- 3.198 When the online sales figures in Figure 3.16 are adjusted for urbanisation, the rankings in Figure 3.16 remain largely unchanged.²²¹ Regardless, the key issue for our study is the likely effect of online sales on competition in New Zealand’s retail grocery sector in the foreseeable future, rather than the current level of online sales.

²¹⁵ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 108.

²¹⁶ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 109.

²¹⁷ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18.

²¹⁸ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 108.

²¹⁹ For example, The World Bank estimated 86.7% of New Zealand’s population in 2020 lived in urban areas, The World Bank “Urban population (% of total population – New Zealand” <https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=NZ>; Other analysis using Statistics NZ and LINZ data estimate 78.2% of New Zealand is uninhabited, The Map Kiwi “Nobody Lives Here: Uninhabited Areas of New Zealand” (December 2017) <https://www.andrewdc.co.nz/project/nobody-lives-here-uninhabited-areas-of-new-zealand/>.

²²⁰ The urban population as a percentage of total population.

²²¹ [].

Online grocery shopping may complement, rather than replace, in-store shopping

- 3.199 Online sales are currently a relatively small share of total grocery sales and there is uncertainty whether increases in online sales observed during the COVID-19 pandemic will continue. There is, however, general agreement that online sales will continue to grow.
- 3.200 However, it may be that strong future growth in online grocery sales could mean that the competitive advantages of a physical retail network could become less important.²²²
- 3.201 We consider it is unlikely that consumer shopping behaviour will shift to such an extent in the foreseeable future that most competitors no longer benefit from a physical presence. Instead, online grocery shopping might complement in-store shopping rather than be a substitute for many consumers.²²³ This means, while we have observed innovation in this area from many online-only retailers, these innovations may be limited in their ability to compete directly with retailers with a strong physical presence.
- 3.202 One reason for this may be due to consumer preferences: convenience is a key driver of online shopping but there are potential ‘inconveniencies’ such as being unable to select the produce they prefer.²²⁴ This may cause some consumers to continue to prefer shopping in a bricks-and-mortar store. Similarly, we heard many Māori prefer kanohi ki te kanohi (face-to-face) engagement, as this provides the ability to see and inspect their food before purchasing.²²⁵
- 3.203 There may also be supply-side factors which limit the growth of online retailers. We note that most current online sales are made by the major grocery retailers or by other retailers with a physical presence. Online-only retailers are currently a small share of grocery sales. This may, in part, be because grocery retailers with a physical presence appear to be more easily able to respond to these innovations by leveraging existing business capabilities.

²²² Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18.

²²³ NZFGC “Post conference submission on Market study into grocery sector” (25 November 2021) at 15.

²²⁴ NZFGC “Post conference submission on Market study into grocery sector” (25 November 2021) at 15; McKinsey & Company “Digital disruption at the grocery store” (14 February 2020) <https://www.mckinsey.com/industries/retail/our-insights/digital-disruption-at-the-grocery-store>.

²²⁵ Ngati Porou Holding Company Ltd “Post conference submission on Market study into grocery sector” (23 November 2021) at 5.

- 3.204 Scale is a requirement for a successful online-only grocery retail channel to be able to obtain competitive prices from suppliers and to cover fixed operating costs, technology and development costs, marketing and infrastructure costs.²²⁶ For example, online-only grocery retailer Supie does not view itself as having sufficient scale to be an effective competitor.²²⁷ It is unclear whether these retailers will succeed in building scale and the timeframe within which this might happen. However, this is unlikely to happen in the foreseeable future even with very rapid growth.²²⁸
- 3.205 Further, the major grocery retailers are likely to constrain the prospects of entry and expansion of online-only retailers. Given their existing cost structures, they are likely to face fewer costs when attempting to grow an online retailing service to scale and/or be able to do so quicker than an online-only competitor.
- 3.206 The major grocery retailers can also use their physical scale to cover some of the costs of online fulfilment and delivery, enabling them to get more value from their existing assets rather than making new investments.²²⁹ They are also likely able to leverage parts of their existing business when expanding into online retail. This may include existing infrastructure, such as distribution centres and IT systems, as well as existing supplier relationships and marketing strategies.²³⁰ Incumbents' brand equity can also give them an advantage over new entrants.²³¹
- 3.207 Additionally, retailers with national networks of physical stores may be able to use these to provide localised distribution services. This can enable these retailers to quickly scale their online offerings to respond to potential entry or expansion of other online retailers. Large retailers are also using 'dark stores' that have no retail display but are used as aggregators for order picking.²³²
- 3.208 NZFGC considered that the growth of online grocery sales has enhanced rather than constrained the power of the two major grocery retailers by providing an alternative to the physical in-store checkout. NZFGC also considered that online shopping has made it more difficult for smaller retailers to compete with larger retailers.²³³

²²⁶ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 4 (lines 37-40).

²²⁷ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 1-6); NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at 15.

²²⁸ Supie observed that what it turns over in 6 months, Woolworths turns over in an hour, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 1-2).

²²⁹ McKinsey & Company "Digital disruption at the grocery store" (14 February 2020) <https://www.mckinsey.com/industries/retail/our-insights/digital-disruption-at-the-grocery-store>.

²³⁰ [].

²³¹ McKinsey & Company "Digital disruption at the grocery store" (14 February 2020) <https://www.mckinsey.com/industries/retail/our-insights/digital-disruption-at-the-grocery-store>.

²³² NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at 16.

²³³ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at 16.

Benchmarking the scale and pace of innovation

- 3.209 We acknowledge the significant investments in innovation in the retail grocery sector that have been discussed above. Many of these benefit consumers.²³⁴ However, our view is the scale and pace of innovation in New Zealand would likely be greater if competition was working better.
- 3.210 The scale and pace of innovation is important because it impacts the prices, choice and options available to consumers over the longer term. Where competition is weak, retailers may have little incentive to innovate.
- 3.211 Some submitters argued investments in the supply chain are more important than investments in consumer-focused innovation because the former are more likely to be enduring and deliver net benefits to the economy through productivity improvements, reliability and product quality.²³⁵ We agree that an efficient supply chain is a vital contributor to productivity and resilience. However, cost-reducing innovations do not tend to benefit consumers unless strong retail competition forces firms to pass on a share of these benefits.
- 3.212 We also consider that the retail grocery sector has a key role in responding to enduring changes in consumer preferences, particularly for healthy and sustainable grocery products. Timely access to such products provides a range of benefits not only to the customers who consume them, but the broader economy. We note that the grocery sector is supply driven with retailers controlling consumers' access to products.²³⁶ These features may mean that New Zealanders are not getting access to products they have a preference for in a timely manner.
- 3.213 The range and extent of innovations in the New Zealand retail grocery sector may suggest the scale, scope and pace of investment and innovation in the sector is appropriate. Nevertheless, the evidence is contradictory:
- 3.213.1 Woolworths NZ told us that in many respects it is an international leader in innovation and the New Zealand retail grocery sector is highly innovative.^{237, 238}

²³⁴ Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 21 (lines 32-34).

²³⁵ Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 1 - Peter Harris AO - Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand" (25 November 2021) at 27.

²³⁶ McKinsey & Company "Digital disruption at the grocery store" (14 February 2020) <https://www.mckinsey.com/industries/retail/our-insights/digital-disruption-at-the-grocery-store>.

²³⁷ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 108.

²³⁸ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at 7.

- 3.213.2 Foodstuffs SI and Foodstuffs NI told us that, given the small size of the New Zealand economy and population, it is inevitable that innovation will not progress at the same pace and scale as much larger countries.²³⁹ New Zealand’s relatively low average household disposable income also affects the innovation that customers demand.²⁴⁰ Nevertheless, Foodstuffs SI and Foodstuffs NI say the pace and scale of innovation is appropriate for the New Zealand market.²⁴¹
- 3.213.3 NZFGC considered that the pace and scale of innovation seems slow in New Zealand.²⁴² Supie told us that the major retailers are slow to invest and innovate towards new food systems that positively impact the environment.²⁴³ Northelia,²⁴⁴ Monopoly Watch²⁴⁵ and another party we spoke to²⁴⁶ also considered that innovation is low.
- 3.214 It is difficult to find suitable benchmarks to assess the scale and scope of innovation in the New Zealand retail grocery sector.
- 3.215 In our draft report we compared innovation in New Zealand with several overseas countries. Foodstuffs NI and Foodstuffs SI cautioned against comparing innovation in the retail grocery sector with innovations overseas even though both closely monitor overseas innovations at Board level and consider the right time to introduce these to New Zealand.^{247, 248} Foodstuffs NI argued that, given the smaller size of the economy and population in New Zealand, it is unrealistic to expect the major grocery retailers to keep pace with overseas innovations.²⁴⁹ In contrast, Woolworths NZ told us that it has already implemented many of the international innovations listed in our draft report.²⁵⁰

²³⁹ Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 9; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 8.

²⁴⁰ Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at 50; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at 36.

²⁴¹ Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 34; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 37.

²⁴² NZFGC “Submission on Market study into grocery sector draft report” (26 August 2021) at 11.

²⁴³ Supie “Post conference submission on Market study into grocery sector” (23 November 2021) at [2.1.3].

²⁴⁴ Northelia “Post conference submission on Market study into grocery sector” (29 November 2021) at 6.

²⁴⁵ Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 20 (lines 37-38).

²⁴⁶ [].

²⁴⁷ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 37 and 41; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 34.

²⁴⁸ Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 16 (lines 11-19).

²⁴⁹ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 41.

²⁵⁰ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 111.

- 3.216 Foodstuffs NI says that innovation can be benchmarked by considering whether it acts on competitive pressure to innovate.²⁵¹ Use of this benchmark, however, raises the question of whether that competitive pressure is sufficient. We address this in Chapter 4 and Chapter 5.
- 3.217 Woolworths NZ considered there is a broad range of indicators of innovation in the New Zealand retail grocery sector.²⁵² Some of these indicators are potentially useful to describe innovation in the sector. However, without a suitable comparator the question remains as to whether the scale and scope of innovation is appropriate.
- 3.218 Although we have not been able to identify a conclusive benchmark, the scale and pace of innovation in the New Zealand retail grocery sector appears to be lower than might be expected in a workably competitive market.
- 3.219 We accept that there may be some delay in introducing overseas innovations to New Zealand. However, we have not seen any evidence to indicate New Zealand's relatively small size is a major reason for this. Woolworths NZ is part of a large multinational company that is able to leverage off innovations in Australia.²⁵³
- 3.220 There are also a number of other grocery retailers who have developed innovative offerings to respond to changing consumer preferences. For example, new entry by meal kit providers and online-only supermarkets has expanded the convenience options available to consumers. There have also been investments by other grocery retailers to provide a more diversified product range, such as increasing the availability of healthy/organic products to cater for dietary preferences and providing prepared meal options for consumers.
- 3.221 The major grocery retailers seem able to respond to and match product and format innovations by other grocery retailers and leverage their position into adjacent sectors.²⁵⁴ However, it is harder for other grocery retailers who lack scale and scope, to match the major grocery retailers' innovations.²⁵⁵ This could mean that the majors' innovations help to protect and extend their market share even when faced with innovative rivals.²⁵⁶

²⁵¹ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 51.

²⁵² Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at 27.

²⁵³ Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 15 (lines 37-40).

²⁵⁴ NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at 18.

²⁵⁵ [].

²⁵⁶ Hexis Quadrant "Post conference submission on Market study into grocery sector" (1 December 2021) at 47; NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at 18.

- 3.222 We acknowledge the major grocery retailers' investments through the supply chain and the benefits they bring to consumers. However, strong competition is required to incentivise the retailers to share the benefits of these investments with consumers. In the absence of workable competition, these investments may instead entrench the competitive cost advantages the majors enjoy over their smaller rivals.²⁵⁷
- 3.223 We consider that, if competition between the majors was working well, innovative firms that meet consumers' needs would be rewarded with temporarily higher profitability in the short term as rivals compete to catch up. However, although the evidence suggests that the majors' pace of innovation differs, their pricing and profitability has been similar over the periods we analysed.
- 3.224 Notwithstanding the recent growth in online sales and the investments made by grocery retailers to enable these, we consider the pace of online innovation is slower than we would expect in a workably competitive market. Significant differences in the major grocery retailers' timeframes for introducing such a significant innovation as online shopping, particularly Foodstuffs SI's slow rate of adoption, appear inconsistent with what we might expect in a well-functioning, competitive market.
- 3.225 Woolworths NZ attributes this slow adoption to Foodstuffs' co-operative/individual store owner model rather than a lack of competition.²⁵⁸ However, NZFGC argued this is instead driven by the major grocery retailers' ability to withhold innovations that may increase competition by reducing switching costs, such as online shopping.²⁵⁹ Our view is that the slow adoption of online shopping by some retailers suggests that small online-only retailers, or other larger retailers offering online shopping, do not pose a significant competitive threat to incentivise this innovation.

²⁵⁷ For example, Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 20 (lines 25-26).

²⁵⁸ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 110.

²⁵⁹ NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at 34.

Chapter 4 The nature of competition in the retail grocery sector

Summary of findings

- Consumers engage in a range of different shopping missions, including: a main shop – a shop typically happening weekly or at another regular interval based on the convenience of using one grocery store to get all necessities in one place; a secondary shop – a visit to one or more store(s), other than the store the main shop is carried out at, to shop for specific products; and/or a top-up shop – a quick shop for a small number of items, often across a range of other grocery retailers.
- We find that most New Zealanders use one of the major grocery retailers for most of their shopping missions. While consumers choose where to shop based on a range of factors which can vary by type of shopping mission, convenience (including location/ease of access, product range and store familiarity) and price are key drivers of store choice.
- Grocery retailers compete across the price, quality, range, and service spectrum to cater to these consumer needs. However, other grocery retailers tend to differentiate their retail grocery offer primarily on non-price dimensions and tend to compete mostly for smaller, secondary or top-up shopping missions.
- The major grocery retailers have broadly similar retail grocery offers and are each other's closest competitors for consumers' grocery spend. Other grocery retailers do not provide a material constraint. Some estimates of market share suggest the major grocery retailers have a combined estimated share of more than 90% for consumers' main shop, and more than 80% for top-up shops.
- The major grocery retailers are therefore uniquely placed to offer a wide range of groceries at locations which consumers can easily access (both in store and online), at prices which are generally lower than other grocery retailers. This offers the convenience of one-stop shopping no matter the shopping mission.
- There are local markets as well as wider regional and national markets in the retail grocery sector. However, competition for specific shopping missions mostly occurs in local markets because consumers are generally unwilling to travel far to purchase groceries. Consumers in rural locations tend to travel further than those in urban areas.
- The local nature of grocery retailing means that the options available to consumers, in terms of product range and the variety of grocery retailers, varies depending on where they live. There are fewer choices outside Auckland, including the other major urban areas such as Wellington and Christchurch. Rural consumers often have even fewer choices.
- The local nature of competition may also mean that prices are higher in areas where there are few competing retailers. However, decisions on pricing, promotion and acquisition of products by the major grocery retailers mostly take place at a national or regional (or co-operative) level. This may provide some protection from higher prices for consumers in local markets where competition is weak. Despite this, analysis of regional price differences shows that prices in the rest of New Zealand are higher relative to those in Auckland.

Introduction

- 4.1 In this chapter we draw on evidence gathered during our study to identify the dimensions upon which competition is occurring in the retail grocery market. We describe consumer product and shopping preferences, including the drivers of store choice in New Zealand, and this helps us to identify the dimensions upon which grocery retailers compete with one another and the grocery retailers that compete most closely. We also provide estimates of the approximate geographic size of different local markets and consider the regional variations in the options available to consumers. We use this discussion as a basis to more closely examine the intensity of competition between different grocery retailers in Chapter 5.
- 4.2 We find that the major grocery retailers are uniquely placed to best meet consumer preferences by offering a wide range of groceries at locations which consumers can easily access (both in store and online), at prices which are generally lower than other grocery retailers. They offer the convenience of one-stop shopping no matter the shopping mission. Other grocery retailers are unable to compete effectively with this retail offer for consumers' grocery spend. Although the major grocery retailers face some competition from other grocery retailers in some local markets for different types of shopping missions, their closest competitors are usually other major grocery retailer banners with broadly similar retail grocery offers.
- 4.3 We have used different methods to estimate the approximate geographic size of local markets in urban and rural areas. Overall, we have found that rural consumers tend to drive further than urban consumers for grocery shopping purposes. We also find that the approximate geographic sizes of local markets vary between different types of shopping missions and grocery stores.
- 4.4 There are regional variations in the product range and variety of grocery retailers available to consumers. There are fewer choices outside Auckland, including in the other major urban areas such as Wellington and Christchurch. Rural consumers typically have more limited options than urban consumers. Some Māori living in isolated, rural areas also face specific challenges regarding accessibility and affordability of kai and a lack of choice.
- 4.5 This chapter has five main sections:
 - 4.5.1 our approach to analysing the nature of competition in grocery retailing;
 - 4.5.2 drivers of store choice and consumer shopping behaviour in New Zealand;
 - 4.5.3 the dimensions of competition in retail grocery markets;
 - 4.5.4 the nature of local, regional and national competition in grocery retailing; and
 - 4.5.5 regional variations in the grocery store options available to consumers.

Our approach to analysing the nature of competition in grocery retailing

- 4.6 This section summarises some key characteristics of grocery consumers and grocery retailers that inform our assessment of the nature of competition in the New Zealand retail grocery sector. We further assess the intensity of competition between different types of grocery retailers in Chapter 5.
- 4.7 We explain that:
- 4.7.1 consumers engage in different types of shopping missions and they are motivated by a range of preferences when shopping for groceries, with convenience (including location/ease of access, product range and store familiarity) and price being the key considerations that inform the choice of grocery store for most consumers;
 - 4.7.2 grocery retailers compete on various combinations of price, quality, range and service (PQRS) to attract consumers to shop with them. However, the major grocery retailers are uniquely placed to offer a wide range of groceries at locations (both in store and online) which consumers can easily access at prices which are generally lower than other grocery retailers. They offer the convenience of one-stop shopping no matter the shopping mission; and
 - 4.7.3 grocery retailers typically compete for consumers within small local areas but there are some regional and national dimensions to competition.

Consumers engage in different types of shopping missions and they are motivated by a range of preferences when shopping for groceries

- 4.8 A commonly used concept to describe a particular type of shopping trip is a shopping mission. It is generally defined by the motivational factors that drive consumers to shop, the context in which they shop, and the shopping behaviours that drive their purchasing decisions.²⁶⁰
- 4.9 The concept of a shopping mission is used extensively by the major grocery retailers in New Zealand to describe the purpose of a particular shopping trip, as well as for market share monitoring and strategic decision-making purposes.²⁶¹

²⁶⁰ For example, Category Management Knowledge Group “Understanding Different Shopper Trip Missions” (2015) [https://cdn2.hubspot.net/hub/269713/file-252232072-pdf/Understanding_Different_Shopper_Trip_Missions_\(Advanced_Shopper_Understanding_OnLine_Course\).pdf](https://cdn2.hubspot.net/hub/269713/file-252232072-pdf/Understanding_Different_Shopper_Trip_Missions_(Advanced_Shopper_Understanding_OnLine_Course).pdf).

²⁶¹ For example: []; [].

- 4.10 Our consumer research assisted us to identify three main categories of shopping missions for the purposes of our study:²⁶²
- 4.10.1 **a main shop:** a shop typically happening weekly or at another regular interval based on the convenience of using one grocery store to get all necessities in one place;
 - 4.10.2 **a secondary shop:** a visit to one or more store(s), other than the store the main shop is carried out at, to shop for specific products; and
 - 4.10.3 **a top-up shop:** a quick shop for a small number of items that can be conducted for a range of reasons at one of a range of grocery retailers.
- 4.11 The major grocery retailers define and monitor several other categories of grocery shopping missions in addition to those we have identified for the purposes of our study. These range from short, often impromptu missions that have the purpose of purchasing an immediate, high need grocery item, to large-scale shopping missions.²⁶³ However, we consider that all these missions fall into one of the three main categories of shopping missions we have identified for the purposes of our study.
- 4.12 We agree with many submitters that different types of consumer shopping missions play an important role in understanding the nature of competition in grocery retailing.²⁶⁴ They provide a useful framework for analysing consumer shopping behaviour and drivers of store choice which may vary to some degree according to the type of shopping mission a consumer is engaged in. We analyse the consumer preferences revealed in our study research. This in turn helps us to consider the extent to which a consumer might be willing to switch some or all their grocery spend to a different type of grocery retailer, and therefore the extent of competition between the major grocery retailers, and between the major grocery retailers and other grocery retailers in New Zealand.²⁶⁵

²⁶² Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 15.

²⁶³ For example, dunnhumby’s analysis of shopping missions conducted at PAK’nSAVE and New World on behalf of Foodstuffs NI grouped micro missions together to analyse [] different shopping missions, including the ‘casual top up mission’, the ‘cooking from scratch mission’, the ‘quick and easy meals mission’, and the ‘family breakfast mission’, Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [185]-[187.2].

²⁶⁴ For example, Woolworths NZ described each consumer (or household) completing a range of shopping missions within any given week or month and a diverse range of factors that can drive each shopping mission, Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 59.

²⁶⁵ For example: Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [175] and [241.1]-[241.4]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [13.3]; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [28.2].

- 4.13 Our consumer research shows that whenever consumers shop for groceries, their choice of grocery store is informed by a wide variety of factors, including location and ease of access, prices, familiarity with the store, and product range.^{266, 267} Consumers therefore have a diverse range of preferences for how and where they shop for grocery products. For most consumers convenience and price are the key considerations that inform their choice of grocery store.
- 4.14 While consumer preferences and a shopping missions approach provide useful points of reference, we also consider that analysis of broader grocery spend provides useful insight into the nature of competition between grocery retailers for all shopping missions. We discuss this further below from paragraph 4.40.

Grocery retailers compete on various combinations of PQRS

- 4.15 In Chapter 2 we identified that there are many grocery retailers operating across New Zealand, including supermarkets, international food stores, specialist grocery retailers, meal kit providers and online-only supermarkets. In this chapter we consider how they cater to the diverse range of consumer preferences that we have identified, and this assists us to consider the extent of competition between them.
- 4.16 The combined set of products and services offered to consumers by grocery retailers to cater to this diverse range of consumer needs is known as the retail grocery offer.
- 4.17 Grocery retailers differentiate the retail grocery offer across the spectrum of PQRS. Individual grocery retailers or retail banners use a particular combination of PQRS to attract and retain customers.
- 4.18 For example, grocery retailers compete for consumers' grocery spend by differentiating their retail grocery offer in a number of ways, including:
- 4.18.1 the prices of products, including regular and one-off promotions;
 - 4.18.2 loyalty programmes and non-price promotions (see Chapter 7);
 - 4.18.3 the quality of products;
 - 4.18.4 the range of available products;
 - 4.18.5 location;
 - 4.18.6 accessibility including ease of access and opening hours; and

²⁶⁶ The major grocery retailers expressed some general concerns regarding the reliability and limitations of our consumer research. We respond to these concerns in Attachment E.

²⁶⁷ Paragraphs E118 to E121 in Attachment E; Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 8.

- 4.18.7 the quality of service and the shopping experience (eg, store layout, number and accessibility of staff to consumers, etc.).
- 4.19 Some of these aspects of the retail grocery offer, such as price and quality of service can be adjusted relatively easily by most grocery retailers. However, other aspects valued by some consumers, such as store size, parking facilities and store layout, are less easily changed. Store location is perhaps the aspect of the retail grocery offer which is most difficult to adjust.

Grocery retailers typically compete for consumers located within small local areas but there are some regional and national dimensions to competition

- 4.20 In this chapter we also consider the extent to which competition is taking place within identified local, regional, or national geographical areas.
- 4.21 Grocery retailers compete for specific shopping missions in local markets where consumers live and work. This is because, as we discuss further in this chapter, convenience of location is one of the key drivers of store choice for consumers.
- 4.22 Consumers are generally willing to travel limited distances to purchase groceries. However, the distance that consumers are willing to travel may vary between different types of grocery retailers and shopping missions. This is consistent with our findings in previous merger decisions in the retail grocery sector.²⁶⁸ We discuss this further below from paragraph 4.113.
- 4.23 There are some national and regional dimensions to competition between the major grocery retailers, such as pricing and the centralised acquisition of products, and we examine below the extent to which these impact on the nature and intensity of competition between grocery retailers at a local level.
- 4.24 Some specialist grocery retailers and other supermarkets also have a wider national or regional presence through franchise agreements with individual store owners (eg, Fruit World, The Mad Butcher and Bin Inn).

The drivers of store choice and consumer shopping behaviour in New Zealand

- 4.25 We describe consumer product and shopping preferences, including the drivers of store choice in New Zealand, and this helps us to identify the dimensions upon which grocery retailers compete with one another.

²⁶⁸ For example: Commerce Commission “Decision Nos. 606 & 607, Determination pursuant to the Commerce Act 1986 in the matter of applications for clearance of business acquisitions involving: Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Limited, and Foodstuffs South Island Limited; and (separately) Woolworths Limited and The Warehouse Group Limited” (8 June 2007) at [E18], available at: https://comcom.govt.nz/_data/assets/pdf_file/0030/75279/PUBLIC-VERSION-Decision-606-and-607.pdf; Commerce Commission “Decision No. 438, Application for clearance involving: Progressive Enterprises Limited and Woolworths (New Zealand) Limited” (13 July 2001) at [66]-[69].

- 4.26 The factors that motivate and influence consumers to choose where they purchase their groceries are known as the drivers of store choice. The evidence shows that there are multiple drivers of store choice in New Zealand and that these vary by demographics, type of shopping mission and geography.
- 4.27 Some of the key drivers of store choice include factors such as price, location and ease of access, product range and quality, and consumer perceptions of, and familiarity with, particular grocery stores. Some key drivers of store choice may be common across shopping missions and some may be more important for some shopping missions than others.
- 4.28 Grocery retailers seek to align their offers with drivers of store choice. This is because consumers are more likely to switch to a store with a similar retail grocery offer if there is a deterioration in their current retail grocery offer, for example, an increase in price or a decrease in service or range availability.

Most consumers like to do at least one large shop each week

- 4.29 To better understand the shopping patterns of consumers we gathered information from respondents to our consumer survey on the frequency and typical size of their shopping trips each week.²⁶⁹
- 4.30 72% of respondents to our consumer survey tend to do at least one or two larger shops each week, and about half of those supplement these with a few smaller top-up shops. A further 12% of respondents usually do less than one shop a week, indicating that around 84% of respondents do a main shop. The remaining 16% of respondents rely on several smaller shops each week (see Figure 4.1).²⁷⁰

²⁶⁹ In March 2021 we conducted an online consumer survey hosted on our website. The aim of the survey was to help identify themes relevant to our study and better understand consumer behaviour, including how consumers decide where to shop and what to buy. Our consumer survey was available to the public from 4 March to 25 March 2021. During this time, we received 12,269 responses. The analysis of our consumer survey is provided in Attachment E.

²⁷⁰ These answers were in response to question four of our survey: "Which of the following best describes how you usually shop for groceries each week?"

- 4.31 Respondents were provided with a definition of the kind of groceries they should take into account when completing the survey.²⁷¹ While the spending size of a large shop is likely to vary between respondents (eg, a “large shop” may be larger for a multi-generational household than an individual living alone, or on a lower income), we expect that respondents would consistently have considered a “large shop” relative to their own weekly spend, rather than an objectively large shop relative to all households.²⁷²
- 4.32 We consider the question about different shopping missions provides more reliable insights on the prevalence of a main shop than attempting to derive this from spending estimates.²⁷³ While analysis of spending data is useful to gain an understanding of average basket sizes, it is limited in its ability to answer questions about the prevalence of certain shopping missions given the inability to ascertain the purpose of a shopping trip based on spending alone. Kore Hiakai Zero Hunger Collective also cautioned against assuming, as the major grocery retailers did in their calculation of the average spend on a shop, that an amount spent under \$100 is not a weekly shop.²⁷⁴

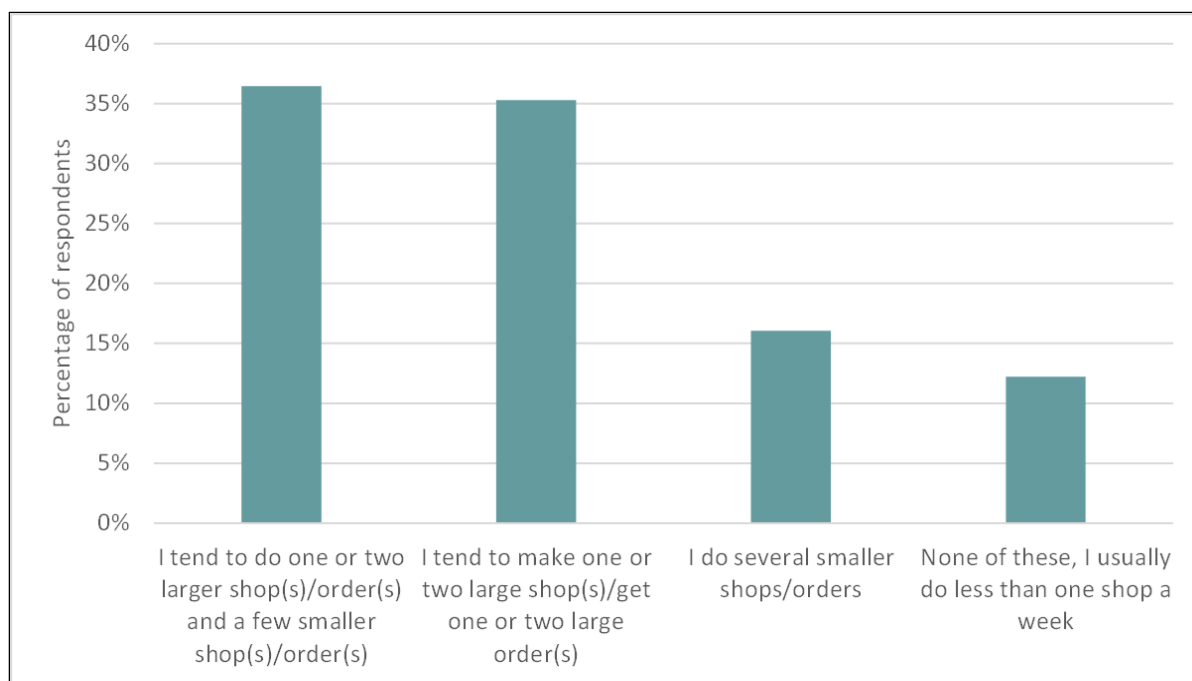
²⁷¹ HoustonKemp submitted that some respondents may have narrowly interpreted the meaning of “groceries”, Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [68(a)]. A similar concern was also raised by Woolworths NZ, Woolworths NZ “Post conference submission on Market study into grocery sector – Appendix Two” (24 November 2021) at [1.6]. However, we consider it unlikely a material number of respondents misinterpreted the meaning of “groceries” as respondents were provided an overview of what was meant by “groceries” at the beginning of the relevant survey section.

²⁷² HoustonKemp is of the view that we should not rely on the analysis shown at Figure 4.1 because the survey question is ambiguous, and therefore the results provide limited insights into the size and frequency of shopping trips, Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [67] and [70]. Its concerns mainly stem from the use of the phrases “large shop” and “groceries”. Specifically, it is of the view that the phrase “large shop” is subjective and may vary by respondent (eg, one respondent may consider \$50 to be a large shop, for another this may be \$200).

²⁷³ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [71] and [74]-[77].

²⁷⁴ The submission also argued that the data used by the major grocery retailers cannot be used to assess the income of the shopper and what portion of their income they are spending on their shop. They are of the view that the aggregate figures used by the major grocery retailers may therefore mask the differences in proportion of food expenditure in relation to income across different income groups. The submission also noted that average basket expenditures may be skewed by a shopper who shops every day to buy their lunch alongside a shopper who shops once a fortnight after payday, Kore Hiakai Zero Hunger Collective “Post conference submission on Market study into grocery sector” (23 November 2021) at [2]-[3].

Figure 4.1 Percentage of respondents who engage in different types of shopping missions



Source: Commerce Commission analysis of responses to our consumer survey.²⁷⁵

- 4.33 Foodstuffs SI suggested that because of the COVID-19 pandemic, consumers tend to make less frequent grocery shopping trips and stock up in bulk on more items.²⁷⁶ It is unclear whether this trend will continue in future.
- 4.34 In contrast, the major grocery retailers also suggest that the relevance of the main shop to New Zealanders continues to decline and that the main shop is no longer prevalent among New Zealand consumers.²⁷⁷
- 4.35 Woolworths NZ told us that “non-main shop” shopping missions are a critical and increasing area of grocery market competition. Data submitted by Woolworths NZ shows that over the past three years, expenditure on main shops has fallen from 67% to 56%, while main shopping missions as a percentage of total grocery shopping missions have fallen from 42% to 35%.²⁷⁸

²⁷⁵ [].

²⁷⁶ Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 10.

²⁷⁷ For example: Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [178]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [161]-[163]; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [28.4.1].

²⁷⁸ To support its view Woolworths NZ provided us with data on average basket sizes of Countdown shopper. This analysis showed that the average Countdown shopper’s checkout basket is [] (including GST) and approximately [] items, with the average Onecard holder shopping [] times per week, Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [28.4.2]-[28.4.3.4].

- 4.36 This is consistent with Foodstuffs NI's submission that expenditure on the main shop as a proportion of total grocery spend by consumers is declining and that the average basket size would be significantly higher if the main shop was dominant.²⁷⁹
- 4.37 Not all stakeholders agree on the usefulness of the shopping mission approach to understanding the nature of competition between grocery retailers. For example, the NZFGC told us that no evidence has been provided by the major grocery retailers on substitutability of other shopping missions for the main shop and that no evidence has been provided of any material competitive constraints from these shopping missions over a meaningful timeframe.²⁸⁰
- 4.38 Our consumer research implies that the main shop is still an important driver of store choice for most New Zealanders, although a number of consumers do more than one large shop or multiple smaller shops each week.
- 4.39 We accept that there could be a declining trend and/or overall decline in consumer preference for main shops over time, and that a range of shopping missions is undertaken by consumers. However, irrespective of whether there is a declining main shop or not, we consider that other evidence of expressed consumer preferences and overall spend with the major grocery retailers are insightful. They suggest regardless of the shopping mission, most consumers tend to use a major grocery retailer for grocery shopping purposes. We discuss this further below.

²⁷⁹ Foodstuffs NI's sales data demonstrates that most baskets are less than [] in value, missions other than the main shop make up approximately [] of baskets (or shopping trips), and missions other than the main shop make up approximately [] of sales, Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [181]-[184].

²⁸⁰ NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at [2.10].

Most consumers use one of the major grocery retailers as their main store

- 4.40 The Ipsos study found that consumers are more likely to visit a store if they know that the store has the products they need and a greater range of options available for those products.²⁸¹ Range is therefore an important driver of store choice and provides an element of convenience. It can also provide some grocery retailers with a competitive advantage for consumers' grocery spend over other grocery retailers with a smaller range of products.²⁸² The availability of a wide range of products reduces the time and costs of shopping, whether shopping in store or online.²⁸³ This is the case regardless the size of the shopping mission since a consumer visiting a grocery retailer offering a wide range of products can feel confident that everything they need is likely to be available in one location no matter the size of the shop they undertake.
- 4.41 Participants in the Ipsos study suggested that there is a core group of consumers that prefers shopping at a one-stop shop to avoid having to visit multiple locations to purchase the groceries they need from different grocery retailers. This implies that participants prefer not to have to visit more stores when they know they otherwise would, and that they also do not want to take the risk of having to do so. The major grocery retailers were typically viewed as most convenient for purchasing a full grocery basket in one location and were overall considered less expensive for many product categories when compared to other grocery retailers.²⁸⁴
- 4.42 As well as submitting that the significance of the main shop is declining, the major grocery retailers are of the view that the traditional retail grocery channels are becoming less important as the main shop is declining.²⁸⁵

²⁸¹ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 8.

²⁸² Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 2.

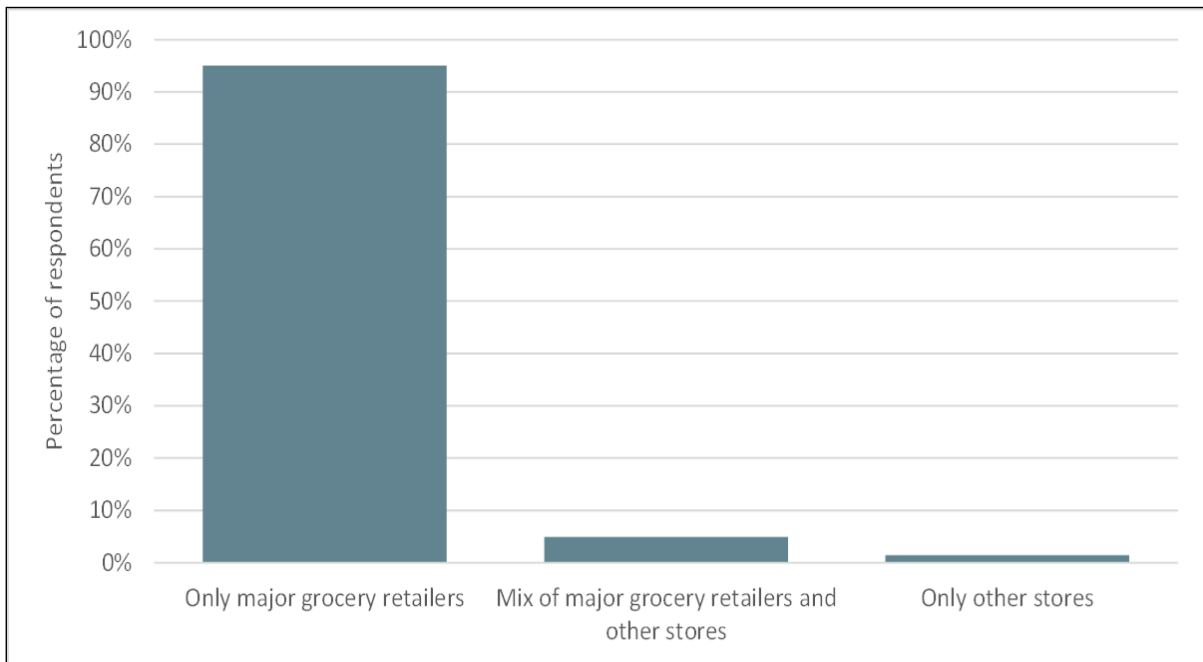
²⁸³ An additional attraction for consumers who use supermarkets is that it allows consumers to purchase groceries at a much lower total transaction cost than would be the case if the same groceries were purchased at a range of specialist stores. Transaction costs include payment fees, transportation costs, search costs and the value the consumer places on their time when shopping for groceries, Commerce Commission "Decision Nos. 606 & 607, Determination pursuant to the Commerce Act 1986 in the matter of applications for clearance of business acquisitions involving: Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Limited, and Foodstuffs South Island Limited; and (separately) Woolworths Limited and The Warehouse Group Limited" (8 June 2007) at [122].

²⁸⁴ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 8 and 21.

²⁸⁵ For example, Woolworths NZ told us that there is a significant and growing range of retailers and other suppliers of food and grocery products in New Zealand that compete directly and successfully with "traditional supermarket" grocery retailers, Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 28.

- 4.43 They are also of the view that there is a wide range of options for consumers across discrete product categories and shopping missions, and that full-service grocery retailers face material competitive constraint across all product categories.²⁸⁶
- 4.44 We acknowledge that there is a range of grocery retailers catering to a range of consumer preferences with a diverse range of grocery retail offers, and that they provide some competition to the major grocery retailers. However, even if the main shop were of declining importance to consumers, the evidence from our consumer research and market share estimates (discussed below) show not only that Ipsos research participants viewed the major grocery retailers as most convenient and less expensive, but also that consumers buy the majority of their groceries at a major grocery retailer.
- 4.45 Figure 4.2 below shows that 95% of respondents to our consumer survey reported one of the major grocery retailers as their main store.²⁸⁷

Figure 4.2 Main store choice by respondents to our consumer survey (%)



Source: Commerce Commission analysis of responses to our consumer survey.²⁸⁸

²⁸⁶ For example, Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 2-3.

²⁸⁷ ‘Main store’ was defined as ‘the store you spend most at, or do most of your grocery shopping with’.

²⁸⁸ [].

- 4.46 Our consumer survey shows respondents reported visiting an average of 2.4 different stores in a typical week.²⁸⁹ However, while the respondents visit more than one store in a typical week, they do not appear to split their spending evenly across the stores they shop at. Instead, one store tends to account for a large proportion of their weekly spend.
- 4.47 For example, the survey indicated respondents spend between two and three times as much at a PAK'nSAVE, Countdown or New World than at other grocery retailers (eg, an ethnic supermarket or specialist grocer), if they reported shopping at these stores in a typical week.²⁹⁰
- 4.48 In addition, the different stores visited are often a combination of banners owned by the major grocery retailers. Approximately 60% of respondents reported shopping at only the major grocery retailers in a typical week.²⁹¹ The other 40% reported shopping at a mix of the major grocery retailers and other stores (less than 0.5% of respondents shopped at only other grocery retailers).
- 4.49 This is consistent with the findings of the Ipsos study, which found participants typically preferred to shop at one store for most of their groceries, supplementing this with secondary and top-up shops to take advantage of specific characteristics of other retailers (eg, quality).²⁹²
- 4.50 While there is mixed evidence that the significance of the main shop may be declining over time, our consumer research suggests that most consumers prefer to buy groceries at one of the major grocery retailer banners no matter what their shopping mission. Based on our consumer research, we consider that this is because consumers value location, price, range and store familiarity when deciding where to shop.

Market shares also illustrate a preference for shopping with the major grocery retailers

- 4.51 A preference for shopping with a major grocery retailer no matter the shopping mission is also evident from analysis of market share.
- 4.52 Market share estimates show that the major grocery retailers have a significant overall combined share of the total consumer spend on grocery products across all different types of shopping missions.

²⁸⁹ For example, approximately one quarter of respondents reported typically only visiting one store per week, with just over a third visiting two stores, and the remainder visiting three or more stores, Figure E10 in Attachment E.

²⁹⁰ Paragraphs E98 to E104 in Attachment E. Our survey results also show that respondents spend approximately two to three times as much on meal kits as they do at other grocery retailers. However, a very small proportion of respondents shop with a meal kit provider in a typical week.

²⁹¹ Paragraph E97 and Figure E13 in Attachment E.

²⁹² Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 7.

- 4.53 We acknowledge that these estimates may vary between different local markets depending on alternative options available to consumers for grocery shopping. However, we are of the view that this provides evidence that the major grocery retailers still appear to have some key advantages over other grocery retailers when competing for all shopping missions.
- 4.54 Internal market share estimates of the major grocery retailers across different types of shopping missions by retail banner show that the major grocery retailers have a combined estimated share of more than 90% for consumers' main shop.²⁹³
- 4.55 Additional internal market share estimates of different types of shopping missions by retail banner show that the major grocery retailers have a combined estimated share of more than 80% for top-up shops and other types of smaller shopping missions.²⁹⁴
- 4.56 Our own market share estimates confirm that the major grocery retailers have a relatively large and stable market share of total consumer grocery spend across all different types of shopping missions (see Chapter 5).
- 4.57 The implications our findings have for the strength of competition between the major grocery retailers and other grocery retailers is discussed in more detail in Chapter 5.

Convenience and low prices are key drivers of store choice

- 4.58 Grocery retailers choose to emphasise different dimensions of the retail grocery offer to cater to the diverse drivers of store choice and consumer preferences. They extensively research how their retail grocery offer matches consumers' needs so that they can try to meet the needs of all consumers and every different type of shopping mission.²⁹⁵
- 4.59 Our consumer research shows that although there are many different drivers of store choice in New Zealand, convenience (including location/ease of access, range and store familiarity) and price are the most important drivers of store choice. Many respondents said they value attributes such as easy parking, convenient opening times and good specials. However, very few respondents consider any of these to be the single most important reason they shop at their main store. We discuss our findings further below.

²⁹³ [].

²⁹⁴ [].

²⁹⁵ For example: []; []; [].

Convenience is the most important driver of store choice

- 4.60 The major grocery retailers submitted that service differentiation is very important for consumers and that store choice is increasingly driven by convenience, such as location, store layout and “ready-to-eat” options.²⁹⁶
- 4.61 We consider that this is consistent with our consumer research which indicates that most consumers prefer to shop at a major grocery retailer, no matter their shopping mission.
- 4.62 A consumer preference for convenience was raised in both our consumer research and by grocery retailers. In our view, it can be used as shorthand for a range of convenient features sought by consumers and offered by grocery retailers such as ease of access or location, a wide range of products or familiarity with the store.
- 4.63 Foodstuffs NI told us that convenience as defined by customers individually sits as their first driver of store choice and that price (or value) would be their second driver of store choice.²⁹⁷ In their view, some consumers value location as a matter of convenience, but for others size of store and ease of shop are sought after aspects of convenience. Availability of product or the consumer’s individual perception of the level of service they receive in any retail grocery offer also contribute to what a consumer will define as convenience.^{298, 299}
- 4.64 This is consistent with Woolworths NZ’s view that there are many different convenience factors that a consumer may consider in deciding where to shop, including location of store, availability of parking, cleanliness, layout of store and website and in-store shopping experience. They also indicated that product range and quality is an important factor that consumers consider when choosing where to shop.³⁰⁰
- 4.65 We asked our survey respondents about factors affecting their choice of store and which was the most important. The results are illustrated by Figure 4.3 below. The total bar shows the proportion of respondents who selected the attribute as one of the reasons for their main store choice. The smaller, darker segment of the bar is the proportion of respondents who considered an attribute to be the single most important reasons for their choice of main store. For example, while about 30% of respondents considered “good quality products” one reason for their choice of main store, only about 6% considered it to be the most important reason.

²⁹⁶ For example: Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 23; Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 2-3.

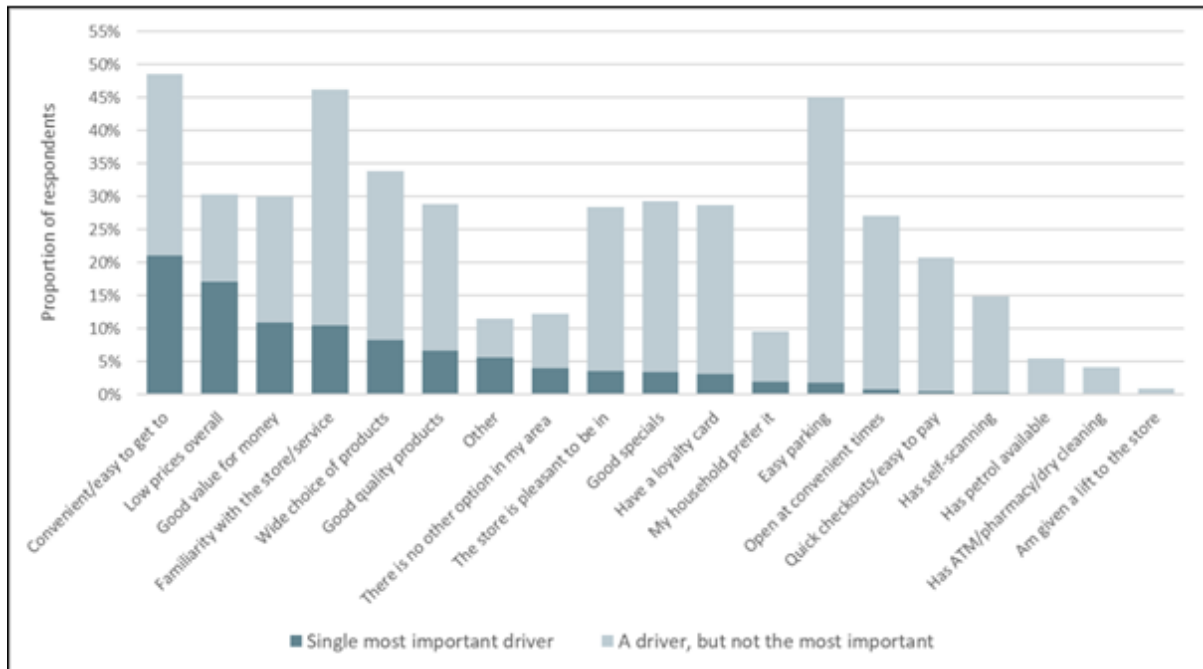
²⁹⁷ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 26 (lines 35-38).

²⁹⁸ Based on our consumer research we consider that ease of shop can be used as shorthand for a range of service features sought by consumers and offered by grocery retailers such as store familiarity, quality of service, parking availability and pleasantness of the shopping experience.

²⁹⁹ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 27 (lines 1-4).

³⁰⁰ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 58.

Figure 4.3 Drivers of store choice in New Zealand



Source: Commerce Commission analysis of responses to our consumer survey.³⁰¹

- 4.66 Figure 4.3 above shows that “convenient/easy to get to” is the most common driver of main store choice, with one in five respondents selecting it as their key driver. We agree with HoustonKemp (on behalf of Foodstuffs) that this should most likely be taken to mean the “ease of location” (as opposed to the convenience of “purchasing all products in one location”).³⁰² Other options (eg, “wide choice of products”) more readily characterise the convenience of purchasing all products in one location or from a wide range of products.
- 4.67 However, Figure 4.3 also highlights many other convenience-related factors which are key drivers for some consumers. These include familiarity with the store, or having a loyalty card. Our analysis shows that 40% of respondents selected a convenience-related factor as their single most important driver of store choice, while 75% of respondents selected at least one convenience-related factor as one of their drivers of store choice.³⁰³

³⁰¹ [].

³⁰² Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [96]-[98].

³⁰³ 21% of respondents selected “convenient/easy to get to” as their main driver of store choice, whilst 11% and 8% of respondents selected “familiarity of the store/service” and “wide choice of products” as their main driver of store choice respectively.

- 4.68 The Ipsos study found that shopping routines and store selection by participants was mainly driven by a sense of convenience, ie, proximity and a need for routine and familiarity. The study also found that specific store choice can also be influenced by a range of secondary factors, including store atmosphere, quality and value, and the range of products available.³⁰⁴ This finding is consistent with our analysis of the responses to our consumer survey.
- 4.69 We consider that the major grocery retailers are uniquely positioned to cater to consumer demands for convenient locations with a wide range of products. We discuss this further below from paragraph 4.104.

Price is also a very important driver of store choice

- 4.70 The responses to our consumer survey show that many consumers also consider price to be an important consideration when choosing where to shop and that it is the second most important driver of store choice. We discuss our findings further below.
- 4.71 HoustonKemp submitted that only a small proportion of respondents selected “low prices overall” as either a driver, or key driver, of main store choice, indicating low prices may not be an important factor for most consumers.³⁰⁵ This is largely attributable to consumers selecting a diverse range of drivers in response to the survey question.
- 4.72 Despite this, price-related factors do appear to be key drivers of main store choice for many consumers. For example, Figure 4.3 shows almost a third of respondents selected “low prices overall”, “good value for money” or “good specials” as their single most important driver of store choice. Our analysis shows that 31% of respondents selected a price-related factor as their single most important driver of store choice, while 50% of respondents selected at least one price-related factor as one of their drivers of store choice.³⁰⁶

Drivers of store choice may differ between individual consumers and between shopping missions

- 4.73 Drivers of store choice are likely to vary by demographics too. For example, we heard that access to fresh, healthy and safe kai is a driver for many Māori, and that many Māori prefer kanohi ki te kanohi (face-to-face) engagement, which provides the ability to see their food before purchasing.³⁰⁷

³⁰⁴ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 8-9.

³⁰⁵ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [91]-[95].

³⁰⁶ 17% of respondents selected “low prices overall” as their main driver of store choice, whilst 11% and 3% of respondents selected “good value for money” and “good specials” as their main driver of store choice respectively.

³⁰⁷ Ngati Porou Holding Company Ltd “Post conference submission on Market study into grocery sector” (23 November 2021) at 55.

- 4.74 Drivers of store choice may differ between individual consumers and between shopping missions. However, we consider that our consumer research and the experience of grocery retailers consistently indicates that consumers place the highest value on convenience, including a store location that can easily be accessed and expected product range and availability.
- 4.75 Our findings also show that following convenience, price is the second most often selected as the most important driver of store choice for consumers. This means that consumers value competition on price between grocery retailers. Also, some consumers may choose their grocery store(s) based on a combination of price and convenience-related factors.
- 4.76 Size of store and consumers' perception of the level of service they receive in any retail offer are also material drivers of store choice. Some consumers may also consider a combination of these factors when choosing their grocery store(s).

The dimensions of competition in retail grocery markets

- 4.77 Having drawn some conclusions from our work relating to consumer preferences, this section of the chapter discusses the dimensions upon which grocery retailers are competing to meet those preferences. This enables us to draw conclusions about who is competing with whom. In Chapter 5 we look at the intensity of competition between major grocery retailers and other grocery retailers, and between the major grocery retailers themselves.
- 4.78 As discussed in Chapter 2, there are many different types of grocery retailers operating across New Zealand, including supermarkets, international food stores, specialist grocery retailers, meal kit providers and online-only supermarkets. We have described that demand for groceries is highly differentiated. Grocery retailers differentiate their offering to meet this demand in different ways to attract and retain different types of consumers, for example, by the combined price and quality of service, or by breadth of product range.
- 4.79 Grocery retailers with similar product offerings on both price and non-price dimensions of the retail grocery offer will be each other's closest competitors. We consider that most New Zealanders use one of the major grocery retailers for most of their shopping missions because for any particular shopping mission, convenience (including location/ease of access, range and store familiarity) and price are key drivers of store choice. The major grocery retailers are uniquely placed to offer the convenience of one-stop shopping for a wide range of groceries at convenient locations (both in store and online) which consumers can easily access, and at prices which are generally lower than other grocery retailers. We discuss this further below.

The major grocery retailers have broadly similar retail grocery offers and are each other's closest competitors but choose to emphasise different elements of price and non-price competition

- 4.80 The major grocery retailers tend to compete across the full spectrum. This allows them to compete for many different combinations of consumer preferences and to make their retail grocery offer attractive to consumers on many different types of shopping missions.³⁰⁸ The major grocery retailers have broadly similar retail grocery offers and are each other's closest competitors.
- 4.81 In contrast, other grocery retailers tend to compete with the major grocery retailers only over some aspects of the retail grocery offer. This competition tends to mostly occur in some local markets for secondary or top-up shopping missions. We discuss this further below from paragraph 4.86.
- 4.82 The major grocery retailers regularly monitor both price and non-price dimensions of competition of each other's competing retail banners on an ongoing and frequent basis.³⁰⁹ We have also seen evidence that they adjust and improve their retail grocery offers in response to changes in the retail grocery offering of other major grocery retailer banners.³¹⁰
- 4.83 We have seen a number of examples of frequent adjustments to the competitive strategies of the major grocery retailers in response to changes in each other's retail grocery offer. Some of the more common examples include:
- 4.83.1 monitoring of price levels for specific products with the aim of maintaining specified price differentials between the major grocery retailer banners,³¹¹
- 4.83.2 adjustments in product range to compete for specific demographics in local markets,³¹²

³⁰⁸ For example: []; [].

³⁰⁹ For example, Foodstuffs NI told us that it monitors Countdown's prices to ensure that its prices are competitive, Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 26.

³¹⁰ The competitive parameters monitored on a frequent basis include [], for example: []; [].

³¹¹ For example, [].

³¹² For example, [].

- 4.83.3 strategies around ensuring that stock availability and range improves so that consumers will avoid supplementing their shop at another competing grocery retailer;³¹³
- 4.83.4 improving online delivery services and shopping experience through improvements in the ease of website navigation and timeliness of deliveries.³¹⁴
- 4.84 We consider the major grocery retailers are each other's closest competitors. However, they also attempt to position themselves differently in the market by differentiating their retail grocery offer from one another on both price and non-price dimensions of competition.³¹⁵ For example, PAK'nSAVE has a different business proposition that aims to ensure it is positioned to offer New Zealand's lowest food prices and to make its retail grocery offer attractive enough for consumers to accept the trade-off in terms of quality, range and service that comes with the ability to compete strongly on price.³¹⁶
- 4.85 We discuss the impact of differentiation by the major grocery retailers on the intensity of competition in the retail grocery market further in Chapter 5.

Other grocery retailers tend to strategically differentiate their retail grocery offers from the major grocery retailers

- 4.86 Other grocery retailers told us that they tend to focus on the non-price dimensions of the retail grocery offer, such as product range and quality, as they are generally unable to compete strongly on price with the major grocery retailers. Some examples of differentiation on non-price dimensions of the retail grocery offer by other grocery retailers include:
- 4.86.1 some specialist grocery retailers told us that they differentiate their retail grocery offering from the major grocery retailers by stocking a different range of fresh produce and meat products;³¹⁷
- 4.86.2 we were told that some convenience stores change their product range to cater for take-away food options and consumers on impulsive shopping missions,³¹⁸ and

³¹³ For example, [].

³¹⁴ For example, [].

³¹⁵ Of the three major grocery retailer banners, it appears that [].

³¹⁶ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 27 (lines 5-17).

³¹⁷ []; [].

³¹⁸ []; [].

- 4.86.3 some other supermarkets told us that they create a unique shopping experience for consumers by stocking a different range of fresh foods and imported goods in comparison to the product range available at the major grocery retailers.³¹⁹
- 4.87 Foodstuffs NI and Foodstuffs SI emphasised non-price dimensions of competition in the retail grocery sector and that multi-dimensional competition is good for consumers.^{320, 321}
- 4.88 We agree that multi-dimensional competition may benefit consumers and that competition on non-price elements of the retail grocery offer is important when considering the nature of competition in the retail grocery sector. This is consistent with the findings of our consumer research that consumers commonly value a range of factors in addition to price when deciding where to do their grocery shopping.
- 4.89 However, as discussed above, we expect competition to be more intense between grocery retailers with similar combinations of price and non-price elements of competition. The limited price competition between the major grocery retailers and other grocery retailers (see from paragraph 4.98 below) lessens the constraint they place on the major grocery retailers, thereby reducing the overall strength of competition in the retail grocery market. It also limits the ability of other grocery retailers to compete for a full set of shopping missions and for the same consumer spend.
- 4.90 We discuss the extent to which the differentiated retail grocery offer by other grocery retailers impacts intensity of competition in the retail grocery market further in Chapter 5.

The major grocery retailers have a wider product range than other grocery retailers

- 4.91 Notwithstanding the differentiating factors between different types of grocery stores, we discuss below two aspects of the retail grocery offer that appeal to the consumer preference for convenience that we have identified. These are:
- 4.91.1 store size which influences both floor area and available product range; and
- 4.91.2 the identity/brand of the store operator which influences store familiarity and consumer perceptions of a retail banner and its retail grocery offer.

³¹⁹ []; [].

³²⁰ Foodstuffs NI “Post conference submission on market study into grocery sector” (3 December 2021) at [67]-[68].

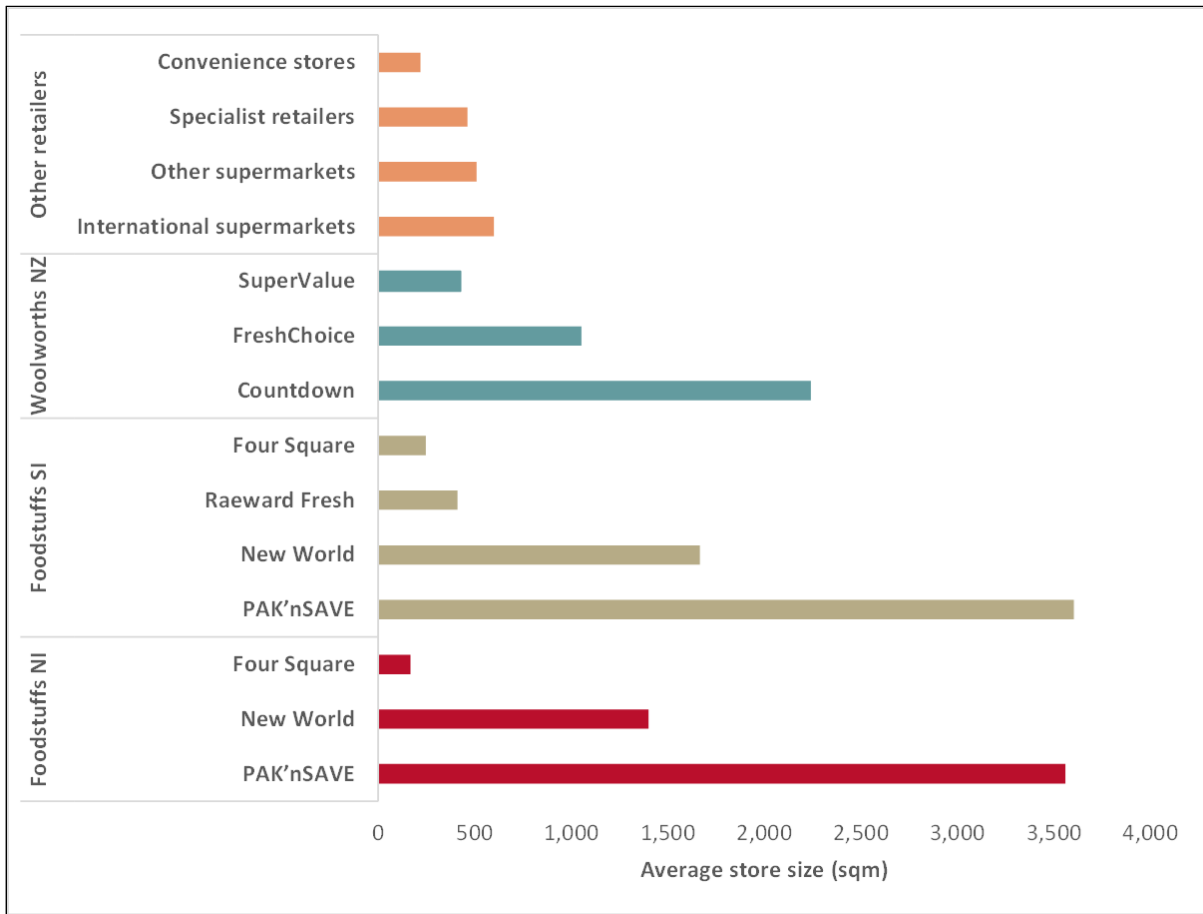
³²¹ Foodstuffs SI “Post conference submission on market study into grocery sector” (3 December 2021) at [43].

- 4.92 The major grocery retailers generally have larger stores and tend to stock a significantly wider grocery product range than other types of grocery retailers, both in terms of the number of different products stocked as well as the number of different brands within each product category. As discussed from paragraphs 4.60 to 4.69 above, many consumers value product range and size when choosing where to shop. Consumers are therefore more likely to view competing grocery retailers with similar size and product range as alternatives to each other.
- 4.93 The breadth and depth of product range stocked at most major grocery retailers means that consumers are more likely to find the range of products that they want to purchase at a major grocery retailer rather than having to visit numerous grocery retailers to purchase the same basket of products. This implies that consumers can have confidence that they will be able to get the grocery products they need at a major grocery retailer. As we discuss further from paragraph 4.104 below, the convenience associated with stocking a wide range of products at one location (both in store or online) at prices that are generally lower than other grocery retailers, result in a competitive advantage for the major grocery retailers regardless of the purpose of a consumer's shopping mission.
- 4.94 Consumers who value store size and product range are also less likely to view online-only supermarkets as alternatives to the major grocery retailers. For example, Supie told us as that as an online-only supermarket with limited access to many products that consumers demand due to exclusive supply arrangements between the major grocery retailers and suppliers, they struggle to compete with the major grocery retailers for consumers' main shop.³²²
- 4.95 We considered the variation in store size across New Zealand to help assess the likely competition between grocery retailers to meet consumer demand for a range of groceries. Data provided by the major grocery retailers and some other grocery retailers shows that the average store size of the major grocery retailers is significantly bigger than the average store size of most other grocery retailers, with the exception of the Four Square, Raeward Fresh and SuperValue retail banners for some categories of retailers (see Figure 4.4).³²³

³²² Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 39 (lines 20-23).

³²³ Although our list of other retailers is not comprehensive, we consider it gives a reasonable comparison of the average store size and number of products stocked at major grocery retailer stores and other grocery retailers.

Figure 4.4 Average net retail area of major grocery retailers and other grocery retailers in (square metres)



Source: Commerce Commission analysis of data provided by industry participants.³²⁴

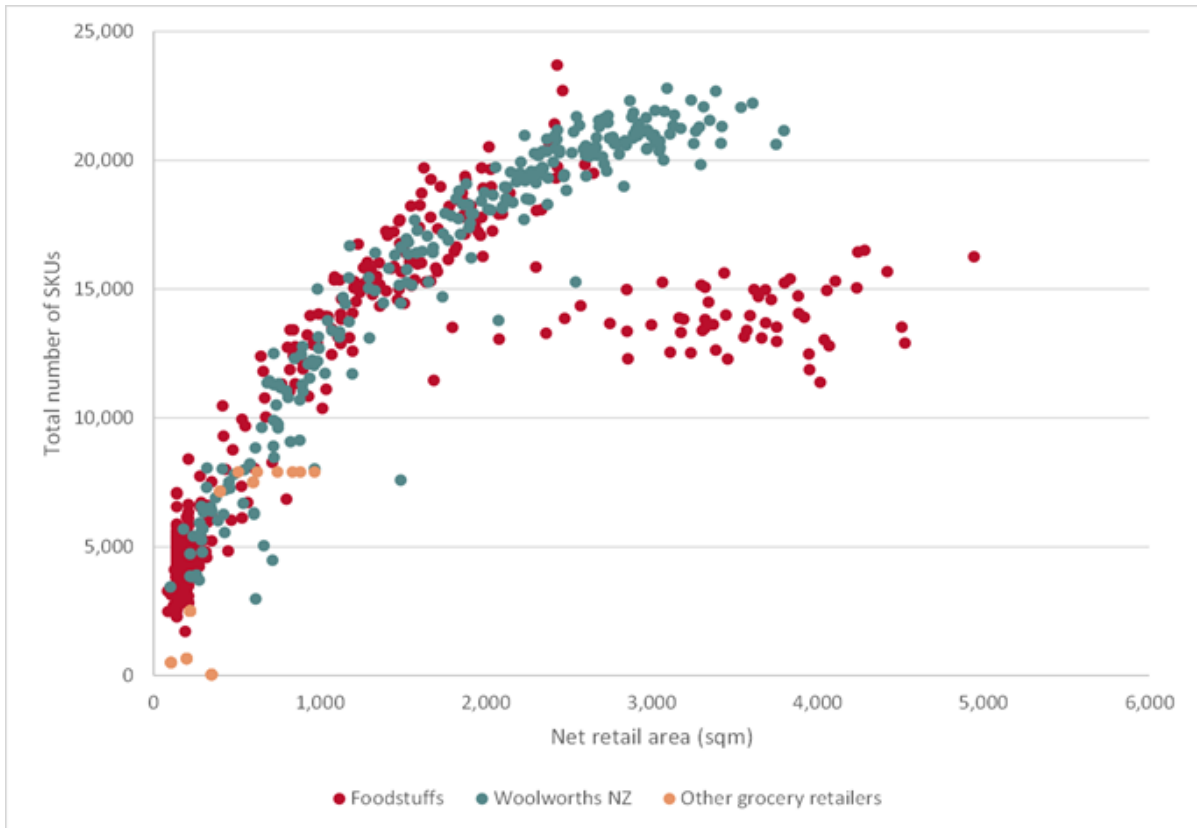
4.96 We acknowledge that store size may not be a perfect approximation of product range and the number of Stock Keeping Units (SKUs) available at a grocery store. However, our analysis of store size and SKU data provided to us by the major grocery retailers and some other grocery retailers, show that there is a strong positive correlation between store size and product range (see Figure 4.5 below).³²⁵ This means that consumers with a preference for range can have confidence that a larger store will stock a wider selection of products, and that they will be more likely to be able to purchase the grocery products they need in one location, no matter the shopping mission.

³²⁴ [].

³²⁵ A correlation between variables indicates that as one variable changes in value, the other variable tends to change in a specific direction. Correlation coefficients r measure the strength and direction of the relationship between two variables. The value of r is always between +1 and -1. The r value for our analysis of the relationship between net store size and product range is 0.84. It is generally accepted that a positive r value of greater than +0.70 is indicative of a strong positive linear relationship between two variables.

4.97 Further analysis of the information provided by grocery retailers on the average number of SKUs stocked by each retail banner also shows that, on average, other grocery retailers stock between 38% to 85% fewer SKUs than New World, Countdown and PAK'nSAVE.³²⁶ Consumers with a preference for size and range are therefore more likely to view major grocery retailers as closer alternatives than other grocery retailers which have fewer SKUs.

Figure 4.5 Net retail area and product range (2019, square metres)



Source: Commerce Commission analysis of data provided by industry participants.³²⁷

There is limited price competition between the major grocery retailers and other grocery retailers

4.98 Our consumer research shows that price is an important driver of store choice for many consumers in addition to factors of convenience such as range, location and shopping experience. We have therefore considered the extent to which different types of grocery retailers compete on price. This is because consumers with a preference for lower prices are more likely to view grocery retailers that compete effectively on price as alternatives to grocery retailers that tend to focus more on non-price aspects of competition.

³²⁶ [].
³²⁷ [].

- 4.99 As discussed above, other grocery retailers told us that they tend to focus on the non-price dimensions of the retail grocery offer, such as product range and quality rather than attempting to compete strongly on price. This is mainly because they cannot match the major grocery retailers’ cost and scale advantages (see Chapter 6) and therefore cannot compete directly with the major grocery retailers on price across the full range of products stocked at the major grocery retailer banners.³²⁸
- 4.100 For example, Night ‘n Day told us that other grocery retailers are unable to compete on price with the major grocery retailers due to a lack of cost-effective wholesale supply. They are also of the view that the entry of the major grocery retailers into the small top-up space with small store formats means that they can leverage their overall buying power throughout the supply chain to charge lower prices at these stores. This further limits the ability of other grocery retailers such as convenience stores to compete effectively with the major grocery retailers for consumers’ demand for convenience.³²⁹
- 4.101 Other grocery retailers also told us that they are mostly unable to compete with the major grocery retailers on price due to a lack of wholesale access to a wide range of grocery products at competitive prices and a range of other factors, including:³³⁰
- 4.101.1 other conditions of entry and expansion that prevents these retailers from competing effectively with the major grocery retailers, such as access to suitable sites for the development of bricks-and-mortar stores (see Chapter 6);³³¹ and
 - 4.101.2 limited geographic and network coverage that reduces their ability to compete with the national and regional (or island-wide) pricing and acquisition strategies of the major grocery retailers (see from paragraph 4.136 below).³³²

³²⁸ For example: Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 21-25); Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 4-5 (lines 34-6).

³²⁹ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 15-29).

³³⁰ For example: Supie “Post conference submission on Market study into grocery sector” (23 November 2021) at [3.1]; Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 18-20).

³³¹ For example: [];
[]; The Warehouse Group “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 4.

³³² For example, [].

- 4.102 We note that in instances where other grocery retailers do compete with the major grocery retailers on price, they tend to focus on particular products or subsets of consumers, such as those products stocked at international food stores or consumers who are willing to buy bulk goods.³³³
- 4.103 We therefore consider that there is limited price competition between the major grocery retailers and other grocery retailers. This means that consumers with a preference for lower prices can have confidence that they will be able to access a wide range of products at the major grocery retailers at prices which are generally lower than other grocery retailers.

The major grocery retailers uniquely meet consumer preferences for a wide range of products at lower prices in a single location

- 4.104 We consider that the major grocery retailers are uniquely placed to offer a wide range of groceries at locations which consumers can easily access (both in store and online), at prices which are generally lower than other grocery retailers. This offers the convenience of one-stop shopping no matter the shopping mission. Other grocery retailers do not provide a material constraint on them.
- 4.105 We agree with the major grocery retailers that differentiation by different types of grocery retailers across price and non-price dimensions of competition is beneficial to consumers because it meets diverse consumer demand. This means that no two grocery retailers will be the same as retail grocery offers are differentiated in different ways. The more similar retail grocery offers are, the more closely they are likely to compete for the benefit of consumers.
- 4.106 However, while differentiation may be beneficial to consumers because it meets diverse consumer demand, it can also work against consumers in the long run by making the retailers sufficiently differentiated that they are not competing strongly with one another, or, in the extreme, at all. We consider that the differentiated retail grocery offers of other grocery retailers are not sufficiently attractive to compete closely with the major grocery retailers for consumers' grocery spend.
- 4.107 There are differing views on the importance of the ability of the major grocery retailers to offer the convenience of a one-stop shop where consumers can buy a wide range of products in one location, either online or in a bricks-and-mortar store.

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- 4.108 Foodstuffs NI told us that it recognises that the range advantage of major grocery retailers to offer the convenience of a main shop in a single location differentiates them from other grocery retailers. However, they are also of the view that the major grocery retailers can be seen as being at a competitive disadvantage given the convenience offered by other grocery retailers which is often more important on smaller shopping missions.³³⁴
- 4.109 Foodstuffs NI and Foodstuffs SI also told us that they cannot tell which kind of mission any shopper is on and that even if they did know, they would still have to set the same prices for all shoppers.^{335, 336} They are of the view that this benefits consumers irrespective of the shopping mission a consumer is engaged in.
- 4.110 However, the NZFGC is of the view that the constraint imposed by other grocery retailers is limited because they lack the portfolio of products offered by the major grocery retailers at the same prices, and they also cannot provide sufficient volume.³³⁷
- 4.111 We acknowledge that the major grocery retailers are unable to price discriminate between consumers on different types of shopping missions. However, we are of the view that their ability to stock a wide range of products at generally lower prices to meet the needs of all types of shopping missions provides them with a unique competitive advantage when competing for consumers' grocery spend across all types of shopping missions, including the main shop and other non-main shops. This is because consumers can have confidence that they are likely to be able to get all the products they need in one place at prices which are generally lower than offered by other grocery retailers no matter the size of the shopping mission.
- 4.112 The availability of a wide range of products reduces the time and transaction costs of shopping, whether shopping in store or online. It provides the major grocery retailers with a competitive advantage over other grocery retailers when competing for different types of shopping missions, as other grocery retailers tend to have a significantly smaller product range and may have less convenient store locations. Consumers can therefore be confident of getting all the products they need in one place at a major grocery retailer store no matter the shopping mission, at prices which are generally lower than other grocery retailers.

³³⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [176].

³³⁵ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [241.4].

³³⁶ Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [211.4].

³³⁷ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [3.2].

The nature of local, regional and national competition in grocery retailing

- 4.113 An important driver of store choice for many consumers is convenient store location. In this section of the chapter we analyse the geographic scope of competition between grocery retailers to meet this preference. This enables us to draw some conclusions regarding the extent to which different types of grocery retailers compete for consumers' grocery spend in local markets where they live and work.
- 4.114 Our research shows that consumers are generally willing to travel limited distances to purchase groceries. However, several important aspects of the retail grocery offer, such as pricing and product acquisition, are set uniformly across the retail banners of the major grocery retailers at a national or regional level. This means that there are also some regional and national dynamics to competition in the retail grocery market that influence the intensity of competition between grocery retailers.
- 4.115 As noted in the UK Competition Commission's market investigation into the supply of groceries, the fact that many grocery retailers set a substantial proportion of their retail grocery offer nationally or regionally on a uniform basis across all their stores does not mean that the intensity of competition in local markets for grocery retailing is not important. The intensity of competition in local markets could influence the retail grocery offer in two main ways:
- 4.115.1 through affecting those dimensions of the retail grocery offer that are adjusted locally at the store level; and
 - 4.115.2 through affecting the overall level at which nationally uniform dimensions of the retail grocery offer are set.³³⁸
- 4.116 We have therefore also considered the extent to which other grocery retailers with limited geographic coverage are able to compete with the major grocery retailers in local markets for consumers' grocery spend across different types of shopping missions.

³³⁸ UK Competition Commission "The supply of groceries in the UK market investigation" (30 April 2008) at [6.33], available at: <https://webarchive.nationalarchives.gov.uk/20140402194746/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/groceries-market-investigation-and-remittal/final-report-and-appendices-glossary-inquiry>.

The approximate geographic sizes of local markets vary between different types of retailers and shopping missions

- 4.117 Research suggests that the importance of distance decreases according to how much the consumer feels they will achieve, or plans to achieve, by visiting a particular store.³³⁹ In particular, the importance of distance depends both on how much a consumer intends to spend at a particular store and how unique the planned shopping mission or experience is.
- 4.118 This means that a consumer who plans to spend a large percentage of their household budget in a particular store is likely to be less influenced by the distance to the store than a consumer who plans to spend only a small percentage of their household budget at the same store.³⁴⁰ Consumers are therefore likely to be willing to travel further to shop at their main store than they would be willing to travel for top-up shopping purposes.
- 4.119 This is consistent with submissions from Foodstuffs NI and Woolworths NZ that consumers are likely to be willing to travel further to larger stores. Specifically, Foodstuffs NI told us that the distance any particular consumer will drive to a store depends on a range of factors, including the nature of the shopping mission and the size and type of store, as consumers ordinarily drive further to larger stores such as PAK'nSAVE.³⁴¹ Woolworths NZ also told us that Costco is seen as a “destination shop” and that they have seen analysis from Australia suggesting that Costco stores have in-person catchment areas of approximately 25 km.³⁴²
- 4.120 Feedback from other grocery retailers confirms that they tend to compete for consumers located within relatively small local areas, which is consistent with our view that consumers mainly use these retailers for the purposes of smaller or top-up shopping missions. For example, some of these retailers have indicated that they consider catchment areas to range from just a few blocks from the location of the store to approximately 10 minutes’ driving distance.³⁴³
- 4.121 However, depending on the alternative options available to consumers in local markets and/or regions, they may be willing to travel further to stores that could be regarded as destination stores (eg, international food stores).

³³⁹ Hansen et al. “How the Measurement of Store Choice Behaviour Moderates the Relationship between Distance and Store Choice Behaviour” (2013) at 3-4, available at: <https://core.ac.uk/download/pdf/50684972.pdf>.

³⁴⁰ NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [117].

³⁴¹ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 24.

³⁴² Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 27.

³⁴³ For example: [];
[].

The approximate geographic size of local markets varies depending on urban or rural store locations

- 4.122 There is not a one sized estimation of the approximate geographic size of local markets that applies to all local areas across New Zealand. It is difficult to precisely estimate a delineation of the size of geographic markets as it varies according to local factors such as topography and the distribution of the population relative to the stores in the area. In some local markets competition may therefore occur over a shorter or longer distance than our estimates indicate. This is consistent with Woolworths NZ's view that there is no clear-cut answer as to how far consumers will travel for groceries, given the diverse range of factors that can drive each shopping mission.³⁴⁴
- 4.123 We have estimated the approximate geographic size of local markets separately for urban and rural areas. This is because there are regional variations in the options available to consumers, both in terms of product range and the diversity of grocery stores.
- 4.124 Rural consumers tend to drive further than urban consumers for grocery shopping purposes. For example, we heard many rural Māori shop about once a month, due to large distances required to travel to the nearest supermarket.³⁴⁵ We discuss regional variations in the options available to consumers below from paragraph 4.152.
- 4.125 This is consistent with Foodstuffs SI's submission that the distance that consumers are willing to travel to purchase groceries is catchment dependent based on the nature and unique attributes of the community. In their view a catchment area would generally be up to a 15 km radius. However, for a rural store its catchment area will depend on the store's location and its proximity to surrounding urban areas.³⁴⁶

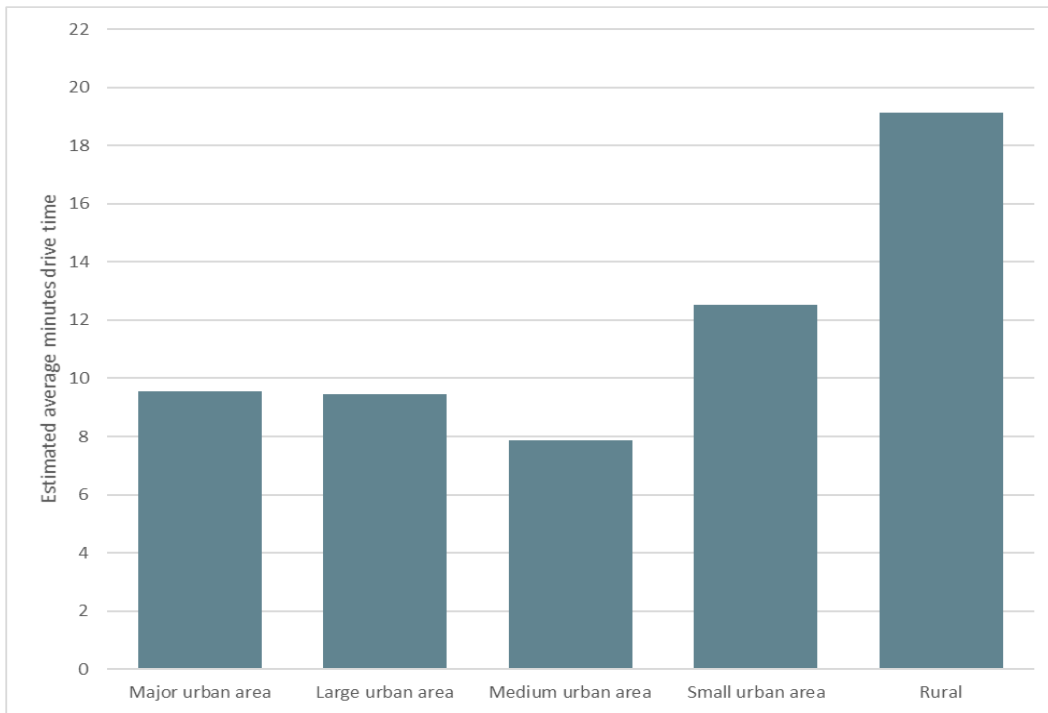
³⁴⁴ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 59.

³⁴⁵ Food is therefore often purchased frozen as there is a need to buy in bulk due to the large distances required to travel and infrequent shopping trips. This means there can be limited access to fresh food for many rural Māori, [].

³⁴⁶ Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 15.

- 4.126 In previous investigations we used a five km radius around each grocery store as a starting point to estimate the approximate geographic size of local markets.³⁴⁷ However, for the purposes of our study we used drive time to estimate the approximate geographic size of local markets in urban and rural areas.³⁴⁸
- 4.127 Our analysis of the responses to our consumer survey shows that, on average, respondents in medium (eg, Te Awamutu), large (eg, Rotorua) and major (eg, Auckland) urban areas travel less than 10 minutes to their main store. Consumers located in small urban (eg, Gore) and rural areas (eg, Haast) tend to travel longer to their main store, with consumers in rural areas travelling close to 20 minutes on average to their main store (see Figure 4.6). This is not an unexpected finding. As noted above, consumers living in rural areas are more likely to make less frequent and longer journeys to stock up on products in bulk.³⁴⁹

Figure 4.6 Estimated average drive time to main store



Source: Commerce Commission analysis of responses to our consumer survey.³⁵⁰

³⁴⁷ For example: Commerce Commission “Decision Nos. 606 & 607, Determination pursuant to the Commerce Act 1986 in the matter of applications for clearance of business acquisitions involving: Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Limited, and Foodstuffs South Island Limited; and (separately) Woolworths Limited and The Warehouse Group Limited” (8 June 2007) at [E18]; Commerce Commission “Decision No. 438, Application for clearance involving: Progressive Enterprises Limited and Woolworths (NZ) Limited” (13 July 2001) at [66]-[69].

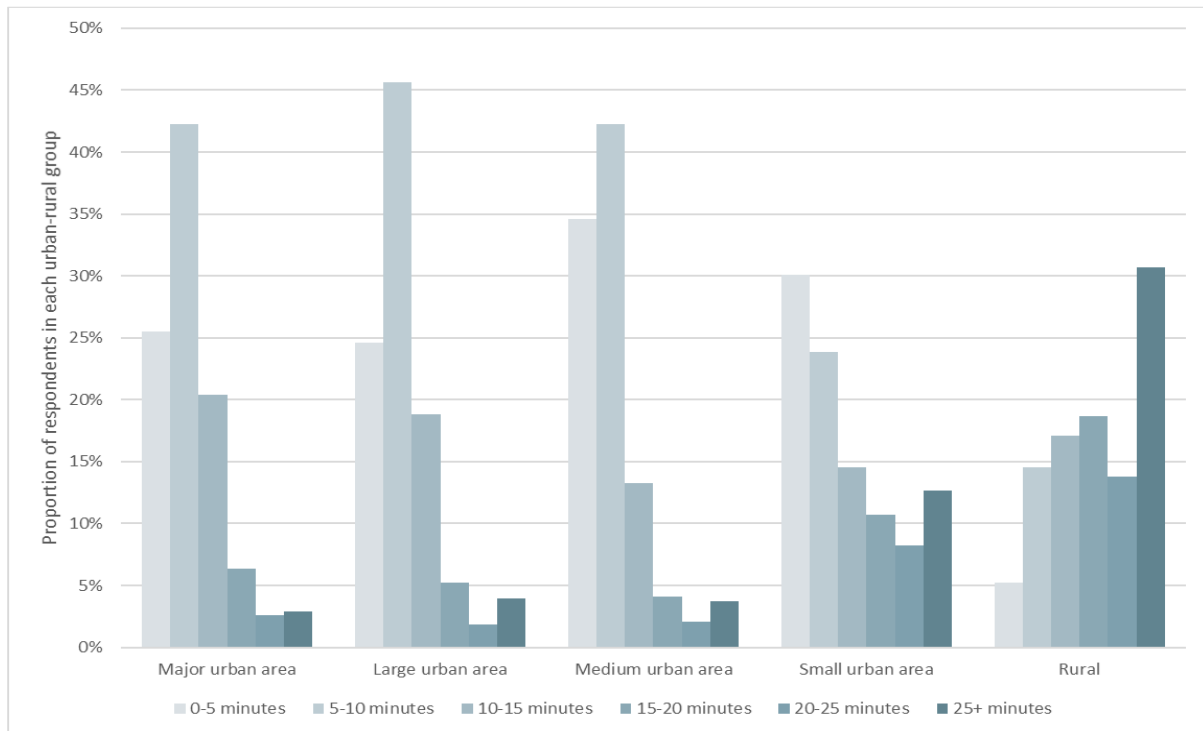
³⁴⁸ This is because distance-based measures may not always provide an accurate picture of how consumers can access a particular site and the alternative options available to them in the area close to where they live or work.

³⁴⁹ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 59.

³⁵⁰ [].

- 4.128 Our analysis also shows that more than 60% of urban respondents travel less than 10 minutes to their main store. However, in comparison less than 20% of rural respondents indicated that they travel less than 10 minutes to their main store, while approximately 30% of rural respondents stated that they travel more than 25 minutes to their main store (see Figure 4.7).

Figure 4.7 How long it usually takes respondents to travel to their main store



Source: Commerce Commission analysis of responses to our consumer survey.³⁵¹

- 4.129 Most of the participants in the Ipsos study reported that they travel less than 7 km for grocery shopping purposes and that they did not need to travel far to access alternative stores. However, rural participants reported often having to travel further (up to 40 minutes) for their main shop and therefore needed to plan larger shops more carefully.³⁵² This finding is consistent with our analysis of the responses to our consumer survey.
- 4.130 Business cases of the major grocery retailers also confirm that urban catchment areas tend to be smaller than for those of stores located in rural areas.

³⁵¹ [].

³⁵² Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 26-27.

- 4.131 Estimates by the major grocery retailers of urban catchment areas for Countdown and New World stores range from 1 km to 10 km.³⁵³ PAK'nSAVE stores tend to have a slightly wider catchment area of up to 15 km.³⁵⁴ This is consistent with Foodstuffs NI's submission that consumers are generally willing to drive further to larger stores and PAK'nSAVE.³⁵⁵
- 4.132 However, estimates of catchment areas for Countdown and New World stores in rural locations tend to be wider than those in urban areas, generally ranging between 3 km and 40 km.³⁵⁶
- 4.133 Frontier Economics used two different measures of competition in local markets to estimate the approximate geographic size of local markets in urban and rural areas for the major grocery retailers.³⁵⁷ The results of the first method using a weighted market share approach indicate that the approximate geographic size of local markets in rural areas vary between 5 to 20 minutes' drive time. Estimations of the approximate geographic size of local markets in urban areas range between 10 to 20 minutes' drive time.³⁵⁸
- 4.134 The second method uses a dummy variable for proximity of each store to the major grocery retailers as the measure of competition. Using this method, the results indicate that the approximate geographic size of local markets in both urban and rural areas vary between 5 to 20 minutes' drive time.³⁵⁹
- 4.135 Further analysis conducted by Frontier Economics to examine how the structure of local grocery markets affects prices suggests that local market concentration appears to have little or no effect on price competition between grocery retailers. We discuss this further in Chapter 5.

There are some regional and national dimensions to competition in the retail grocery sector

- 4.136 Although consumers typically choose between grocery retailers in their local area, there are also some regional and national dimensions to competition in the retail grocery sector.

³⁵³ For example: [];

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³⁵⁴ [].

³⁵⁵ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 24.

³⁵⁶ For example: [];

[].

³⁵⁷ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 28.

³⁵⁸ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 28-29.

³⁵⁹ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 30-31.

- 4.137 Decisions on pricing, promotion and acquisition of products by the major grocery retailers mostly take place at a national or regional (co-operative) level, whereas decisions on product range and other non-price elements of the retail grocery offer are more likely to be made at an individual store level in local markets.

Pricing and promotion decisions by the major grocery retailers mostly take place at a national or regional (co-operative) level

- 4.138 Most of the strategies relating to pricing and discounting of products are made at a national (Woolworths NZ) or at a co-operative level (Foodstuffs SI and Foodstuffs NI). This means that over time the national and island-level component of competition is likely to be a bigger driver of prices charged at major grocery retailers' stores than competition in individual local markets. This implies that the major grocery retailers are constrained mostly on price by each other.
- 4.139 If national or regional prices are set with reference to strong competition in particular local areas, this may benefit consumers in markets where there is less competition which would otherwise result in them facing higher prices. However, if competition at the national level is not strong, there is a risk that all consumers may end up paying more than they likely would have in a workably competitive market.³⁶⁰
- 4.140 Woolworths NZ operates a national business model for its Countdown stores. This means that pricing in Countdown stores is almost entirely consistent nationwide.³⁶¹ The most significant product categories where this is not the case are fresh products where different supply conditions and/or commercial models mean that there are price differences predominantly between the North Island and South Island.³⁶² Woolworths NZ also told us that its national pricing proposition delivers a number of efficiencies, such as the ability to advertise on television.³⁶³

³⁶⁰ The greater the proportion of stores a grocery retailer has with high levels of local market share, the greater its ability and incentive to raise prices or reduce levels of service, range and/or quality independently of other operators at both a national and local level. There may also be strategic reasons why grocery retailers may choose to set a uniform retail grocery offer. For example, it improves price transparency and makes it easier to monitor the competitive offering of rivals.

³⁶¹ Woolworths NZ "Submission on the retail grocery market study preliminary issues paper" (4 February 2021) at 6.

³⁶² According to Woolworths NZ the effects of its consistent nationwide pricing at Countdown stores is that overall, [] of products have the same shelf price at all Countdown stores across New Zealand. Despite regional variations in fresh produce prices, [] of these products have the same shelf price nationwide. For packaged goods, [] of products have the same standard shelf price nationally and more than [] of promotional prices are the same nationwide, Woolworths NZ "Submission on the retail grocery market study preliminary issues paper" (4 February 2021) at 6.

³⁶³ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 21 (lines 30-32).

- 4.141 Foodstuffs NI is of the view that that its island-wide pricing policy is pro-competitive as it allows consumers in remote regions with fewer competitors to benefit from competition in areas where there are more competitors.³⁶⁴ They also told us that its pricing policies at a co-operative level aim to provide more consistent value to consumers across core and staple items. In addition, Foodstuffs NI noted that pricing and promotions for fresh products, including produce and meat, operate to a different dynamic than other product categories due to their seasonality, certainty of supply and short shelf life.³⁶⁵
- 4.142 Both Foodstuffs NI and Foodstuffs SI also told us that they collaborate on matters that require national consistency with the shared ownership and use of national brands, such as a national televised New World price promotion.³⁶⁶ There also appears to be some scope for pricing at Foodstuffs NI and Foodstuffs SI stores to vary on a store-by-store basis.³⁶⁷

The acquisition and distribution of products by the major grocery retailers is mostly coordinated at a national or co-operative level

- 4.143 Scale economies achieved in the acquisition of groceries at a national or co-operative level can benefit consumers if they lead to lower prices. However, it may also increase barriers to entry at a local market level, thereby affecting consumers at both a local, regional and national level (see Chapter 6).
- 4.144 Woolworths NZ told us that its national business model leads to ease of doing business with its suppliers (with product decisions based on data from across all its stores) and enables them to achieve efficiencies in their transport network and centralised marketing activities.³⁶⁸

³⁶⁴ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 32 (lines 6-11).
³⁶⁵ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 34.
³⁶⁶ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 22; Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 14.
³⁶⁷ Foodstuffs NI “Submission on the retail grocery market study preliminary issues paper” (4 February 2021) at 22; Foodstuffs SI “Submission on the retail grocery market study preliminary issues paper” (4 February 2021) at 14. Foodstuffs NI told us that
 []

³⁶⁸ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 7.

- 4.145 Foodstuffs NI submitted that a significant proportion of its products are supplied directly to grocery retailers and do not go through Foodstuffs NI's central distribution centres.³⁶⁹
- 4.146 However, Foodstuffs NI is currently implementing a new centralised buying model for its New World and Four Square stores (see Chapter 8). There are consequently some co-operative level dimensions to competition for the procurement of products by Foodstuffs NI.

There is some scope for the major grocery retailers to adjust product range and other dimensions of competition at a local store level

- 4.147 As discussed above, most of the competition on pricing and the procurement of products by the major grocery retailers takes place at a national or island level. However, there is some discretion at a local store level for owner-operators and store managers to adjust their product range and other non-price dimensions of competition, such as opening hours in response to local competition.
- 4.148 With regards to product range, Woolworths NZ told us that they have invested in tailoring their range and product offerings to local consumer tastes through developing new products as demand evolves (for example, increasing investment in ready-to-go meals and dedicated health food aisles).³⁷⁰
- 4.149 Both Foodstuffs NI and Foodstuffs SI also told us that there is scope for a member to tailor their product range, including to local consumer preferences and market conditions.³⁷¹
- 4.150 Specifically, Foodstuffs NI's service offerings differ across the North Island as a result of one or a combination of the following:³⁷²
- 4.150.1 differences in local market conditions including customer needs, demographics and competition from other suppliers of retail grocery items;
 - 4.150.2 the presence of different Foodstuffs NI retail banners within different catchment areas;

³⁶⁹ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 11. Foodstuffs NI told us that direct to store represents approximately [] by value of all products shipped and is mostly to [] stores.

³⁷⁰ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 12-13.

³⁷¹ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 22; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 14.

³⁷² Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 22-24. Foodstuffs NI also told us that []

- 4.150.3 differences arising due to particular arrangements or pricing changes requested by suppliers affecting different regions;
 - 4.150.4 the nature of relevant products such as fruit or vegetables; and
 - 4.150.5 other differences arising due to the independent owner/operator model run by each co-operative.
- 4.151 Foodstuffs SI's service offerings are determined at both the co-operative and at a store level by each member, within the framework established by their membership agreement. Specifically, there is scope for Foodstuffs SI stores to tailor their local service offerings in response to local market conditions based on the nature of demand from consumers. For example, opening hours are determined by each operator in consultation with Foodstuffs SI.³⁷³

Regional variations in the grocery store options available to consumers

- 4.152 In this section we discuss the analysis we undertook to assess regional variations across New Zealand in prices and the variety of grocery store options available to consumers. We also discuss the nature of regional and national dimensions to competition in the retail grocery sector.
- 4.153 Our analysis of the location of major grocery retail banners and other grocery retailers shows that there are regional differences in the diversity of retail grocery options available to consumers.
- 4.154 The greatest number of retail grocery options appears to be in the Auckland region, where there are several other grocery retailers operating in addition to the major grocery retailers. There are increasingly fewer options through the rest of the country, with consumers in rural areas having the least number of grocery shopping options available (see Figure 4.8 to Figure 4.10 below and Attachment A).
- 4.155 Analysis done by Frontier Economics also shows that prices are lowest in Auckland relative to the rest of New Zealand.³⁷⁴

Consumers in rural areas tend to have less choice than those located in urban areas

- 4.156 The geographic location of stores in different local markets and/or regions of itself does not provide us with any information of the extent and intensity of competition between the major grocery retailers and other grocery retailers. However, the locations of grocery stores provide a useful overview of the different retail grocery options available to consumers. Limited grocery store choice may lead to poorer retail grocery offers in the form of higher prices and/or lower quality and service.

³⁷³ Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 14.

³⁷⁴ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 18-20.

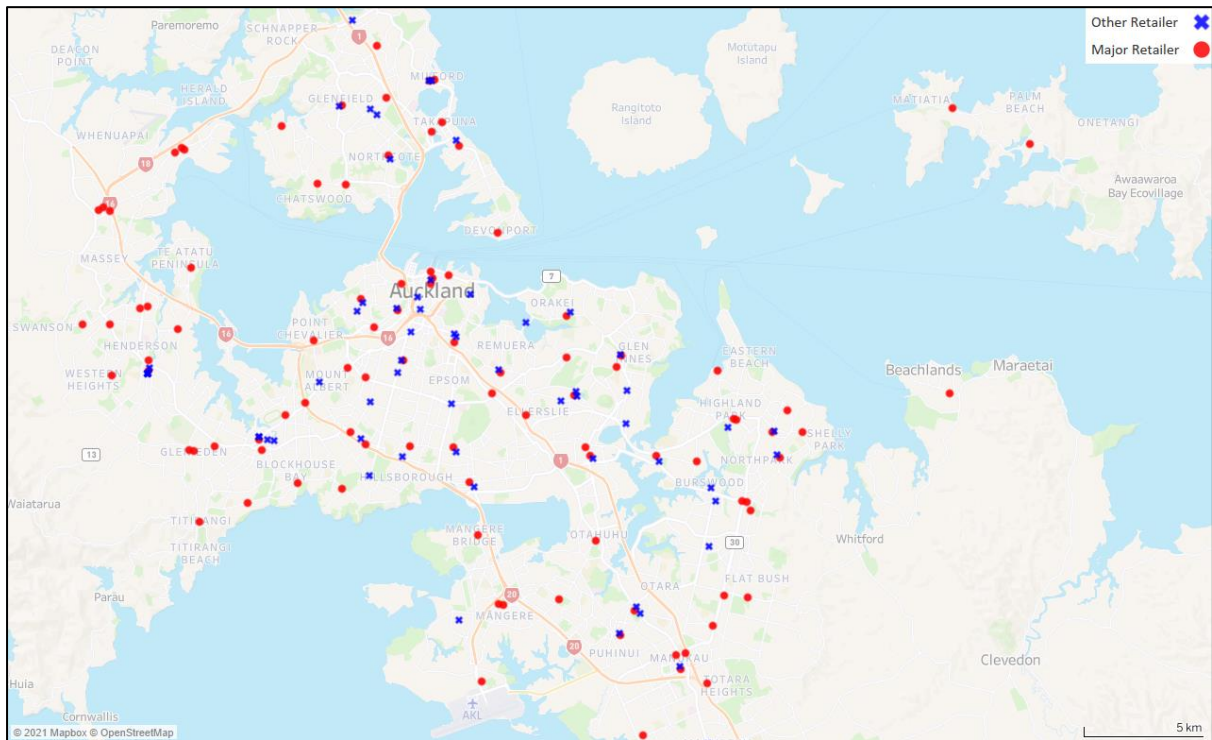
- 4.157 Some Māori contributors suggested there are parts of New Zealand, particularly rural areas, where there are limited existing grocery retail options for consumers.
- 4.158 Specifically, we heard some Māori living in isolated, rural areas face specific challenges regarding accessibility and affordability of kai and a lack of choice.³⁷⁵ Some Māori in rural and remote areas also have limited digital connectivity and online food delivery options available to them.³⁷⁶
- 4.159 Our analysis in Figure 4.8 to Figure 4.10 below confirms that consumers in rural areas typically have fewer options available to them compared to urban consumers. Consumers in the Auckland region also appear to have comparatively greater variety in grocery shopping options available to them than consumers located in other urban areas or rural areas.³⁷⁷
- 4.160 We have not attempted to show the locations of every store across New Zealand that might sell one or more grocery products. Rather, our analysis includes the locations of categories of grocery retailers that have larger stores and sell a wider range of products (such as international food stores and other supermarkets), as they are most likely to provide some alternatives to the major grocery retailers for consumers' grocery spend.

³⁷⁵ We also heard that, for lower income groups such as Ngati Porou, perceived issues of lack of competition and increased food prices exacerbate disparities in living standards, Ngati Porou Holding Company Ltd "Post conference submission on Market study into grocery sector" (23 November 2021) at 5.

³⁷⁶ For example, Ngati Porou told us that having a single supplier (Foodstuffs) on the East Coast of the North Island (which is Ngati Porou's rohe) limits the ability of consumers to comparatively shop which has a direct impact on the health and wellbeing of the community. There are also limited digital connectivity and online delivery options available to the East Coast community which further impacts consumer choice in this area. It is an approximate three-hour drive to the nearest supermarket in Gisborne to obtain lower prices or more grocery shopping options, Ngati Porou Holding Company Ltd "Post conference submission on Market study into grocery sector" (23 November 2021) at 1, 4 and 5.

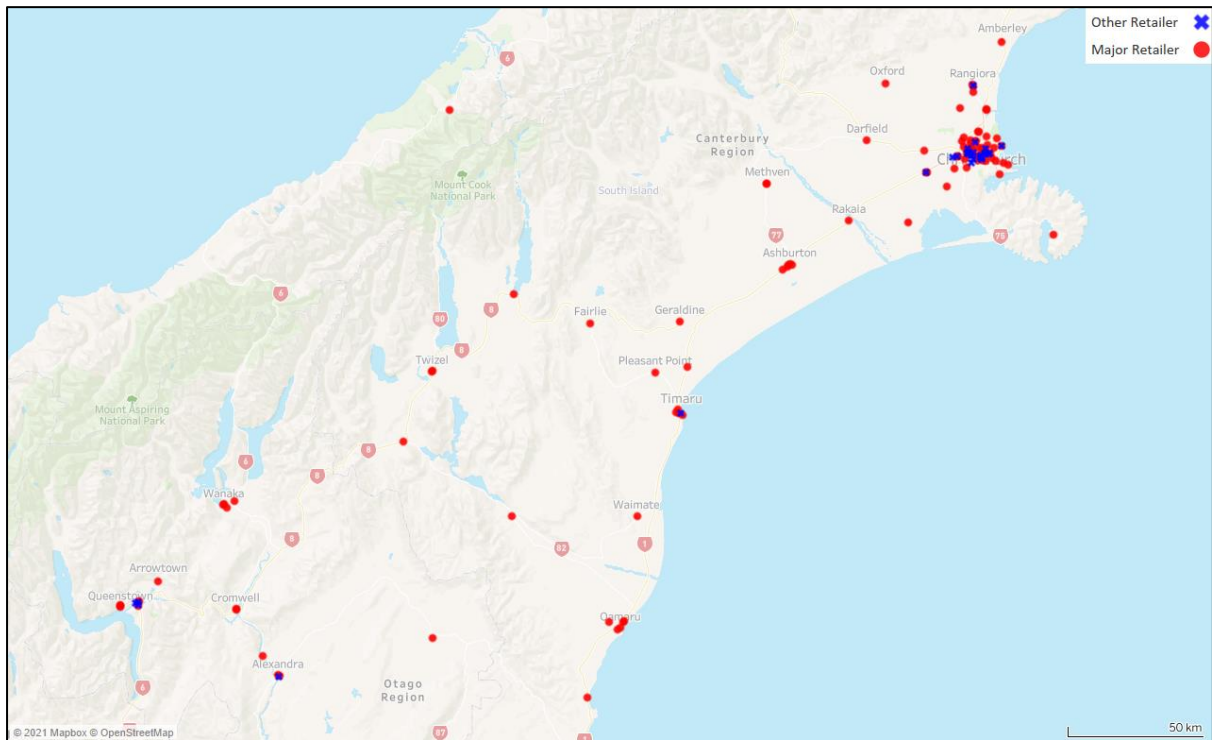
³⁷⁷ See Attachment A for additional maps of other regions across New Zealand.

Figure 4.8 Grocery store locations in Auckland



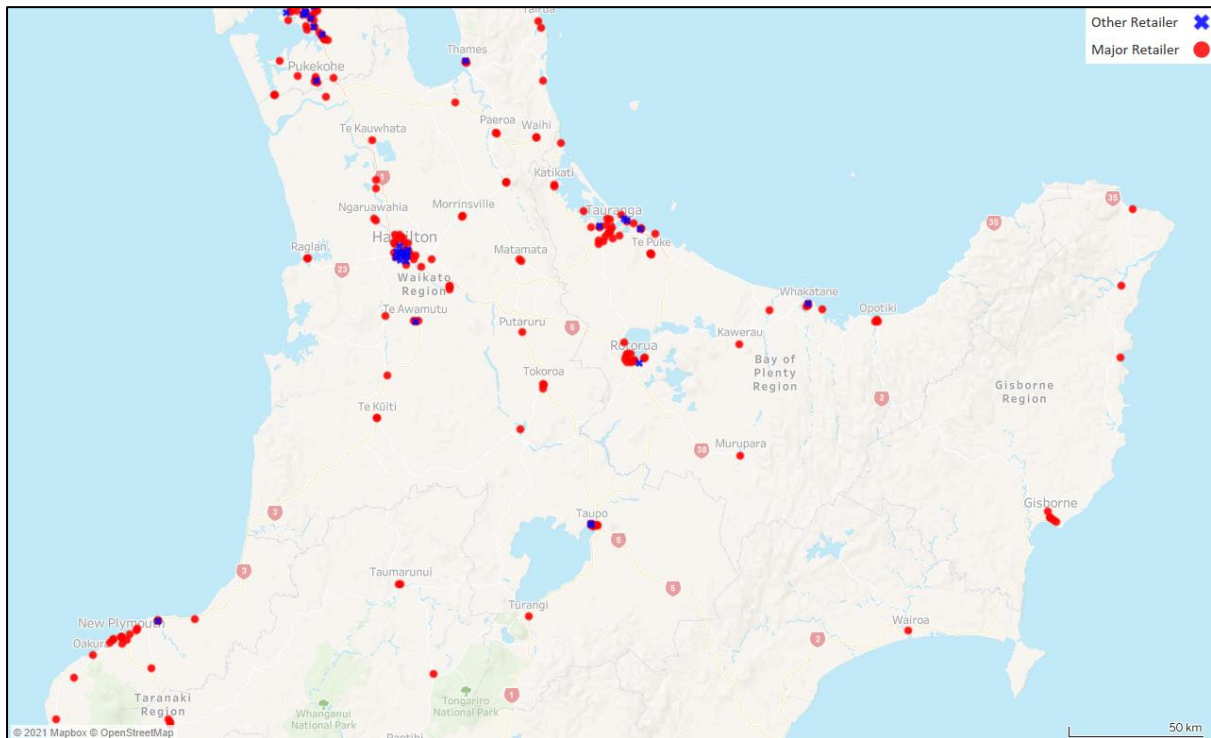
Source: Commerce Commission analysis of information provided by grocery retailers.³⁷⁸

Figure 4.9 Grocery store locations in the central South Island



Source: Commerce Commission analysis information provided by grocery retailers.³⁷⁹

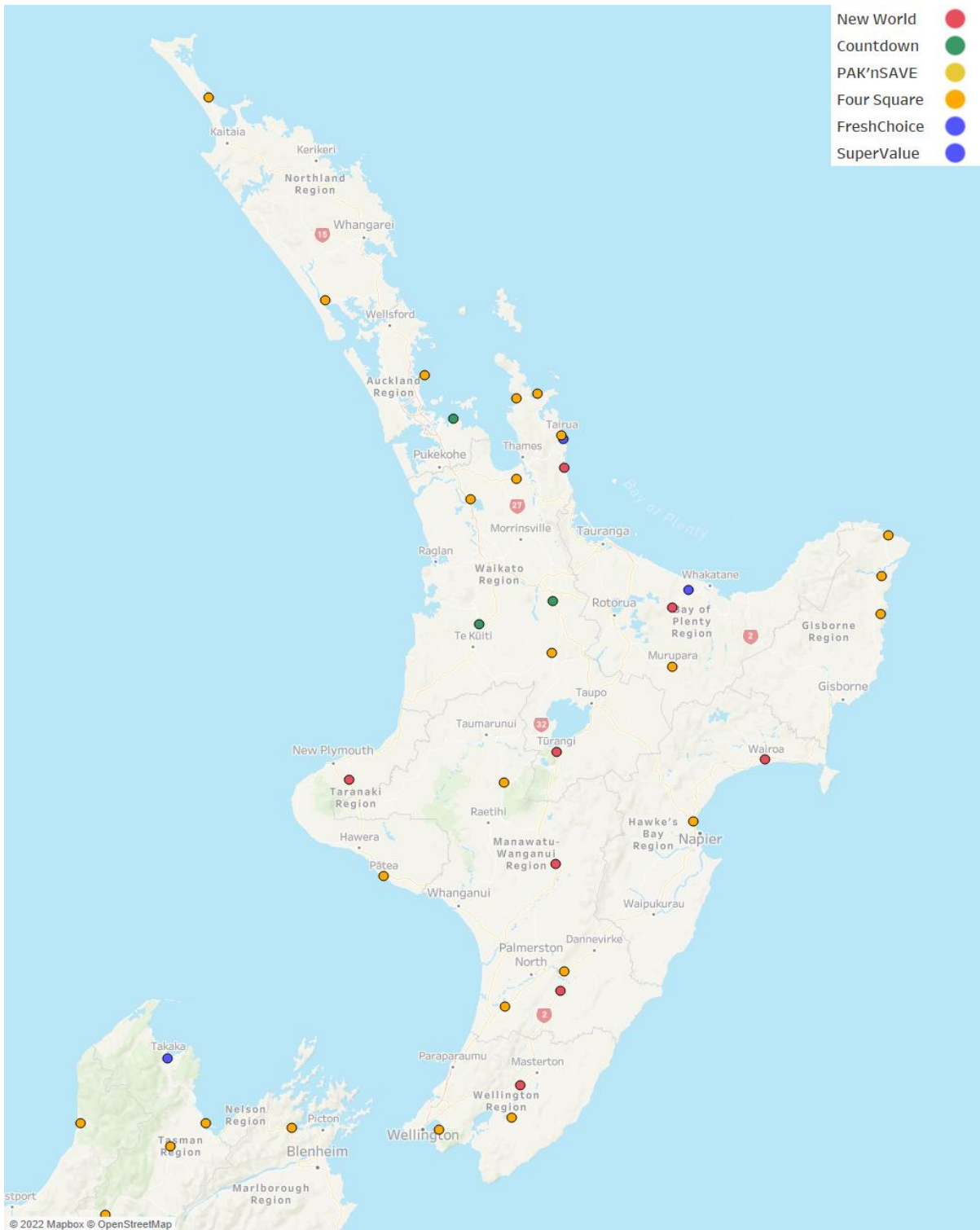
Figure 4.10 Grocery store locations in the central North Island



Source: Commerce Commission analysis of information provided by grocery retailers.³⁸⁰

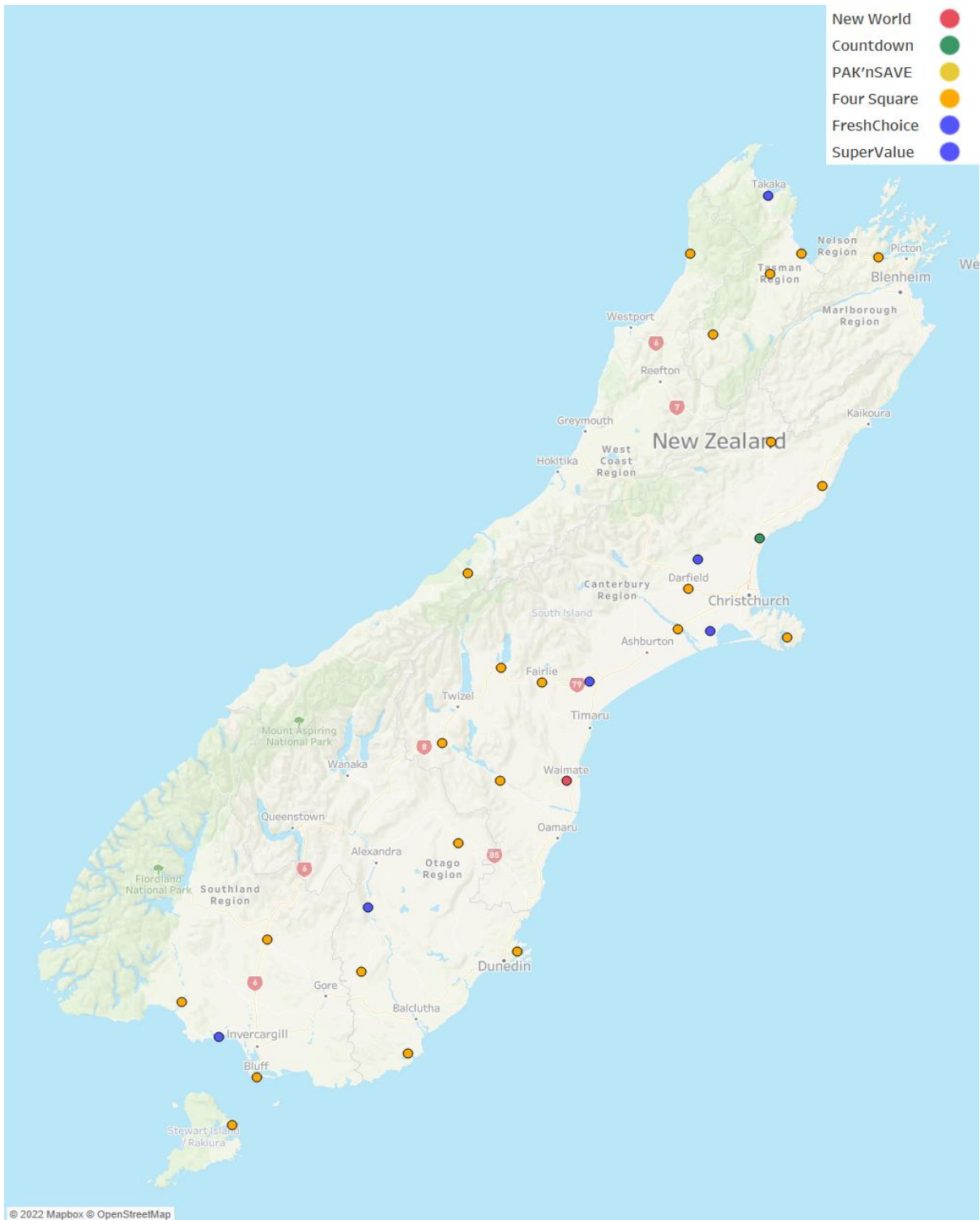
- 4.161 As discussed earlier, we consider that the major grocery retailers are each other's closest competitors and that other grocery retailers are generally unable to compete strongly with them to satisfy consumer preferences for convenience and price. We have therefore further analysed the variation in retail grocery options available to consumers in local markets by also considering the locations of every Foodstuffs banner without a competing Woolworths NZ banner in the same local market, and every Woolworths NZ store without a Foodstuffs store nearby in the North and South Island (see Figures 4.11 and 4.12 below).
- 4.162 Using location data provided to us by the major grocery retailers and our findings on the average drive time in urban and rural areas (see Figures 4.6 and 4.7 above) we identified individual stores without a competing major grocery retailer banner in proximity of the store's location. Our analysis confirms that there appears to be limited retail grocery options for consumers that have a preference for one-stop shopping at the major grocery retailers in some local markets. This is particularly evident in more remote areas of New Zealand.

Figure 4.11 Local areas with no competing major grocery retailer banner (North Island)



Source: Commerce Commission analysis of information provided by grocery retailers.³⁸¹

Figure 4.12 Local areas with no competing major grocery retailer banner (South Island)



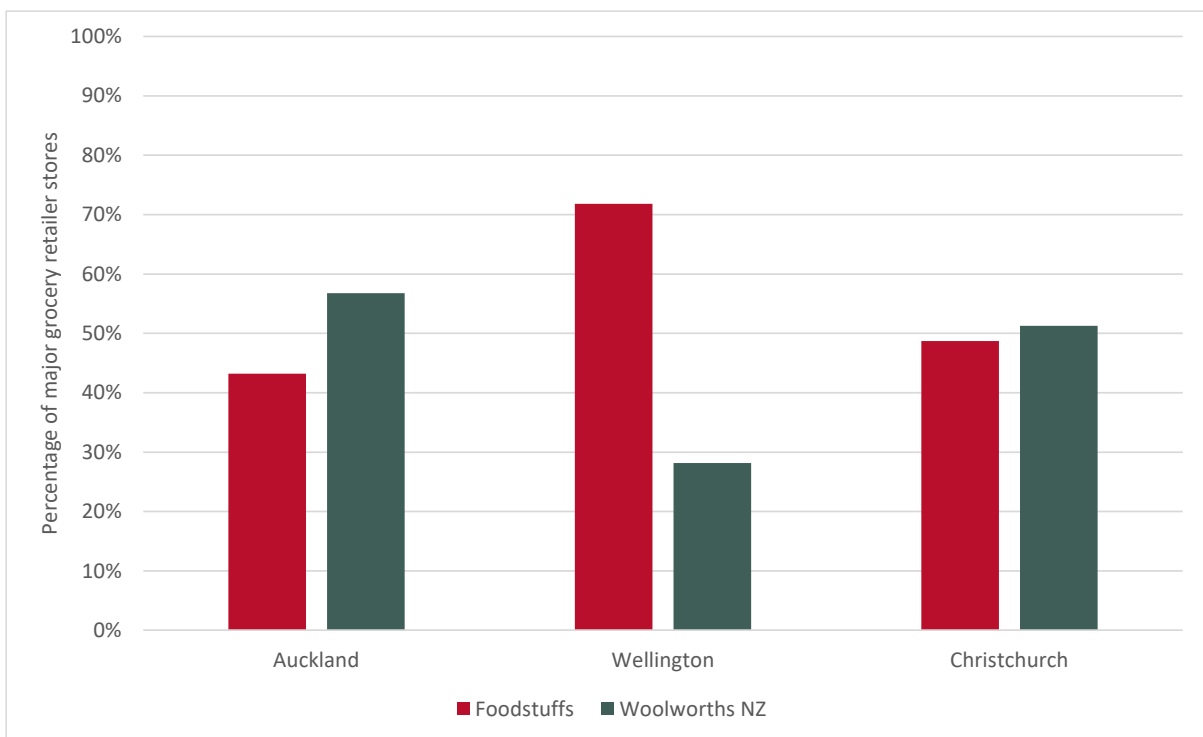
Source: Commerce Commission analysis of information provided by grocery retailers.³⁸²

There appears to be an uneven distribution of retail choice in Wellington

4.163 In addition to the evidence of uneven distribution of retail choice between urban and rural areas we have also considered whether there is any evidence of geographic disparities in retail choice within major urban areas of New Zealand.³⁸³

4.164 We analysed the distribution of major grocery retail choice in major urban areas across New Zealand using store location data provided to us by the major grocery retailers. We have found that there is a relatively equal distribution of major grocery retailer stores in Christchurch and Auckland. However, our analysis shows that there is an uneven distribution of major grocery retail stores in Wellington (see Figure 4.12 above).

Figure 4.13 Distribution of major grocery retailer stores in major urban areas



Source: Commerce Commission analysis of information provided by grocery retailers.³⁸⁴

4.165 The major grocery retailers told us that uneven store distribution is historical and that they have plans for future expansion in cities where they have historically operated fewer stores.

³⁸³ Based on analysis of a small sample of the grocery shopping options typically available to consumers in Auckland and Wellington respectively, Ernie Newman concluded that there is evidence of a disparity in regional market share between the major grocery retailers. His analysis shows that Woolworths NZ enjoy around three quarters of the Auckland market and Foodstuffs NI two thirds of Wellington, Ernie Newman “Submission on Market study into grocery sector draft report” (26 August 2021) at 4-5.

³⁸⁴ [].

- 4.166 Specifically, Woolworths NZ told us that they have fewer Countdown stores in Wellington than Foodstuffs NI has PAK'nSAVE and New World stores, largely as a product of history. For 91 years the Foodstuffs Wellington Co-operative had Wellington as the home of its head office, whereas Woolworths NZ and its predecessors have historically been Auckland and Christchurch based entities.³⁸⁵
- 4.167 Woolworths NZ also told us that they have actively been looking to increase their presence in the Wellington area. This has resulted in the opening of six new Countdown stores in the Wellington region and the Grenada e-store in the last ten years, compared to Foodstuffs NI having opened two New World stores in the Wellington region during that time.³⁸⁶
- 4.168 This is consistent with Foodstuffs NI's view that the history of previous company structures and mergers of brands have led to a relatively more uneven distribution of major grocery retailer choice in Auckland and Wellington as compared to Christchurch. Foodstuffs NI also told us that they have plans to fill current gaps in the regional presence of Foodstuffs NI branded stores where possible.³⁸⁷

There is some evidence of small regional price differences between the major grocery retailers

- 4.169 In general, we would expect to see variation in prices between different regions due to differences in factors such as transport costs and market structures.
- 4.170 However, pricing and promotion decisions by the major grocery retailers mostly take place at a national or regional level (see paragraphs 4.138 to 4.142). This means that there is no significant variation in pricing within the major grocery retail banners in different local markets and/or regions.³⁸⁸
- 4.171 Frontier Economics analysed regional differences in prices charged by the major grocery retailers across New Zealand.
- 4.172 In Table 4.1 we show the most relevant of Frontier Economics' findings which they call "Method 2". It shows average regional prices for consumers relative to Auckland and price variation across all the major grocery retail banners.

³⁸⁵ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [23.2].

³⁸⁶ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [23.3]-[23.4]. Woolworths NZ also told us that they have plans to open several ([]) new Countdown stores in Wellington in the next four years and that their efforts to build their presence in the Wellington region have contributed to Woolworths NZ having a higher level of online grocery sales as a proportion of total sales in the Wellington region [] as compared to Auckland [] for the year ending October 2021.

³⁸⁷ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 42 (lines 18-27).

³⁸⁸ Analysis by Frontier Economics shows that except for [], pricing at the stores of the other major grocery retail banners typically lie within [] percent of each other, Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 24.

4.173 Store price indices were estimated by comparing all stores to a base store. After this store-revenue weighted averages of the price indices of the stores in each region were calculated. The weighting ensures that the results also reflect how much money consumers spend in each store and retail banner in each region.

Table 4.1 Regional price differences relative to Auckland

	Region	Method 2 National index
Upper North Island	Auckland	0.0%
	Bay of Plenty	0.5%
	Northland	3.0%
	Waikato	1.7%
Central and Lower North Island	Gisborne	1.2%
	Hawke's Bay	1.4%
	Manawatū-Whanganui	2.1%
	Taranaki	2.2%
	Wellington	1.4%
South Island	Canterbury	1.7%
	Marlborough	1.9%
	Nelson	2.8%
	Otago	3.3%
	Southland	3.1%
	Tasman	1.9%
	West Coast	4.8%

Source: Table 9, Frontier report.³⁸⁹

4.174 The results from Method 2 in Table 4.1 above shows prices in the rest of New Zealand are higher relative to Auckland. The West Coast is the most expensive when compared with other regions relative to Auckland when using the national index to account for differences in the availability of major grocery retail banners in different regions.³⁹⁰

³⁸⁹ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 20.

³⁹⁰ Analysis by Frontier Economics indicates that [] stores tend to be the [] stores for products other than tobacco and that rural areas tend [], Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 19.

- 4.175 Overall, the results show that regional price variation appears to be due to the presence or absence of particular major grocery retail banners in different places, rather than different prices within a banner.

Chapter 5 Competition at the retail level

Summary of findings

- Although other grocery retailers provide some competition to the major grocery retailers for some shopping missions and in some local markets, they are generally unable to provide strong competition to satisfy consumers' preferences for one-stop shopping in a single location. Neither do retail offerings like meal kits provide a complete substitute for supermarket shopping, either alone, or when combined with retail offerings by other grocery retailers.
- New small-scale entry is viable. However, new entry by other grocery retailers appears to have limited impact on the major grocery retailers. Under current market circumstances it is unlikely that existing and anticipated future competition by other grocery retailers will provide strong competition to the major grocery retailers.
- There is some competition between the major grocery retailers on both price and non-price dimensions of competition of the retail grocery offer. However, some features of the retail grocery market such as the relative stability of market shares and demand for groceries weaken the major grocery retailers' incentives to engage in stronger competition than is currently evident. Analysis also shows that local market concentration has little or no effect on price competition between the major grocery retailers. We therefore consider that the intensity of competition between the major grocery retailers is muted and does not reflect workable competition.
- Our study did not disclose any evidence that the major grocery retailers are accommodating each other's strategies. We have also not identified a mechanism, such as leader-follower behaviour, that may facilitate accommodating behaviour. However, some features of the retail grocery sector suggest it is vulnerable to tacit coordination, such as common relationships with the same suppliers. Measures to improve competition are likely to reduce the potential for accommodating behaviour.

Introduction

- 5.1 In this chapter we build on our findings in Chapter 4 by further considering the extent of current and anticipated future competition between the major grocery retailers and other grocery retailers. We describe the intensity of competition in retail grocery markets in New Zealand, the structure of the retail grocery market and identify features of the market that might be contributing to (or detracting from) the effectiveness of competition.
- 5.2 We find that in the current market circumstances, existing and anticipated future competition by other grocery retailers is unlikely to provide strong competition to the major grocery retailers to satisfy consumers' preferences for one-stop shopping in a single location (both in store or online).
- 5.3 We also find that there is some competition between the major grocery retailers on both price and non-price dimensions of the retail grocery offer. They compete across the entire PQRS spectrum for consumers on all types of shopping missions and are each other's closest competitors. However, the intensity of competition is muted and we do not consider that it reflects workable competition. This is because there are features of the market that reduce the incentive for the major grocery retailers to compete more intensely with each other, particularly the following:
- 5.3.1 The major grocery retailers' decision making is interdependent and they take each other's likely responses into account when formulating their own competitive strategies.
- 5.3.2 The retail grocery sector is highly concentrated, and the market shares of the major grocery retailers have been relatively high and stable over time. The demand for groceries is also relatively stable and predictable, with trend growth largely reflecting population growth. This means that the major grocery retailers have a good understanding of each other's competitive strategy and the likely response of their main competitor to changes in their own strategy. In addition, there is a high degree of transparency which enables the major grocery retailers to quickly detect and respond to any changes in their rival's competitive strategy.
- 5.3.3 There is evidence of cross-shopping between grocery retailers and evidence that many consumers participate in more than one retail grocery loyalty programme. These factors may make any gains from switching by price sensitive consumers in response to stronger competition difficult to sustain as those consumers may choose to switch back if a retailer responds.

- 5.3.4 Some consumers find it hard to make the best purchasing decisions for them in store, particularly when retailers use complex and/or multiple pricing and promotional mechanisms, and when loyalty programmes have complex rewards structures and terms and conditions. These complexities have the potential to limit consumers' ability and willingness to access, assess and act on information when choosing between grocery retailers (see Chapter 7).
- 5.3.5 Under current market circumstances there is limited scope for the competitive stability to be disrupted by new entry or expansion of existing grocery retailers. It also seems unlikely that changes in demand for groceries would be sufficient to strengthen the incentives to compete given the essential nature of grocery purchases.
- 5.4 These features combine to weaken the major grocery retailers' incentives to engage in stronger competition than is currently evident because any gains in sales and market share from stronger price competition are likely to be relatively short-lived. In addition, stronger price competition risks turning into a price war given the speed with which price reductions can be detected and matched. While benefitting consumers for their duration, price wars are likely to decrease retail margins in the short term and unlikely to significantly increase sales and individual retailer's market shares over the longer term.
- 5.5 We expect that competition would be more intense at the retail level if there were more large-scale grocery retailers competing across the entire PQRS spectrum for consumers who value one-stop shopping. More intense competition at the retail level would also strengthen competition between grocery suppliers by creating additional opportunities to access customers.
- 5.6 This chapter has four main sections:
 - 5.6.1 how intense is competition at the retail level?
 - 5.6.2 what is the extent of competition between other grocery retailers and the major grocery retailers?
 - 5.6.3 what is the extent of competition between the major grocery retailers?
 - 5.6.4 how does the structure of local grocery markets affect price competition between the major grocery retailers?

How intense is competition at the retail level?

- 5.7 The major grocery retailers consider that the retail grocery sector in New Zealand is intensely competitive and a wide range of different types of grocery retailers provide a strong competitive constraint to the traditional supermarket, especially for smaller shopping missions.³⁹¹
- 5.8 We consider the extent of competition between the major grocery retailers and other grocery retailers, and between the major grocery retailers themselves, in later sections of this chapter.
- 5.9 In this section we consider cross-shopping by consumers across different grocery retailers and reductions in real grocery prices over time.

Evidence of cross-shopping by consumers across different types of grocery retailers does not imply that there is effective competition for consumers' grocery spend

- 5.10 The major grocery retailers told us that cross-shopping across a variety of different types of grocery retailers provides evidence of intense competition in the retail grocery market.³⁹²
- 5.11 For example, Woolworths NZ told us that more than half of New Zealanders will shop at specialist grocery retailers and non-supermarkets in a given month.³⁹³ Additional analysis provided to us by Woolworths NZ also shows that some consumers will visit other food and grocery retailers on the same shopping trip.³⁹⁴
- 5.12 Evidence of consumer cross-shopping is insightful for purposes of assessing the extent to which consumers consider different types of grocery retail banners as alternatives to each other. It may also be evidence of price competition between grocery retailers if it could be shown that consumers choose the store with the lowest prices for the products they want to buy on a particular shopping mission.

³⁹¹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 11-28; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 1; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4-5.

³⁹² For example: Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [34.5]; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [25.5]; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [3.6.6].

³⁹³ Woolworths NZ provided evidence based on [] to show that [] of New Zealanders will shop at other grocery retailers in a given month, Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [29.2.1].

³⁹⁴ Analysis [] found that consumers spent [] on food and grocery products at other grocery retailers within 30 minutes either side of a shopping trip to Countdown, where the average shopping basket at Countdown is itself [], Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [29.2.2].

- 5.13 In contrast, evidence of cross-shopping may reflect consumers satisfying different needs at different types of grocery retailers or through different channels of sale. This is consistent with the findings of the Ipsos study which found some participants typically preferred to shop at one store for most of their groceries, supplementing this with secondary or top-up shops to take advantage of specific characteristics of other grocery retailers.³⁹⁵
- 5.14 We consider the utility of the evidence of cross-shopping provided by the major grocery retailers is limited when drawing conclusions about the intensity of competition in the retail grocery market because:
- 5.14.1 The evidence does not distinguish between cross-shopping in response to competition between grocery retailers and cross-shopping done for other reasons. We have not seen evidence that cross-shopping reflects consumers' responses to strong competition rather than other factors such as convenient location.
- 5.14.2 Some of the evidence provided is aggregated statistics about the proportion of customers that cross-shop, rather than spending patterns. This does not tell us how significant cross-shopping is for competition.
- 5.14.3 There are limitations to some of the analysis of cross-shopping that limit the usefulness of its findings.³⁹⁶
- 5.15 The differentiated nature of the retail grocery market means that competition will be more intense between grocery retailers that compete to attract and retain the same group of consumers with similar preferences for PQRS combinations. This is because they face a greater risk that a material portion of consumers will switch their grocery spend to other grocery retailers in response to an increase in price (or deterioration in other non-price dimensions of competition) of their respective retail grocery offers relative to those of other grocery retailers (see Chapter 4).
- 5.16 However, the evidence of cross-shopping provided to us does not provide any further insights into the typical proportional allocation by consumers of their total grocery spend between different types of grocery retailers, or how this allocation is likely to change in the event of a material change in the quality of the retail grocery offer of competing grocery retailers.

³⁹⁵ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 8-9.

³⁹⁶ For example,
[

- 5.17 Further, the evidence does not provide any insights into the extent of overlap between the types of products typically purchased by consumers at a major grocery retailer banner and other grocery retailers on the same shopping trip. We are therefore unable to reach any conclusions as to whether the products typically purchased on the same shopping trip reflect complementary purchases by consumers of grocery products that are, for example, not available at one type of grocery retailer, or if the products are substitutable and compete directly with each other for consumers' grocery spend.
- 5.18 The cross-shopping evidence provided to us is not strongly indicative of intense retail competition in the grocery sector. Some of it could support an opposing view. For example, some evidence suggests that promotions do not drive choice of supermarket for many customers.³⁹⁷ This may mean that many customers cross-shop for reasons other than the intensity of competition between grocery retailers.

Evidence of a decline in real grocery prices over time is not informative of the effectiveness of competition in the retail grocery market

- 5.19 In addition to the cross-shopping evidence discussed above, Woolworths NZ is also of the view that evidence of a decline in real grocery food prices over the last decade shows that the market is workably competitive.³⁹⁸ Woolworths NZ told us that food inflation (excluding restaurant and ready-to-eat meals) in New Zealand has grown on average by less than general inflation.³⁹⁹ Furthermore, retail price inflation at Countdown has been restricted to 0.7% per annum, which is below Consumer Price Index (CPI) inflation of 1.6% per annum and increases in Woolworths NZ's input costs of 1.7% to 3.7% per annum.⁴⁰⁰

³⁹⁷ [].

³⁹⁸ Woolworths NZ analysed trends in real grocery prices over time by considering whether retail grocery food prices have decreased in real terms (that is, grown more slowly than CPI and input costs) over the last decade, Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [2.1.2.1].

³⁹⁹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 3.

⁴⁰⁰ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [2.1.2].

- 5.20 We have assessed these claims using data obtained from Woolworths NZ and CPI and Food Price Index (FPI) data from Statistics New Zealand.⁴⁰¹ Our analysis confirms that for the most part, CPI inflation was above inflation in FPI and FPI (excluding restaurants) between 2010 Q2 and 2020 Q2.⁴⁰²
- 5.21 However, in our view changes in relative food prices over time compared with the CPI do not necessarily provide insight into the level of competition in the retail grocery sector. There are two main reasons for this:
- 5.21.1 Changes in nominal retail food prices are determined by a combination of the retailers' wholesale purchase costs and the services provided by the retailer. The wholesale cost makes up around two thirds of the retail price. Changes in wholesale costs will largely reflect changes in demand and supply conditions in the relevant food production market. For example, Statistics New Zealand reported that annual food prices increased by 4.5% in December 2021 driven largely by increases in the prices of tomatoes, yoghurt, standard two-litre milk and fresh eggs.⁴⁰³ Grocery retailers have limited ability to influence prices in food production markets although as we discuss in Chapter 8, their buyer power may influence the extent to which wholesale cost increases are passed through to retailers' cost of goods sold.
- 5.21.2 Similarly, changes in the nominal prices of other goods and services measured by the CPI will also be largely determined by demand and supply conditions in their relevant markets and may increase at a faster rate than food prices. In this regard, annual inflation in the year to December 2021 was 5.9% driven predominantly by increases in prices for 'household and utilities' by 7.6% and transport by 15%.⁴⁰⁴

⁴⁰¹ The CPI is a weighted average measure of prices of 11 groups of goods and services purchased by consumers. The FPI measures the 'food' group and makes up 18.72% of the CPI. This is the second largest group behind 'Household and household utilities' which has a weighting of 28% of the CPI. That group includes housing rental and new house construction costs, Statistics NZ "DataInfo+: Consumer Price Index" (September 2010) https://datainfoplus.stats.govt.nz/Item/nz.govt.stats/8b0860b8-cf63-4f12-a578-8eed8ba69ac3?&_ga=2.114807552.687459114.1645258135-1553157585.1637115933&_gac=1.185940571.1643233625.Cj0KCCQIA_8OPBhDtARIsAKQu0gbSjH6fsB3FgGcpcbqzqEn4dlzHh8vILRzD899Aob_7BauzpXQGpPcEaAuTVEALw_wcB#/nz.govt.stats/24daf577-e941-4a5c-9ba1-f43c5afb5e1e/1#.

⁴⁰² We note our analysis shows that FPI inflation was significantly higher than CPI inflation in the period immediately preceding the selected timeframe of Woolworths NZ (October 2006 to June 2010), [].

⁴⁰³ Statistics NZ "Annual food price increase the highest in a decade" (20 January 2022), available at: <https://www.stats.govt.nz/news/annual-food-price-increase-the-highest-in-a-decade>.

⁴⁰⁴ Statistics NZ "Consumer Price Index: December 2021 quarter" (27 January 2022), available at: <https://www.stats.govt.nz/information-releases/consumers-price-index-december-2021-quarter>.

- 5.22 Woolworths NZ also considered that if competition was not working well in the retail grocery sector, then increased input costs (variable costs that impact on marginal costs and hence price) would have been not only passed through to consumers, but more than passed through. However, Woolworths NZ told us it has not passed on all its variable cost increases through to consumers because of effective competition in the retail grocery market that has led to increased efficiencies.⁴⁰⁵
- 5.23 Consistent with Woolworths NZ's experience, we would generally expect to see less than full pass through of cost increases, except in limited specific circumstances.⁴⁰⁶ Therefore, we do not consider evidence of Woolworths NZ not passing through all its variable cost increases to consumers to be informative of the effectiveness or intensity of competition in the retail grocery sector.
- 5.24 We are therefore of the view that the evidence provided by Woolworths NZ on the decline of real grocery prices over time and pass-through rates is not informative of the effectiveness of competition in the retail grocery sector.

What is the extent of competition between other grocery retailers and the major grocery retailers?

- 5.25 We received a range of perspectives on the extent to which other grocery retailers compete with the major grocery retailers. The major grocery retailers consider that a wide range of different types of grocery retailers provide a strong competitive constraint to the traditional supermarket, especially for smaller shopping missions.⁴⁰⁷

⁴⁰⁵ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [2.1.2].

⁴⁰⁶ The degree of cost pass-through in a competitive market depends on the slope and shape of the demand and marginal cost (supply curves). In a perfectly competitive market, we would expect any increases to marginal cost to be passed through one-to-one. In a competitive market we would not expect to observe any pass-through rates greater than 100% except where the marginal cost curve is downward sloping, which seems unlikely to be the case for groceries in New Zealand. Where firms have market power (and face a downward sloping marginal revenue curve), then depending on what the marginal cost curve looks like it is not unexpected for pass-through of increases in marginal cost to be less than one-to-one. In addition to the shape of the marginal cost curve, this result also depends on whether the increase to marginal cost is constant or changes depending on quantity, Commerce Commission "Market Study into the retail fuel sector – Final report" (5 December 2019) at [E38]-[E48].

⁴⁰⁷ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 11-28; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 1; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4-5.

- 5.26 In contrast, the NZFGC and Consumer NZ both consider the constraint provided by other grocery retailers to be limited.⁴⁰⁸ T&G Fresh also told us that supermarkets hold considerable market share compared to other grocery retailers who may be more specialised and offer limited products.⁴⁰⁹
- 5.27 In the sections below we complement some of our conclusions in Chapter 4 and assess the current and anticipated future competition between the major grocery retailers and other grocery retailers for consumers' grocery spend. We also consider whether there is any evidence that the major grocery retailers adjust their prices or other non-price dimensions of their retail grocery offer in response to competition by other grocery retailers.
- 5.28 Other grocery retailers provide limited competition to the major grocery retailers in some instances and in some locations. However, there is limited incentive for the major grocery retailers to adjust their retail grocery offering in response to competition from other grocery retailers on a consistent basis. We conclude that this is because there is a low risk that a material portion of consumers will switch their grocery spend to other grocery retailers in response to an increase in price (or deterioration in other non-price aspects of competition) of their respective retail grocery offers relative to those of other grocery retailers.
- 5.29 We further explain the constraint from other retailers in the following sections.

Different types of grocery retailers may exercise asymmetric competitive constraints on each other

- 5.30 Asymmetric competition describes the extent to which firms are unevenly in competition with each other. For example, larger grocery stores may constrain the retail grocery offer of smaller stores while the reverse may not be true.
- 5.31 As discussed in Chapter 4, the major grocery retailers are uniquely placed to offer a wide range of groceries at locations which consumers can easily access (both in store and online), at prices which are generally lower than other grocery retailers. Other grocery retailers are generally unable to offer the convenience of one-stop shopping which means they are constrained by supermarkets with a wide product range, access to products at more competitive prices and greater geographic coverage. However, the evidence shows that the constraint imposed by most other grocery retailers on the major grocery retailers is generally limited. We therefore consider that there are asymmetric competitive constraints between other grocery retailers and the major grocery retailers.

⁴⁰⁸ NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 20; Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4.

⁴⁰⁹ T&G Fresh "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 3.

- 5.32 We have seen some evidence of price monitoring by the major grocery retailers of prices charged at some other grocery retailers and adjustments to their prices for some products as a result. For example, Foodstuffs NI told us that some individually owned stores monitor prices charged by the Mad Butcher and have lowered prices in response to that competition.⁴¹⁰
- 5.33 However, we have seen little evidence to suggest that such price comparisons are done on an ongoing and consistent basis across a wide range of product categories by the major grocery retailers or that these comparisons affect the major grocery retailers' national pricing decisions. Indeed, Foodstuffs NI noted that price competition with other retailers occurs mainly at store level, rather than the co-operative level.⁴¹¹ This supports our view that there is limited price competition between other grocery retailers and the major grocery retailers (see Chapter 4).
- 5.34 In contrast, most other grocery retailers told us they frequently monitor prices of similar products stocked at the major grocery retail banners located in close proximity to their own stores and that they make price adjustments accordingly to ensure that their prices of commonly stocked products are competitive.⁴¹²
- 5.35 We also note that in instances where some categories of other grocery retailers compete with the major grocery retailers on price they tend to focus on particular products or subsets of consumers, such as those products stocked at international food stores or consumers who are willing to buy bulk goods.⁴¹³
- 5.36 Frontier Economics assessed the extent to which other grocery retailers located in close proximity to the major grocery retailers have any effect on the prices set by the major grocery retailers banners. They found that there is little evidence that other grocery retailers have an effect on the prices set by the major grocery retailers.⁴¹⁴
- 5.37 Frontier Economics also assessed the impact that entry by two new Farro Fresh stores in Auckland had on pricing of the major grocery retailers. They found a lack of evidence that the opening of two new Farro Fresh stores constrained the pricing of the major grocery retailers.⁴¹⁵

⁴¹⁰ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [261.2].

⁴¹¹ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [261.2].

⁴¹² For example: []; [].

⁴¹³ []; [].

⁴¹⁴ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 30-31.

⁴¹⁵ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 37.

- 5.38 We consider the finding of Frontier Economics that local market concentration appears to have little or no effect on price competition between grocery retailers, also appears to confirm that the aggregated effect of competition by other grocery retailers in local markets is not sufficient to increase the intensity of price competition at either a local, regional or national level.
- 5.39 We have also seen some evidence of the major grocery retailers adjusting their product range and service offerings in some local markets to compete with the likes of meal kit providers, international food stores or other supermarkets such as Farro Fresh.⁴¹⁶ However, it is difficult for other grocery retailers who lack scale and scope to have a similar competitive response to innovations and adjustments of the respective retail grocery offers of the major grocery retailers (see Chapter 3).
- 5.40 Nevertheless, we agree with the submission by Foodstuffs SI that a retailer with a broader offering, albeit with one or two omissions such as fresh vegetables/dairy, offers more general competition to the major grocery retailers. This is particularly so for those consumers whose mission is not a main shop. This means that competition between the major grocery retailers and other grocery retailers is likely to be closer where consumers are engaged in shops other than a main shop.⁴¹⁷
- 5.41 Woolworths NZ also told us that it competes closely with Chemist Warehouse across multiple categories, including health and beauty, baby, household cleaning and pharmaceutical needs and that its entry has had an impact on Woolworths NZ's sales.⁴¹⁸
- 5.42 We acknowledge that the major grocery retailers face some competition from Chemist Warehouse across these product categories. However, the product offering of Chemist Warehouse only overlaps with a small percentage of those offered by the major grocery retailers. It does not offer any dry groceries or fresh produce. We are therefore of the view that the extent of competition between the major grocery retailers and Chemist Warehouse is limited.
- 5.43 Similarly, the major grocery retailers consider that they face increasing competition from The Warehouse Group and its e-commerce platform provider, TheMarket, for some product categories. For example, Foodstuffs NI told us that they face strong competition from The Warehouse Group on a national basis for particular grocery items such as personal care products, confectionery, baby products, pet food, dry groceries and household products.⁴¹⁹

⁴¹⁶ For example: Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [28]; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [29.3.1.4].

⁴¹⁷ Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 14-15.

⁴¹⁸ Woolworths NZ "Submission on Market study into grocery sector draft report (10 September 2021) at [30.8.2].

⁴¹⁹ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [25] & [145.1].

- 5.44 We agree that the major grocery retailers may face some competition from The Warehouse across these product categories. However, we consider that the current grocery product offering of The Warehouse Group is limited. For example, it does not offer any fresh produce or chilled goods in most of their stores. The Warehouse Group also told us that while they offer customers a range of ambient grocery products, it does not currently have the necessary scale and capability to be regarded as an effective constraint on the major grocery retailers.⁴²⁰ This means that they are unlikely to provide consumers with an effective alternative to the one-stop shopping option provided by the major grocery retailers that caters to a diverse range of consumer preferences across all shopping missions (see Chapter 4).
- 5.45 The Dairy and Business Owners Group emphasised the role of dairies, convenience stores and service stations in providing groceries to consumers.⁴²¹ We acknowledge that these retailers may provide an alternative to the major grocery retailers for some consumers on smaller shopping missions. However, we have seen little evidence to suggest that the major grocery retailers adjust their prices or other non-price dimensions of their retail grocery offer in response to competition by dairies, convenience stores or service stations.

Meal kit providers and food box operators provide an additional convenience option for consumers

- 5.46 Increased demand from consumers for convenience in the form of home delivery options has led to significant growth of meal kit providers and food box operators in New Zealand in recent years, albeit from a low base. The COVID-19 pandemic has also contributed to growth in the number of consumers using these services.

⁴²⁰ The Warehouse Group “Comments on submissions on preliminary issues paper” (12 April 2021) at 1. We estimate that The Warehouse Group currently account for less than [] of the total retail grocery market. This is based on data provided to us by The Warehouse Group showing that it had total grocery sales of approximately [] and data from Statistics NZ on the total size of the retail grocery sector (\$22 billion): []; Statistics NZ “Retail Trade Survey: December 2020 quarter” (21 February 2021) at Table 1, excluding GST.

⁴²¹ Dairy and Business Owners Group “Submission on Market study into grocery sector draft report” (25 August 2021) at 1.

- 5.47 The major grocery retailers consider that meal kit providers such as My Food Bag and HelloFresh operate as direct competitors to traditional grocery retailers by reducing the need for main shops.⁴²² The major grocery retailers have expanded their ready-to-eat and quick-to-prepare in-store offerings in response to the competition provided by meal kit providers. For example, Woolworths NZ told us that there is an increasing offering of convenience initiatives and “ready-to-eat” options within large-format grocery stores, and they have implemented other initiatives such as layout changes to bring read-to-eat food closer to the front of the store.⁴²³
- 5.48 Woolworths NZ also told us that the expansion of My Food Bag from being a meal kit supplier to supplying a range of grocery products as an online grocery retailer is evidence of increased competition in the retail grocery sector through new entry and expansion.⁴²⁴ However, the additional range of grocery products stocked by My Food Bag is significantly smaller than those of the major grocery retailers and complementary to the meal kits provided. We consider them unlikely to provide strong competition for many shopping missions and for consumers’ total grocery spend in the foreseeable future.
- 5.49 However, the NZFGC and Consumer NZ suggest that meal kits are unlikely to place a significant competitive constraint on the major grocery retailers, as they tend to be targeted at a specific consumer segment, which would generally include less price sensitive consumers.^{425, 426}
- 5.50 A meal kit provider told us that although they compete to some extent with the major grocery retailers on food consumption expenditure, their direct competitors are other meal kit providers.⁴²⁷ Similarly, a food box operator told us that although they view anyone selling similar products as a competitor (including the major grocery retailers), their closest competitors for the same wallet spend are meal kit providers and other food box operators.⁴²⁸

⁴²² For example: Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 6; Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 2-3. Woolworths NZ told us that there has been a significant uptake of meal kit providers and that this channel is estimated to be worth over [] and growing at more than [] per annum in New Zealand.

⁴²³ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 23.

⁴²⁴ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [30.2.3].

⁴²⁵ NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 21.

⁴²⁶ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 4.

⁴²⁷ [].

⁴²⁸ [].

- 5.51 Some participants in the Ipsos study mentioned exploring alternatives such as food boxes and meal kit deliveries. However, while many participants noted having tried a meal kit or food box delivery service in the past, only a handful were regular users. A lot of the uptake of food boxes and meal kits reported by participants related to aggressive pricing promotions, variety, choice and convenient solutions.⁴²⁹
- 5.52 Further, the overall financial commitment required to regularly subscribe to meal kit providers and food boxes and the fact that they do not fully remove the need for some grocery shopping, means that participants in the Ipsos study were less likely to switch all their spending to meal kits or adopt these as a long-term alternative.⁴³⁰
- 5.53 The overall benefits of these services for participants were time saved on meal planning and preparation, as well as new variety and portion control. However, many found meal kits to be more costly than a typical grocery order and often time consuming to prepare. Those who had used them felt that it had not stopped them from doing a regular grocery shop, as other meals and non-food grocery items still need to be purchased.⁴³¹
- 5.54 Meal kits provide an additional convenience option for consumers and as such there is a degree of competition between meal kit providers, food box operators and the major grocery retailers for some shopping missions by consumers that value convenience and the other benefits of those services that are discussed above.
- 5.55 Meal kit providers tend to provide a differentiated service to that offered to consumers by the major grocery retailers. This means that meal kits are generally not considered a complete substitute for supermarket shopping as consumers still need to do a regular grocery shop for essential items. To the extent that meal kits replace some items that would otherwise be purchased from a grocery retailer, we agree with Foodstuffs NI that if a customer chooses to purchase a meal kit then the size and value of the basket of goods they need to purchase from a supermarket will be smaller.⁴³²

⁴²⁹ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 40.

⁴³⁰ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 40.

⁴³¹ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 40. We note that participants in the Ipsos study indicated that meal kits and food boxes were seen to have more competition than grocery retailers due to the number of available brands and the aggressive promotional behaviour. Participants felt that price and choice was available in this segment of the market as it was viewed as less ‘structured’ than the supermarkets.

⁴³² Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [252].

- 5.56 However, as discussed in Chapter 3, it appears that the major grocery retailers have been able to fairly easily respond to innovations from meal kit providers, for example, by increasing the availability of ready meals at major grocery retailer stores.⁴³³ This increases consumers' choices of convenient meal options but also makes it easier for consumers who value one-stop shopping to combine a 'quick and easy meals' shopping mission at a major grocery retailer with other missions to obtain the benefits of one-stop shopping rather than choosing to purchase from a meal kit provider.
- 5.57 In addition, meal kit providers and food box operators may not provide a viable alternative option for all consumers, particularly for those who are more price sensitive.
- 5.58 Finally, although meal kit providers have grown significantly in recent years, their combined share of the total retail grocery market remains small.⁴³⁴ As discussed in Chapter 3, the slow growth of online grocery sales in New Zealand implies that online competitors such as meal kit providers are unlikely to provide significantly more competition to the major grocery retailers in the foreseeable future.

The combined market shares of the major grocery retailers is persistently high and relatively stable over time

- 5.59 In this section we provide estimates of market shares and concentration in the retail grocery sector. Although we have not formally defined a market as part of our study, we refer to these estimations as market shares for purposes of our analysis.
- 5.60 The relationship between the concentration or structure of the market and intensity of competition is somewhat ambiguous. For example, greater concentration might indicate a decline in competition, but might also demonstrate that competition is effective and that more efficient firms have been able to gain market share.⁴³⁵
- 5.61 The ease of entry and expansion is relevant to understanding the information that can be gleaned from analysing market shares and concentration. If it is relatively easy for competitors to enter and expand then we would generally have fewer concerns about the intensity of competition even in highly concentrated markets.

⁴³³ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [275].

⁴³⁴ We estimate that meal kit providers currently account for less than [] of the total retail grocery market. This is based on the submission from Woolworths NZ that the channel accounts for approximately [] and data from Statistics NZ on the total size of the retail grocery sector (\$22 billion), Statistics NZ "Retail Trade Survey: December 2020 quarter" (21 February 2021) at Table 1, excluding GST.

⁴³⁵ OECD "Summary of Discussion of the Hearing on Market Concentration (2018)" *DAF/COMP/M(2018)1/ANN6/FINAL* (12 November 2019) at 2, available at: [https://one.oecd.org/document/DAF/COMP/M\(2018\)1/ANN6/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2018)1/ANN6/FINAL/en/pdf).

- 5.62 It is also important to consider concentration over a longer period in conjunction with market shares and other evidence on market structure. For example, while higher concentration levels in a market might simply reflect more efficient firms outperforming the others, we might also expect to see those other firms and new entrants competing to catch up and displace those efficient firms.⁴³⁶ High market shares held over a long period of time can therefore be an indicator of market power and weak competition.⁴³⁷
- 5.63 We agree with the major grocery retailers that evidence of high concentration and market shares alone is not conclusive of a lack of competition in the retail grocery market.⁴³⁸ However, our analysis of concentration and market shares provides useful insights into the strength of competition. Furthermore, our market share analysis is just one factor we assess in this study. We also consider other relevant factors to assess the extent of competition between grocery retailers such as the nature of competition for consumer demand (see Chapter 4), the intensity of existing and future competition (see from paragraph 5.92 below), and conditions of entry and expansion (see Chapter 6).
- 5.64 We also acknowledge submissions from the major grocery retailers that some of the estimates we discuss below, particularly those in Table 5.1 below, and our other market share estimates more broadly, are an overestimation of their respective market shares, mainly because of data limitations.⁴³⁹ However, we consider that the broad definition used by Statistics New Zealand for the purposes of estimating the total size of the retail grocery market means that it is unlikely that our estimates in Table 5.1 below are an overestimation of the individual and combined market shares of the major grocery retailers.
- 5.65 We are mindful of the data and methodological limitations associated with market share and concentration estimates in general. For that reason, we used two different sources of information and different methodologies to test whether the views we form about market shares and concentration are robust to changes in data source and methodology.

⁴³⁶ Absent any other factors such as demand or supply shocks that may result in greater variation of market shares.

⁴³⁷ We note that high market shares by and of itself do not necessarily mean a firm has market power.

⁴³⁸ Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [12]-[13]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [14]-[15]; Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [24.2].

⁴³⁹ Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [24.3 and 24.3.1]. Woolworths NZ also told us that the use of [

]: Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [24.3.1]; Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [292(c)(i)].

5.66 We have used the following sources of information to estimate market shares of grocery retailers in New Zealand:

5.66.1 evidence provided by the major grocery retailers relating to their estimates of market shares; and

5.66.2 our own estimates based on data from Statistics New Zealand.

Market share estimates used by the major grocery retailers for strategic decision-making purposes show that their combined shares are high

5.67 The major grocery retailers each monitor and estimate market shares to inform their strategic decision making. This monitoring includes their own retail banners and competing major grocery retail banners on a frequent and consistent basis.⁴⁴⁰

5.68 The stores included in the major grocery retailers' estimates of market shares provide evidence of the extent to which they consider other grocery retailers as competitors. We note a few instances where the major grocery retailers include other grocery retailers in their monitoring. However, monitoring mainly focuses on the other major grocery retailer.

5.69 There are some differences between the way major grocery retailers estimate market shares. Some of the main differences include the number and types of grocery retailers included in these estimates; the geographic areas covered in market share estimates; the time periods that market shares are estimated and reported over, and the underlying source of data.

5.70 We reviewed a sample of market share estimates provided by the major grocery retailers to analyse shares for the period January 2015 to January 2020 at both a national and regional level.⁴⁴¹

⁴⁴⁰ For example: []; []; [].

⁴⁴¹ We did not include market share estimates in our sample after January 2020 to ensure that our analysis is not affected by impact of the COVID-19 pandemic.

Table 5.1 Minimum combined market shares of the major grocery retailers (January 2015 to January 2020, Moving Annual Total)⁴⁴⁴

National						
	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020
Foodstuffs	[]	[]	[]	[]	[]	[]
Woolworths NZ	[]	[]	[]	[]	[]	[]
Minimum combined market shares	n/a	n/a	n/a	90-100%	80-90%	80-90%
North Island						
	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020
Foodstuffs NI	[]	[]	[]	[]	[]	[]
Woolworths NZ	[]	[]	[]	[]	[]	[]
Minimum combined market shares	80-90%	80-90%	80-90%	80-90%	80-90%	80-90%
South Island						
	Jan 2015	Jan 2016	Jan 2017	Jan 2018	Jan 2019	Jan 2020
Foodstuffs SI	[]	[]	[]	[]	[]	[]
Woolworths NZ	[]	[]	[]	[]	[]	[]
Minimum combined market shares	80-90%	80-90%	80-90%	80-90%	80-90%	80-90%

Source: Market share estimates based on information provided by the major grocery retailers.⁴⁴⁵

- 5.73 In the few instances we have seen of the major grocery retailers including other grocery retailers in their own estimates of market shares, their combined estimated market share ranges between 75% and 95%.⁴⁴⁶

⁴⁴⁴ The minimum combined market shares is the sum of the lowest estimates of each individual major grocery retailer's estimates of market share for each relevant time period. Given the differences in estimation methodologies used by the major grocery retailers we use a 10% range in Table 5.1 to estimate the combined market share of the major grocery retailers.

⁴⁴⁵ The analysis in Table 5.1 is based on a sample of market share estimates provided by the major grocery retailers for the period January 2015 to January 2020 at both a national and regional level, [].

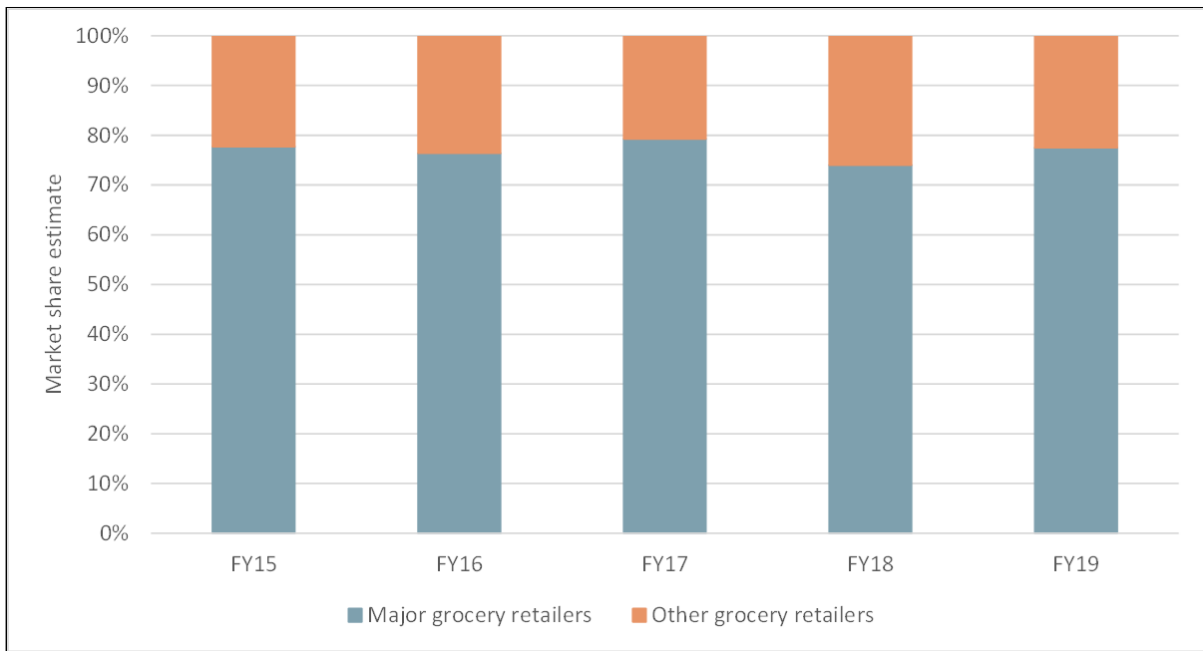
⁴⁴⁶ Estimates by [] for the North Island show that the major grocery retailers have a combined estimated market share ranging between [], []; Different estimates by [] indicate that the major grocery retailers have a combined estimated market share ranging from [] at a national level, [].

5.74 The estimates in Table 5.1 are based on information provided to us by the major grocery retailers that they use consistently for the purposes of tracking their own performance against that of competing retail banners and for other strategic decision-making purposes. However, as noted above, we are aware of the limitations of our estimates. For this reason we sought to test whether other sources of information about market shares and concentration suggest similar results as those based on our analysis of the major grocery retailers’ own data. Our estimates of market shares using Statistics New Zealand are broadly consistent with the internal market share estimates of the major grocery retailers. We discuss this further below.

Market share estimates using Statistics New Zealand data confirm that the combined shares of the major grocery retailers are high

5.75 We tested the major grocery retailers’ estimates of market shares at the national level against our own estimates based on sales revenue data provided by the major grocery retailers and information obtained from Statistics New Zealand (see Figure 5.1 below).

Figure 5.1 Market share estimates using sales revenue and Statistics New Zealand data



Source: Commerce Commission analysis of sales revenue provided by industry participants and Statistics New Zealand data.⁴⁴⁷

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- 5.76 We note that our market share estimates in Figure 5.1 are slightly lower than the estimates based on the major grocery retailers' data (see Table 5.1). This is because Statistics New Zealand includes a wider range of smaller competitors in their calculations of the total size of the retail grocery sector than those included in the estimations of the major grocery retailers.⁴⁴⁸
- 5.77 The major grocery retailers are of the view that the Statistics New Zealand data is not a reliable estimate of the total size of the market, primarily because they say it does not include the full range of other grocery retailers that they compete with.⁴⁴⁹
- 5.78 However, we consider that the Statistics New Zealand data provides the most accurate estimate of the total size of the retail grocery sector available to us, as it includes all other types of grocery retailers that are most likely to provide some competition to the major grocery retailers for the bulk of consumers' grocery spend. It is unlikely that the exclusion of some specialist retailers, such as Chemist Warehouse which compete with the major grocery retailers on a limited product range, from the Statistics New Zealand estimates of the total size of the retail grocery market would make a material difference to a market share and concentration analysis using those estimates.

Different market estimates all show that market shares are relatively stable over time

- 5.79 Despite the different ways market shares can be measured, the individual shares and combined market shares of the major grocery retailers appear to be high and relatively stable over time. We found that most annual estimates of combined shares ranged from 80% to 90% and the lowest estimates of their combined market share were from 70% to 80%.
- 5.80 Our analysis based on annual data suggests that there is some variation in the combined market shares of the major grocery retailers over time of between three to six percent which may suggest some competition between them and other grocery retailers.⁴⁵⁰

⁴⁴⁸ We note that the data obtained from Statistics NZs Retail Trade Survey includes other supermarkets, convenience stores and international food stores, but excludes specialist grocery retailers.

⁴⁴⁹ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [24.3.3]; Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [16.3]; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [12].

⁴⁵⁰ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [38.1].

- 5.81 We agree with submissions that annual aggregate figures can mask variations in market shares on a weekly or local market basis.⁴⁵¹ For example, Foodstuffs NI told us that at a regional level, market shares fluctuate weekly for each banner.⁴⁵² These variations likely reflect the degree of competition between the various grocery retailers and cross-shopping observed in the sector. However, we do not observe this cross-shopping behaviour resulting in significant movements in longer-term market shares.
- 5.82 We consider that what matters for our assessment of competition in this sector is the relative stability of market shares and concentration over time as this can be an indicator of market power and weak competition.⁴⁵³
- 5.83 If there was effective competition in the retail grocery market, we would expect to see greater disruption by other grocery retailers when competing with the major grocery retailers for consumers' grocery spend over a sustained and longer period.
- 5.84 In this regard, there is broad consistency across all the different estimations discussed above. We are of the view that this provides further evidence that other grocery retailers do not compete strongly with the major grocery retailers. For example, the recent entry and expansion by other grocery retailers (eg, meal kit providers) does not appear to have had a material impact on the sales and market share of the major grocery retailers.
- 5.85 Although there is some evidence of variation in the combined market shares of the major grocery retailers over time, we consider that evidence of relatively high and stable individual and combined shares provides further support for our conclusion that competition between the major grocery retailers is muted and not reflective of workable competition. We discuss the extent of competition between the major grocery retailers below from paragraph 5.101.
- 5.86 The major grocery retailers do not consider that evidence of stable market shares necessarily provides evidence that the market is not competitive.⁴⁵⁴ For example, Woolworths NZ says that it cannot be correct to assume that new entry and expansion by the likes of online-only supermarkets, other supermarkets, convenience stores and meal kit providers can occur without impacting the sales and market share of the major grocery retailers.

⁴⁵¹ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [38.2].

⁴⁵² Foodstuffs NI also told us that, for example, for PAK'nSAVE in Auckland it is not uncommon for market share to [], with some weekly changes [], Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [39].

⁴⁵³ Competition and Markets Authority "Merger Assessment Guidelines" (18 March 2021) at [4.12(a)], available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051823/MAGs_for_publication_2021_-_pdf.

⁴⁵⁴ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [24.5].

- 5.87 We agree that the entry and expansion of other grocery retailers is likely to have some impact on the sales and market shares of the major grocery retailers. However, the fact that this is not reflected in material changes in market shares over time indicates that many consumers continue to do the bulk of their grocery shopping at the major grocery retailers despite the wider set of choices available to many of them.
- 5.88 This may be because, as HoustonKemp submitted (on behalf of Foodstuffs) competition is effective between the major grocery retailers.⁴⁵⁵ However, over the longer term we would expect to see firms, including new entrants and other grocery retailers who might currently lack sufficient scale to be competitive, competing to lower their cost bases and win market share from each other. As we discuss in Chapter 6, it is difficult for new entrants and other grocery retailers to achieve sufficient scale to compete effectively with the major grocery retailers, and thus to win significant and growing share from them. Similarly, although we have seen evidence of investment in supply chain innovation by the major grocery retailers (see Chapter 3), the lack of movement in market shares over the longer term suggests a lack of dynamism in competition and that consumers are not benefitting from these investments to the extent possible.
- 5.89 It seems more plausible that the stable individual and combined market shares we observe over time are indicative of weak competition at the retail level rather than effective competition between the major grocery retailers themselves and between the major grocery retailers and other grocery retailers.
- 5.90 Demand for groceries is subject to shifts in taste and market shocks such as the COVID-19 pandemic. However, overall market demand is relatively stable and predictable, because grocery purchases are necessary and frequent. Trend growth is related to population growth. In the absence of the threat of disruption by new entry or expansion, stable demand in a concentrated market such as this will lead to stable market shares because grocery retailers have weaker incentives to compete vigorously on price and risk triggering a price war.
- 5.91 We therefore consider that market share analysis provides further support for our view that the major grocery retailers have a unique competitive advantage in competing for consumers' grocery spend across all different types of shopping missions (see Chapter 4).

There appears to be little scope for increased competition from new entry and expansion of existing other grocery retailers

- 5.92 Given our view that other grocery retailers currently provide limited competition to the major grocery retailers, we have considered the extent to which competition is likely to be strengthened by new entry and expansion by existing retailers.

⁴⁵⁵ Foodstuffs NI "Post conference submission on Market study into grocery sector – Attachment 2" (3 December 2021) at [32].

- 5.93 There are differing views on the future competitive environment in the retail grocery market. The major grocery retailers told us that new entry and expansion by the likes of Costco, Chemist Warehouse, The Warehouse, Geezy Go, Circle K, Supie, The Honest Grocer and meal kit providers will increase competition in the foreseeable future across different types of shopping missions.⁴⁵⁶
- 5.94 In contrast, the NZFGC is of the view that there is no evidence that there would be any material competition from new entry or expansion over a meaningful timeframe. It also told us that grocery shopping should not be conflated with all other types of food consumption and that evidence of new entry provided by the major grocery retailers should be considered proportionately to their ability to constrain the major grocery retailers.⁴⁵⁷
- 5.95 We agree with the major grocery retailers that it is correct to adopt a forward-looking approach when assessing the scope for increased competition from new entry or expansion by existing grocery retailers. However, we consider there is limited scope for new entry and expansion by other grocery retailers to compete more effectively with the major grocery retailers in the foreseeable future. We discuss our reasons below.
- 5.96 There have been a few smaller scale entrants (or entrants with differentiated product offerings) into the sector, such as meal kit providers (eg, Hello Fresh and My Food Bag), online-only supermarkets (eg, Supie and The Honest Grocer), other supermarkets (eg, Farro Fresh) and convenience stores (eg, Circle K). However, as discussed above, other grocery retailers do not impose a material competitive constraint on the major grocery retailers. Small-scale entry, while viable, is therefore likely to have limited effect on the competitive behaviour of the major grocery retailers. Further. As discussed in Chapter 6, the inability of the smaller scale entrants to access a range of competitively priced groceries constrains their ability to expand to a scale to compete more effectively with the major grocery retailers.
- 5.97 We also consider it is unlikely that consumer shopping behaviour will shift to such an extent in the foreseeable future that most competitors no longer benefit from a physical presence. Our reasons for this are discussed more fully in Chapter 3. Instead, online grocery shopping might complement in-store shopping rather than be a substitute for many consumers. There are also supply-side synergies between physical and online grocery retailing.

⁴⁵⁶ For example: Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [69]-[73]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [48-51]; Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [24]; Woolworths NZ “Submission on Market study into grocery sector draft report (10 September 2021) at [30.8.2].

⁴⁵⁷ NZFGC “Post conference submission on Market Study into grocery sector” (25 November 2021) at [2.11]-[2.12] and [3.5].

5.98 It is impossible to accurately predict the likely success of the specific examples provided by the major grocery retailers of planned future entry and expansion. However, based on the characteristics of the entrants we do not consider that planned new entry and expansion is likely to materially impact the major grocery retailers and significantly improve competition for consumers' grocery spend across all types of shopping missions. For example:

5.98.1 **Costco:** We accept that Costco is likely to compete with the major grocery retailers to some extent particularly in certain catchment areas.⁴⁵⁸ For example, Foodstuffs NI considered that Costco will offer lower prices when it opens in New Zealand.⁴⁵⁹ However, its planned entry involves a limited store network at this stage. Costco has confirmed that it intends to open one store in Auckland in 2022,⁴⁶⁰ and it appears that it is actively looking for store sites in Christchurch and Wellington.⁴⁶¹ This limited network may limit the competitive effect of its entry beyond those catchment areas. Further, Costco provides a differentiated offering from the major grocery retailers which may be more likely to appeal to consumers with a certain level of disposable income as it charges a membership fee and offers a relatively limited selection of grocery products, typically in larger package sizes.⁴⁶²

⁴⁵⁸ Foodstuffs NI told us that [], Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [26]. We have also seen other evidence suggesting that the major grocery retailers expect to face increased competition from Costco's entry, for example: []; [].

⁴⁵⁹ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [147.2].

⁴⁶⁰ Stuff "Costco delays its New Zealand launch, but is actively looking for additional sites" (29 October 2020), available at: <https://www.stuff.co.nz/business/industries/123230944/costco-delays-its-new-zealand-launch-but-is-actively-looking-for-additional-sites>; []; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [24.4.1].

⁴⁶¹ We understand that the development of additional stores in Wellington and Christchurch may depend on the success of entry of its Auckland store, Radio NZ "Costco experience opens in NZ mid-August" (9 February 2022), available at: <https://www.rnz.co.nz/national/programmes/first-up/audio/2018829795/costco-experience-opens-in-nz-mid-august>.

⁴⁶² [].

5.98.2 **Geezy Go:** Geezy Go is an online grocery retailer that currently operates in five countries, including the US, UK, India, Australia and New Zealand. In November 2021 it announced its intention to open a network of dark stores in the Auckland region. It also has plans to enter the Wellington market. Its model relies on providing deliveries to consumers via e-bike from its dark stores within a 5km radius.⁴⁶³ However, its typically limited product range of 2,000 SKUs and limited geographic coverage means that it is unlikely to provide effective competition to the major grocery retailers for consumers' grocery spend in the foreseeable future.

5.98.3 **Circle K:** Circle K is a convenience store format with more than 14,000 outlets worldwide. It entered New Zealand in 2018 with four stores located in the Auckland region.⁴⁶⁴ In September 2021 it announced plans to convert more than 100, or 3% of, existing convenience stores across New Zealand to the Circle K brand and store fit-out.⁴⁶⁵ We acknowledge that the expansion of Circle K across New Zealand may provide consumers with an additional convenience option for some smaller shopping missions. However, the typically limited product range offered by convenience stores such as Circle K and Night 'n Day is unlikely to provide effective competition to the major grocery retailers for consumers' entire grocery spend.

5.99 Therefore, absent some unforeseen entry to the market of a new entrant with a similar retail grocery offer to the major grocery retailers, we are of the view that the differentiated product offerings and generally limited geographic coverage and product range of new entrants in the retail grocery market means that they are unlikely to provide more effective competition for consumers' grocery spend in most local markets.

5.100 Entry by new competitors and expansion by existing fringe competitors under current policy settings is unlikely to significantly increase competition to satisfy consumers' demand for one-stop shopping options in the foreseeable future.

What is the extent of competition between the major grocery retailers?

5.101 In this section we assess the intensity of competition between the major grocery retailers.

⁴⁶³ Monique Steele "Online grocer Geezy Go readies 20-minute delivery for NZ" (1 November 2021) Food Ticker <https://www.foodticker.co.nz/online-grocer-geezy-go-to-bring-20-minute-delivery-to-nz/>.

⁴⁶⁴ Circle K <https://circlek.co.nz/>.

⁴⁶⁵ Scoop "PRG set to open 100+ Circle K stores & EV service stations in NZ" (30 September 2021), available at: <https://www.scoop.co.nz/stories/BU2109/S00760/prg-set-to-open-100-circle-k-stores-ev-service-stations-in-nz.htm>.

- 5.102 Given our conclusion that other grocery retailers do not impose a material competitive constraint on the major grocery retailers, the strength of competition between the major grocery retailers is a key driver of the prices, quality and range of grocery products available to New Zealand consumers. In competition terms we refer to this type of market structure as a duopoly with a fringe of other grocery retailers.⁴⁶⁶
- 5.103 We received differing perspectives on the intensity of competition between the major grocery retailers. For example, Foodstuffs NI and Foodstuffs SI told us that Woolworths NZ is a very significant competitive constraint as illustrated by the degree of cross-shopping between the two major grocery retailers.^{467, 468} This is consistent with Woolworths NZ's view that New Zealand has intense price competition and that the major grocery retailers compete head-to-head on a range of price and non-price dimensions of the retail grocery offer.⁴⁶⁹
- 5.104 However, the NZFGC is of the view that competition between the major grocery retailers is not effective, and product and service differentiation may provide a way for them to avoid price competition.⁴⁷⁰ This is consistent with Consumer NZ's view that there is limited competition between the major grocery retailers.⁴⁷¹
- 5.105 There is evidence of competition between the major grocery retailers on both price and non-price dimensions. The strength of this competition varies on a national, regional and local basis (see Chapter 4).
- 5.106 However, we consider that the intensity of this competition is muted by several features which combine to reduce the incentives for the major grocery retailers to compete more effectively with each other.

The major grocery retailers are each other's closest competitors

- 5.107 As discussed in Chapter 4, the two major grocery retailers provide similar retail grocery offers and are each other's closest competitors for consumers' grocery spend. This is confirmed by evidence we have seen of strategic considerations by the major grocery retailers, the Ipsos study and our consumer survey (see Attachment E). We discuss each of these below.

⁴⁶⁶ Whilst there are two separate Foodstuffs co-operatives, there are two major grocery retailers operating stores under national brands on each island.

⁴⁶⁷ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [33].

⁴⁶⁸ Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [24].

⁴⁶⁹ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [29.3].

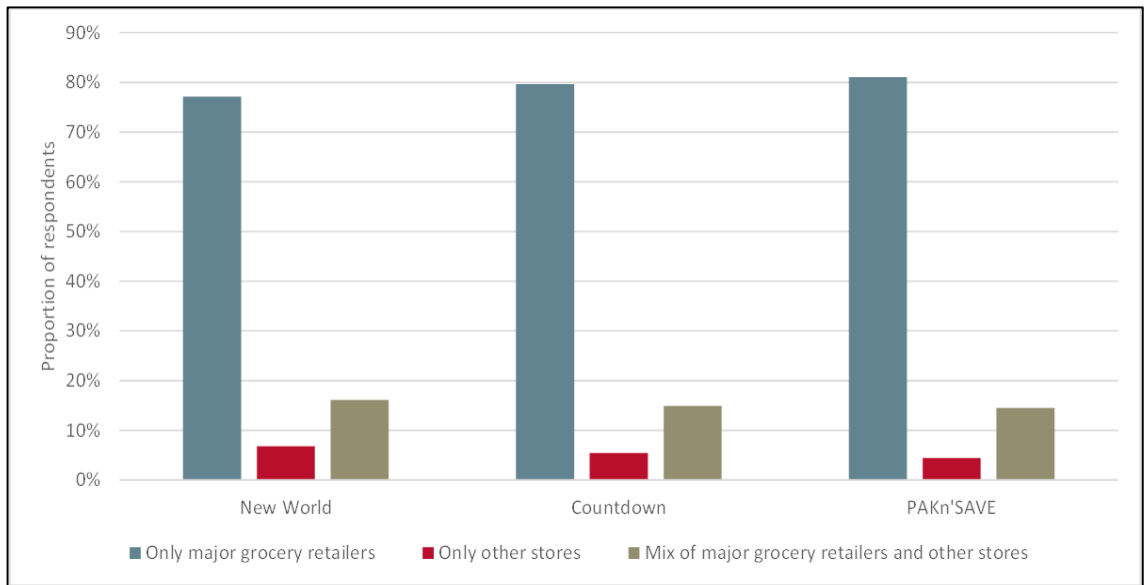
⁴⁷⁰ NZFGC "Submission on Market study into the grocery sector draft report" (26 August 2021) at [3.14].

⁴⁷¹ Consumer NZ "Post conference submission on Market study into grocery sector" (18 November 2021) at 2.

What can we tell about the closeness of competition between the major grocery retailers from our consumer research?

- 5.108 Our consumer survey contributes to our understanding of the closeness of competition between the major grocery retailers as it reveals consumers’ views on the degree of substitutability between them.
- 5.109 Specifically, we asked respondents what their main store was, and where they would shop if their main store(s) closed for the foreseeable future.⁴⁷² The purpose of these questions was to test which stores respondents viewed as the closest substitutes to their main store.⁴⁷³
- 5.110 In Chapter 4 we noted that 95% of survey respondents reported one of the major grocery retailers as their main stores (see Figure 4.2). Figure 5.2 below shows that over 77% of respondents would switch to another of the major grocery retailers’ stores if they reported their main store as Countdown, New World or PAK’nSAVE. This indicates that the consumers who responded to our consumer survey generally viewed the major grocery retailers stores as a closer alternative to their main store than other grocery retailers’ stores.

Figure 5.2 Types of stores that respondents would visit if their main store(s) closed⁴⁷⁴



Source: Commerce Commission analysis of responses to our consumer survey.⁴⁷⁵

⁴⁷² ‘Main store’ was defined as ‘the store you spend most at, or do most of your grocery shopping with’.

⁴⁷³ We gave respondents the option to choose up to 12 types of stores, modified to account for their main store. See paragraphs E123 to E136 in Attachment E for further discussion on this question in our consumer survey.

⁴⁷⁴ We asked respondents which stores would visit if their main store closed for the foreseeable future. Figure E24 in Attachment E shows where respondents would shop by store type. The same size ranges from 3,700 for New World customers to 4,775 for Countdown customers.

⁴⁷⁵ [].

- 5.115.2 improving online delivery services through improvements in the ease of website navigation and timeliness of deliveries;⁴⁷⁹ and
- 5.115.3 strategies around ensuring that stock availability and range improves so that consumers are less likely to supplement their shop at another competing grocery retailer.⁴⁸⁰
- 5.116 We have also seen evidence that even in instances where market share monitoring by the major grocery retailers includes those of other grocery retailers, the combined estimated market share of other grocery retailers is persistently low (see from paragraphs 5.59 to 5.91 above). This is consistent with our view that the major grocery retailers do not compete closely with other grocery retailers and that they are each other's closest competitors.
- 5.117 We discuss the implications of this monitoring activity for the intensity of competition between the major grocery retailers later in this section.

The major grocery retailers appear to strategically differentiate their retail grocery offers from each other

- 5.118 We have seen some evidence suggesting that the major grocery retailers attempt to position themselves differently in the retail grocery market by differentiating their retail grocery offer from one another on both price and non-price dimensions of the retail grocery offer. For example, PAK'nSAVE has a different business proposition that aims to ensure it is positioned to offer New Zealand's lowest food prices and to make its retail grocery offer attractive enough for consumers to accept the trade-off in terms of quality, range and service that comes with the ability to compete strongly on price.⁴⁸¹
- 5.119 The major grocery retailers are of the view that differentiation reflects healthy competition, and that multi-dimensional competition is good for consumers. For example, Foodstuffs NI and Foodstuffs SI consider that differentiation between the major grocery retail banners does not imply that they are segmenting the market between them, but rather suggests that the major grocery retailers are competing with each other to attract customers.⁴⁸² However, we have seen information that suggests there is very little cross-shopping that involves only shopping at both of New World and PAK'nSAVE.⁴⁸³ This suggests to us that Foodstuffs has positioned its banners to both minimise direct competition between them and enable them to compete more effectively with Woolworths NZ banners, as it would appear rational for it to do.

⁴⁷⁹ For example, [].

⁴⁸⁰ For example, [].

⁴⁸¹ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 27 (lines 5-17).

⁴⁸² Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [301]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [273].

⁴⁸³ For example, [].

- 5.120 Woolworths NZ also told us that the extent to which grocery retailers in New Zealand seek to differentiate their product and service offering through competing on aspects such as innovation, shopping experience, product range and service levels is evidence of the intensely competitive nature of the retail grocery sector in New Zealand.⁴⁸⁴
- 5.121 As we have discussed in Chapter 4, consumers have diverse and different preferences. For example, some might prefer lower prices and less differentiation on product range and quality. However, other consumers might prefer convenience and service differentiation over lower prices. To the extent that differentiation caters to these diverse preferences it is likely to provide some benefits to consumers. We consider that the impact of retail grocery offer differentiation on the magnitude of benefits to consumers will depend on the extent of competition between grocery stores who compete across the PQRS spectrum. This is because competitors who target a particular segment of the PQRS spectrum have weaker incentives to compete strongly, particularly on price, with competitors who target a different segment.
- 5.122 Consumer perceptions of differentiation by the major grocery retailer banners may affect the intensity of price competition between the major grocery retailers. This is because the perception consumers have of a retail banner and its retail grocery offer may influence purchasing and switching behaviour.
- 5.123 For example, some participants in the Ipsos study were of the view that each of the major grocery retailers had chosen to focus on different parts of the market and that they did not directly compete on their main brand promises or for the same demographics. Participants also described a trade-off between quality, range of available products and the in-store experience between the major grocery retailer banners.⁴⁸⁵
- 5.124 We agree with the major grocery retailers that competition on non-price elements of the retail grocery offer such as product range, convenience and service levels is an important feature of the retail grocery market.⁴⁸⁶ This is consistent with the findings of our consumer survey (see Figure 4.3).
- 5.125 However, for many consumers price is also an important driver of store choice. We have therefore also considered the extent of price competition between the major grocery retailers. We discuss this further below.

⁴⁸⁴ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [29.3.2.2].

⁴⁸⁵ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 33.

⁴⁸⁶ For example, Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [29.3.2.1].

Competition between the major grocery retailers is muted in some geographic markets

- 5.126 As discussed in Chapter 4, decisions on pricing, promotion and acquisition of products by the major grocery retailers mostly take place at a national or regional (co-operative) level. However, decisions on product range and other non-price elements of the retail grocery offer may be made at an individual store level in local markets (see paragraphs 4.138 to 4.151).
- 5.127 Our analysis of regional variations in grocery options available to consumers shows that there are limited options for consumers that have a preference for one-stop shopping in some local markets, particularly in more remote areas of New Zealand (see Figure 4.11 and Figure 4.12). We have also found that there is an uneven distribution of major grocery retail stores in Wellington (see paragraphs 4.163 to 4.168).
- 5.128 We consider that in local markets or regions where one of the major grocery retailers does not face competition from the other, the intensity of competition on those dimensions of the retail grocery offer that are adjusted locally at the store level will be muted and not reflective of workable competition. In addition, weak competition in local markets may also affect the overall level at which nationally uniform dimensions of the retail grocery offer are set.⁴⁸⁷

Promotional price competition between the major grocery retailers is a feature of the retail grocery sector

- 5.129 The major grocery retailers offer a similar product range, including many of the same proprietary brands and have similar pricing strategies that typically involve some combination of everyday low pricing (EDLP) and high-low pricing strategies whereby the prices of some products are temporarily discounted from their usual shelf price. Retail pricing promotions are a major feature of the New Zealand retail grocery sector and a key part of price competition between the major grocery retailers. We discuss the nature of pricing promotions in more detail in Chapter 7 and in Attachment D.
- 5.130 Retailers' promotional strategies involve negotiations with suppliers as to the products to promote, and the timing and size of the discount from the usual shelf price. The wholesale price that suppliers agree with grocery retailers consists of the general purchasing terms and the suppliers' trade and marketing spend. The latter is the money that suppliers spend with a retailer to market, promote and discount their products.⁴⁸⁸

⁴⁸⁷ UK Competition Commission "The supply of groceries in the UK market investigation" (30 April 2008) at [6.33], available at: <https://webarchive.nationalarchives.gov.uk/20140402194746/http://www.competition-commission.org.uk/our-work/directory-of-all-inquiries/groceries-market-investigation-and-remittal/final-report-and-appendices-glossary-inquiry>.

⁴⁸⁸ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [242].

- 5.131 We understand from our confidential discussions with a range of suppliers that the amount of promotional funding offered by a supplier to a retailer varies. We also understand that sometimes a retailer contributes funds to promotions, but that suppliers' generally fund the majority, if not all.⁴⁸⁹ Suppliers are willing to offer trade and marketing spend to some retailers because they expect that this will generate additional sales at the expense of competing products and brands. Therefore, some of the retail promotional activity we observe is driven by competition between suppliers rather than strong competition between retailers.
- 5.132 We have also seen some evidence that promotional clashes are avoided for some products (see Attachment D). The timing of promotions run by each of the major grocery retailers for some products therefore tends to be staggered. We consider that this mutes the intensity of competition between the major grocery retailers in relation to the promotion and sale of those products.
- 5.133 Promotional price competition between the major grocery retailers appears to be limited and temporary in nature, depending on the length of time that a particular product is being promoted. Periodic price competition on a few items benefits some consumers who prefer that product and are able to time their purchases to coincide with the discount period. However, some consumers that tend to make less frequent grocery shopping trips, such as those in rural areas, may not always be able to time their purchases to coincide with the discount period.
- 5.134 In addition, we explain further in Chapter 7 our view that the array of promotional mechanisms and their complexity and frequent use may make it harder for consumers to accurately assess the value of competing offers or to develop accurate perceptions of value over time. Where this is the case, the competitive benefit of any promotional price competition would be weakened.

Non-promotional price competition between the major grocery retailers appears limited to a subset of grocery products

- 5.135 The evidence suggests that apart from the major grocery retailers' promotional activities, price competition between the major grocery retailers is mostly limited to a subset of grocery items. These are referred to as KVIs. A KVI is a grocery item (or group of items) that drives the value and price perception of a grocery retailer by consumers.⁴⁹⁰

⁴⁸⁹ [].

⁴⁹⁰ For example, Competera "KVIs in Retail: How Business Use Them To Boost Sales" (1 June 2020) <https://competera.net/resources/articles/kvi-pricing>.

- 5.136 For many consumers, price is a key component of where they choose to shop. However, comparing prices across grocery retailers is difficult, especially comparing the prices of all the grocery products stocked at a supermarket. Price sensitive consumers therefore tend to compare the prices of products based on the prices of a few items that they purchase frequently and know the price for. These products tend to be high volume and low margin products that are frequently purchased by many consumers, such as a 454g tin of baked beans.⁴⁹¹
- 5.137 Non-promotional price competition between the major grocery retailers is primarily focused on these products. Evidence we have seen confirms that price monitoring by the major grocery retailers and price competition in response to lower prices offered by the other major grocery retailer seems to focus on KVIs.⁴⁹²
- 5.138 Table 5.2 contains information about KVIs for a selection of stores in each banner during 2019. The number of KVIs for each banner and store appears to vary but generally appears to be a relatively low proportion of the number of SKUs in a store. The proportion of store revenue represented by KVIs also appears to vary across banners and stores but is reasonably high relative to the number of KVIs (ie, in general, KVIs are high revenue items).

Table 5.2 Characteristics of Key Value Items, 2019

Chain	Banner	Number of distinct SKUs	Proportion of SKUs that are KVIs	Proportion of store revenue covered by KVIs	Highest KVI sales rank	Lowest KVI sales rank
FSNI	[]	[]	[]	[]	[]	[]
FSNI	[]	[]	[]	[]	[]	[]
FSSI	[]	[]	[]	[]	[]	[]
FSSI	[]	[]	[]	[]	[]	[]
Woolworths	[]	[]	[]	[]	[]	[]

Source: Commerce Commission analysis of information on KVIs provided by the major grocery retailers⁴⁹³

- 5.139 We have also seen some evidence that the major grocery retailers monitor price levels for KVIs with the aim of maintaining specified price differentials between the different major grocery retail banners.^{494, 495}

⁴⁹¹ Robert Hamlin "Submission on Market study into grocery sector draft report" (26 August 2021) at 3.

⁴⁹² For example, Foodstuffs NI told us that

[], Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [34.2(d)(i)].

⁴⁹³ [].

⁴⁹⁴ [].

⁴⁹⁵ For example: []; [].

The major grocery retailers have weak incentives to engage in stronger price competition

- 5.140 Foodstuffs NI and Foodstuffs SI told us that monitoring the prices of Woolworths NZ with a view to achieving a price differential is not a way of avoiding competition. They consider it is consistent with competition and would be a strong sign of a lack of competition if they did not monitor Woolworths NZ's prices.⁴⁹⁶
- 5.141 We acknowledge that the major grocery retailers' pricing strategies are common across many retail sectors and are not of themselves indicative of weak competition. We would also expect that unless competition is entirely absent competitors would be monitoring and responding to each other's competitive offers. In this regard price monitoring and competition through the active management of price differentials on KVIs may benefit consumers that buy the items that are discounted in response to rivals' lower prices, including those who value aspects of competition other than price and is not necessarily evidence of weak competition.
- 5.142 However, we consider that the major grocery retailers' active monitoring and ability to quickly respond to each other's price competition weakens the incentives for the major grocery retailers to deviate from their competitive strategies which are well known and understood by each other.
- 5.143 These strategies are interdependent and formed on the basis of considering how each other is likely to respond to a particular strategy. Given the high degree of monitoring and transparency in the retail grocery market, we consider it would be rational for a major grocery retailer to expect its closest competitor to rapidly observe and respond to any significant deviations from the established competitive strategy and for the rival competitor to respond as expected to avoid a loss of sales and market share.
- 5.144 There is likely to be little benefit to a grocery retailer from engaging in stronger price competition across a broader range of products as any gains are likely to be short-lived, particularly given the tendency for many consumers to cross-shop between stores. Instead, stronger price competition risks turning into a price war, which while benefitting consumers through its duration, lowers retail margins in the short term with limited gains in sales and profitability over the longer term.⁴⁹⁷
- 5.145 We therefore consider that while there is evidence of price competition between the major grocery retailers, the intensity of competition is muted by the lack of incentive to compete more strongly on price which arises as a consequence of the likelihood of immediate response.

⁴⁹⁶ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [34.2(b)]; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [25.2(b)].

⁴⁹⁷ Robert Hamlin "Submission on Market study into grocery sector draft report" (26 August 2021) at 3; McKinsey & Company "Pricing in retail: Setting strategy" (1 April 2015) <https://www.mckinsey.com/industries/retail/our-insights/pricing-in-retail-setting-strategy>.

- 5.146 This view is supported by evidence about the degree of the anticipated effect on price competition of disruption caused by successful entry into the retail grocery sector of a scale sufficient to compete closely with the major grocery retailers in some local markets.⁴⁹⁸ For example:
- 5.146.1 Northelia, a potential large-scale new entrant, anticipates entry would be met with a “vigorous” reaction from incumbents with prices and margin falling,⁴⁹⁹ and
- 5.146.2 Foodstuffs NI told us that it expects that future competition may include new entrants that compete across the full range with a disruptive or different model to Foodstuffs NI’s, including Aldi.⁵⁰⁰ We note that Aldi’s business model focuses on the supply of a limited range of mainly private label products at low prices.
- 5.147 Overall, we consider there is some competition between the major grocery retailers on both price and non-price dimensions of the retail grocery offer. Price competition focuses mainly on promotional pricing which is often funded by suppliers.
- 5.148 However, the intensity of competition between them is muted and we consider that it does not reflect workable competition. This is because a combination of market features reduces the incentive for the major grocery retailers to compete more intensely with each other (particularly on price). In particular:
- 5.148.1 The major grocery retailers are each other’s closest competitors and have similar competitive strategies which are well known.
- 5.148.2 They closely monitor each other, and the high degree of transparency means they can quickly detect and respond to any changes in their closest rival’s competitive strategy. This limits the gains that might be made from more intense competition, particularly price competition.
- 5.148.3 The market is relatively stable. The retail grocery sector is highly concentrated and the market shares of the major grocery retailers have been relatively high and stable over time. Other grocery retailers face difficulties entering and expanding. The demand for groceries is also relatively stable and predictable, largely reflecting population growth. These features limit the scope for significant disruption to the major grocery retailers’ existing competitive strategies.

⁴⁹⁸

[];

[].

⁴⁹⁹ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 7 (lines 26-27).

⁵⁰⁰ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 10 (line 5).

Are grocery retailers accommodating each other's behaviour?

- 5.149 We consider that the major grocery retailers' weak incentives to engage in stronger price competition that we discussed above are in part a consequence of their duopolistic interdependence and the general stability in the sector. These features mean that there does not necessarily need to be direct or indirect communication between them for weak competition to result. Instead, it has evolved over time from a reduction in uncertainty about how the other will likely react and respond to changes in competitive strategy by one of them.
- 5.150 We also assessed whether there is evidence of direct or indirect communication between grocery retailers that may allow them to coordinate their actions to achieve and sustain higher than competitive prices and profits. This is called accommodating behaviour.
- 5.151 Our merger guidelines explain the range of factors that are likely to make accommodating behaviour more or less likely in a particular market.⁵⁰¹ Some features of the retail grocery sector make it vulnerable to accommodating behaviour although we acknowledge that there are other features that make accommodating behaviour less likely.⁵⁰²
- 5.152 We received differing perspectives on the extent to which there may be accommodating behaviour between grocery retailers in New Zealand. The major grocery retailers consider that accommodating behaviour is neither occurring nor likely to occur in the retail grocery sector.⁵⁰³ However, the NZFGC and Consumer NZ both consider the risk of accommodating behaviour to be a concern.⁵⁰⁴
- 5.153 Explicit coordination may be harmful and breach cartel laws. We have not seen evidence in this study of cartel conduct in the retail grocery sector that may breach the Commerce Act.
- 5.154 We considered whether certain conduct we observed may amount to accommodating behaviour which does not breach the Act but could impact competition. We did not find evidence of accommodating behaviour in the retail grocery sector. Nevertheless, we consider that it is vulnerable to such behaviour and measures to improve competition are likely to reduce the potential for accommodating behaviour.

⁵⁰¹ Commerce Commission "Mergers and acquisitions guidelines" (July 2019) at [3.89].

⁵⁰² We discussed features of the retail grocery market that may make it vulnerable to accommodating behaviour in more detail in our draft report, Commerce Commission "Market study into the retail grocery sector" (29 July 2021) at [5.141]-[5.149].

⁵⁰³ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 25-26; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 17; Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 60-61.

⁵⁰⁴ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [3.18]; Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4-6.

- 5.155 We found no evidence of leader-follower behaviour in the retail grocery sector. We analysed pricing data provided by the major grocery retailers to assess whether there is any evidence of leader-follower type pricing behaviour. We found no clear pattern of high correlations of price changes across any of the geographic clusters used for the purposes of analysing price correlations across stores (see Attachment D).
- 5.156 We considered whether communications between the major grocery retailers and common suppliers may be used to avoid promotional clashes. We have not seen evidence of any direct communications between any grocery retailers through common suppliers with the aim of influencing each other's retail grocery offers. We are also not aware of any evidence that the major grocery retailers have advance communication on the promotional schedules of competitors. However, we have seen some evidence of grocery retailers seeking information from suppliers about the prices, discounts and promotions of their rivals.⁵⁰⁵ We have also seen some evidence that promotional clashes are avoided for some products (Attachment D).
- 5.157 We also assessed whether the maintenance of price differentials between retail banners may have similar effects as market sharing arrangements. We have seen evidence that the major grocery retailers are actively managing price differentials between their respective retail banners for specific product categories. However, we have seen no evidence of any direct communication between the major grocery retailers to maintain these price differentials between their respective retail banners.
- 5.158 Finally, we considered whether national pricing may facilitate coordinated conduct. HoustonKemp told us that national (or uniform) pricing does not necessarily facilitate coordinated conduct for several reasons.⁵⁰⁶ We agree but note that increased price transparency through uniform pricing is a feature of the retail grocery market that may potentially make it vulnerable to accommodating behaviour through increased visibility of each other's retail grocery offerings.

How does the structure of local grocery markets affect price competition between the major grocery retailers?

- 5.159 In this section we discuss the quantitative analysis conducted by Frontier Economics to examine how the structure of local grocery markets affect price competition between the major grocery retailers.

⁵⁰⁵ For example: []; [];

⁵⁰⁶ Foodstuffs NI "Post conference submission on Market study into grocery sector – Attachment 2" (3 December 2021) at [233]-[278].

5.160 Overall, the analysis by Frontier Economics suggests that local market concentration appears to have little or no effect on price competition between the major grocery retailers. There is also no material effect on prices of new entry, exit or rebranding on prices in local markets. This is consistent with our finding that price competition between the major grocery retailers is muted and does not reflect workable competition. We discuss the analysis further below.

Local market concentration appears to have little or no effect on price competition between the major grocery retailers

5.161 Frontier Economics tested whether there is a relationship between concentration and prices in local grocery markets. These tests were conducted by comparing the way in which variations in concentration across local grocery markets are related to variations in prices.⁵⁰⁷ They also controlled for various other factors that may influence variations in prices, such as retail banner and demographics.⁵⁰⁸

5.162 For the purposes of conducting the tests Frontier Economics defined separate geographic markets around each of the 694 stores in the sample (the focal stores). The market for each focal store included all those stores which exercise a constraint on the prices, range or quality of service of the focal store.⁵⁰⁹ We used the results of this estimation of the approximate geographic size of local grocery markets in our discussion of local geographic markets in Chapter 4.

5.163 Two different methods were used to measure market concentration levels for each of the 694 focal stores. The first measure was the focal store's share of local market revenue of the major grocery retailer group to which the focal store belongs, where these shares were weighted to account for the distance of competing stores to the focal store. The second measure was the proximity of the closest store of each of the six major grocery retail banners to the focal store.⁵¹⁰

⁵⁰⁷ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 17.

⁵⁰⁸ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 25-26.

⁵⁰⁹ The focal store is defined as the store around which a market is defined in each local grocery market. An underlying assumption of this analysis that the constraint of a competitor is likely to be greatest for stores located close to the focal store and that the constraint decreases for stores located further from the focal store, Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 21.

⁵¹⁰ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 23-24.

- 5.164 Separate tests were conducted for each of the different major grocery retail banners. The results of the tests vary somewhat, depending on the measure of market concentration. In models with weighted revenue share as the concentration variable, Frontier Economics found that increased concentration in local markets tends to be associated with higher prices in the cases of Four Square, New World and SuperValue.⁵¹¹ However, no consistent effects were found for the other major grocery retail banners.
- 5.165 In models using proximity to the major grocery retail banners as the concentration measure, Frontier Economics found that Four Square stores tend to have lower prices when a FreshChoice or SuperValue store is located nearby. Countdown, FreshChoice and SuperValue stores tends to have lower prices when a New World store is located nearby, by around 1%. However, no consistent effects were found for the other major grocery retail banners.⁵¹²
- 5.166 The results also show that proximity of the focal store to other stores of the same major grocery retailer tends to increase prices for certain pairs of stores, but not for others. In particular, prices at Four Square stores tend to be higher if a PAK'nSAVE store is nearby. Similarly, prices at SuperValue stores tend to be higher when a Countdown or FreshChoice store is nearby.⁵¹³
- 5.167 Overall, the analysis by Frontier Economics suggests that local market concentration appears to have little or no effect on price competition between the major grocery retailers. This is consistent with our finding that price competition between the major grocery retailers is muted and does not reflect workable competition.
- 5.168 We discuss HoustonKemp's view that this finding could equally lead to alternative conclusions from paragraph 5.177 below.

There is no material effect of new entry, exit or rebranding on prices in local markets

- 5.169 In general, we would expect grocery prices to increase in a local market if a retailer that was previously a strong competitor exits that market (an exit event) and for grocery prices to fall if a retailer that is expected to be a strong competitor enters a local market (an entry event). The expected impact of a rebranding of an existing store is less clear and might depend on the specific brand change that occurred.
- 5.170 Frontier Economics used a sample of 32 events when stores entered, exited, changed location or rebranded during the period 1 April 2016 to 31 March 2019 to assess whether these events had an economically significant impact on the prices charged by competing stores within the same local markets.

⁵¹¹ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 29-30.

⁵¹² Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 31-33.

⁵¹³ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 33.

- 5.171 The sample included 14 entry events, six exit events, six store replacement events, three store rebranding events and three store consolidation or temporary closure events. Although the analysis mostly focused on events associated with the PAK'nSAVE, New World and Countdown retail banners, two of the events related to new store openings by Farro Fresh in Auckland.
- 5.172 The impacts of these entry, exit or rebranding events on prices in the relevant local market were assessed by looking at the prices of neighbouring major grocery retailers for the 12 months prior to and following the event.⁵¹⁴ Frontier Economics used prices of control stores in neighbouring markets to account for the possibility that prices of competing stores may have changed around the time of the event for reasons other than the event, such as cost increases or general inflation.⁵¹⁵
- 5.173 Frontier Economics found that there was no systematic relationship between the entry, exit or rebranding of a store and the prices charged by a close competitor store in the 12 months after the event.⁵¹⁶ This is consistent with their finding that local market concentration levels appear to have little or no effect on price competition between most of the major grocery retail banners.

The Frontier Economics analysis is not necessarily reflective of effective price competition in local and national grocery markets

- 5.174 HoustonKemp consider that the conclusions drawn from Frontier Economics' analysis that local market concentration levels and new entry, exit or rebranded entry appear to have little or no effect on prices at the local level is equally consistent with alternative conclusions that there is intense price competition at a national level between the major grocery retailers and that local and national grocery markets are subject to effective competition.⁵¹⁷

⁵¹⁴ Frontier Economics acknowledged that its analysis may not pick up all the competitive effects of entry because the analysis is limited to a period of time. All studies have limitations, and we consider it likely that, to the extent that entry affects price competition, at least some of this effect would be observed in the period studied, Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 34.

⁵¹⁵ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 35.

⁵¹⁶ Frontier Economics "Econometric analysis of the New Zealand Retail Grocery Sector – Report for the Commerce Commission" (15 July 2021) at 7.

⁵¹⁷ Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Empirical evidence of grocery sector competition – further analysis" (3 December 2021) at [99].

- 5.175 In relation to the possibility that local and national grocery markets are subject to effective competition, we note that competition in local markets can come either from rivalry among established competitors or from new entrants. The Frontier Economics analysis examined the effect on prices of each of these forms of competition and found that there was very little systematic effect. This does not imply that there is no effective competition at the national level. However, the analysis found no evidence of effective price competition at a local level.⁵¹⁸
- 5.176 Further, if the aggregation of competitive constraints in local markets is sufficient to constrain the major grocery retailers, we would expect to see this reflected in the way in which prices are set nationally (or island-wide). The finding that local market concentration appears to have little or no effect on price competition appears to confirm that the major grocery retailers face no meaningful price competition from other grocery retailers that have a presence in some local markets.
- 5.177 As acknowledged by HoustonKemp, Frontier Economics did not assess the intensity of price competition at a national level between the major grocery retailers.⁵¹⁹ It is therefore not possible to use the findings of this analysis to reach a conclusion about the strength of price competition between the major grocery retailers at a national (or island-wide) level.
- 5.178 Given that other grocery retailers generally have limited geographic coverage and tend to compete for consumers' grocery spend in local markets, we have sought to assess how the structure of local grocery markets affect price competition in the retail grocery sector. The major grocery retailers also told us that price competition in local markets is considered and reflected in the way that prices are set at a national (or island-wide) level.⁵²⁰ However, the Frontier Economics analysis found little or no evidence that increased local market concentration levels influence prices charged by the major grocery retailers.
- 5.179 On the contrary, the evidence of muted local market price competition between the major grocery retailers would suggest there is correspondingly weak price competition at a national level. We also note that HoustonKemp has not provided any alternative evidence or analysis to support its view that there is intense price competition at the national level.

⁵¹⁸ Frontier Economics "Memo re HoustonKemp comments of 3 December 2021" (23 December 2021) at 3.

⁵¹⁹ Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Empirical evidence of grocery sector competition – further analysis" (3 December 2021) at [112].

⁵²⁰ For example: Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [261.2].

- 5.180 HoustonKemp also made further comments regarding the methodology used by Frontier Economics in its assessment of how local grocery market structures affect price competition between the major grocery retailers. It is of the view that the approach taken by Frontier Economics contains several limitations that makes it challenging to interpret the results with confidence.⁵²¹
- 5.181 We acknowledge that there are some limitations to the Frontier Economics analysis.⁵²² For example, due to the different business models of the major grocery retailers and other data limitations it was unable to test the effect of local grocery market structures on gross margins which may be expected to provide greater insights on the impact of local grocery market structure on non-price elements of competition.⁵²³
- 5.182 However, we note that Frontier Economics did test for the effect of non-price competition elements of the retail grocery offer by including variables such as store size and staffing levels in its analysis, and found that neither variable seems to have an impact on the cross-section regressions consistent with them reflecting the quality offering of supermarkets.⁵²⁴
- 5.183 Based on the responses of Frontier Economics to HoustonKemp’s comments on its approach we consider that the analysis is sufficiently robust to provide some useful insights on the impact of local grocery market structures on price competition between the major grocery retailers. In particular:
- 5.183.1 Consistent with submissions by the major grocery retailers, in general we expect that national (or island-wide) prices will be set with reference to local market conditions.⁵²⁵
- 5.183.2 However, the finding of Frontier Economics that local market concentration appears to have little or no effect on price competition between the major grocery retailers shows that local prices are not responsive to competition.

⁵²¹ Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Empirical evidence of grocery sector competition – further analysis" (3 December 2021) at [96] and [163].

⁵²² Frontier Economics "Response to HoustonKemp report" (9 November 2021); Frontier Economics "Memo re HoustonKemp comments of 3 December 2021" (23 December 2021).

⁵²³ Frontier Economics "Memo re HoustonKemp comments of 3 December 2021" (23 December 2021) at 1-2.

⁵²⁴ Frontier Economics "Memo re HoustonKemp comments of 3 December 2021" (23 December 2021) at 2.

⁵²⁵ For example: Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 32 (lines 7-11); Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 34 (lines 13-25).

Chapter 6 Conditions of entry and expansion

Summary of our findings

- In recent years there has been a number of smaller scale or niche entrants into the market, which have improved choices for consumers. These entrants include online-only retailers Supie and The Honest Grocer and the emergence of meal kit providers. Costco is also due to open an Auckland store in August 2022.
- However, it appears unlikely under current market conditions that any new grocery retailers (or existing grocery retailers seeking to expand) will be able to achieve the scale and geographic coverage required to compete effectively with the major grocery retailers.
- Scale is an important factor when considering conditions of entry and expansion. Large-scale entry to the retail grocery sector may be made difficult by New Zealand's size and population profile, which may restrict the number of places a supermarket can be profitably operated.
- There is a lack of suitable sites for development of retail grocery stores. Planning laws and their implementation by territorial local authorities can affect the availability of land. There is uncertainty as to whether the positive effects of trade competition can be considered in planning processes.
- The availability of land for grocery store development is also aggravated by the major grocery retailers placing restrictive covenants on land and exclusivity covenants in leases that prevent rival supermarkets from developing stores.
- There is a lack of wholesale access to a full range of groceries for resale at competitive prices. A grocery retailer cannot provide a widespread, full range, competitively priced offering without first obtaining groceries on reasonable terms from either a range of suppliers or a grocery wholesaler.
- Without wholesale supply, smaller independent grocery retailers and smaller new entrants are unlikely to be able to buy a sufficient range of products (particularly dry groceries) cheaply enough to compete with the major grocery retailers for a wide range of shopping missions. Wholesale supply could also provide a stepping-stone for new entrants as they are able to grow and develop their own direct relationships with suppliers. However, larger retailers would likely have sufficient volumes and scale to receive competitive pricing by purchasing directly from suppliers.

Introduction

- 6.1 In this chapter we consider longer-run competitive dynamics by assessing the ability of retailers to enter the sector and expand their operations. We draw conclusions in relation to a wide range of factors, including the nature of the sector and relevant regulations, and the conduct of current grocery retailers.
- 6.2 As the Court stated in *Re Queensland Co-op Milling Association Limited*:⁵²⁶
- Of all these elements of market structure, no doubt the most important is (2), the condition of entry. For it is the ease with which firms may enter which establishes the possibilities of market concentration over time; and it is the threat of the entry of a new firm or a new plant into a market which operates as the ultimate regulator of competitive conduct.
- 6.3 If entry and expansion costs are low enough, then the threat of entry by new firms, and the potential for existing firms to readily expand, can significantly constrain the behaviour of existing firms, even when they do not face significant constraint from existing competitors. Conditions of entry and expansion can therefore limit both the number of competitors in a market and the threat of further competition.
- 6.4 If entry and expansion are difficult or prohibited, then less competitive offerings are more likely to persist in the longer term, to the detriment of New Zealand consumers.
- 6.5 Our study has identified that a number of factors are likely to be preventing or slowing entry and expansion into the grocery sector.
- 6.6 The remaining sections in this chapter cover:
- 6.6.1 our approach to analysing conditions of entry and expansion;
 - 6.6.2 recent entry and prospect of imminent entry;
 - 6.6.3 impact of New Zealand's size and geography on entry and expansion;
 - 6.6.4 site availability and development;
 - 6.6.5 cost advantages available to the major grocery retailers;
 - 6.6.6 wholesale access to grocery products;
 - 6.6.7 conduct by suppliers and retailers which could potentially affect product sourcing;
 - 6.6.8 access to capital;

⁵²⁶ *Re Queensland Co-Op Milling Association Limited and Defiance Holdings Limited (QCMA)* (1976) ATPR 40-012 at [246].

6.6.9 alcohol licensing laws; and

6.6.10 loyalty programmes.

Our approach to analysing conditions of entry and expansion

6.7 This section sets out the framework for our discussion of conditions of entry and expansion in the rest of the chapter.

The starting point for our discussion of entry and expansion conditions

6.8 We considered the conditions of entry and expansion by grocery retailers into the New Zealand grocery sector in 2007 when Foodstuffs (Foodstuffs Auckland, Foodstuffs Wellington, and Foodstuffs SI) and Woolworths NZ each separately applied for clearance to acquire The Warehouse Group.⁵²⁷ Our decision to decline clearance was appealed to the Courts.

6.9 In the subsequent appeal, *Commerce Commission v Woolworths Limited And Ors*, the Court of Appeal stated:⁵²⁸

[the Commission] also concluded, uncontroversially, that there were high barriers to entry into the relevant markets (for reasons associated with access to suitable sites, requirements for resource consents and economies of scale) and that there is no likely new entrant into the relevant markets other than the Warehouse.

6.10 It also stated that:⁵²⁹

We consider that the Commission was right to give weight to the theoretical concerns raised by a 3:2 merger in markets such as these, characterised by high barriers to entry. ...Other potential entrants are not obvious and barriers to entry are high.

6.11 We have not relied on this previous finding in our assessments of entry and expansion conditions for our study, instead seeking to understand the range of entry and expansion conditions relevant to the sector today. However, as set out in detail below, we note that many of our findings are consistent with those found previously.

What we mean by conditions of entry and expansion

6.12 We do not use the term ‘barriers to entry’ in this report but instead use the term ‘conditions of entry and expansion’, which is related to, but broader than, the economic concept of ‘barriers to entry’.

⁵²⁷ Commerce Commission “Decision Nos. 606 & 607, Determination pursuant to the Commerce Act 1986 in the matter of applications for clearance of business acquisitions involving: Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Co-operative Society Limited, and Foodstuffs South Island Limited; and (separately) Woolworths Limited and The Warehouse Group Limited” (8 June 2007).[_](#)

⁵²⁸ *Commerce Commission v Woolworths Limited & Ors* [2008] NZCA 276, at [166].

⁵²⁹ *Commerce Commission v Woolworths Limited & Ors* [2008] NZCA 276, at [200].

- 6.13 There are two key reasons for this:
- 6.13.1 A market study is a study of “any factors that may affect competition for the supply or acquisition of goods or services”.⁵³⁰ Its scope is broad.
 - 6.13.2 It is consistent with the approach adopted by the Courts in *Commerce Commission v New Zealand Bus* and *Air New Zealand v Commerce Commission*. In those cases, the Courts emphasised that the question of whether conditions in a market qualify as a barrier to entry, however defined, is less important than considering whether those conditions have the potential to prevent, impede or slow entry and expansion.⁵³¹
- 6.14 Conditions of entry and expansion can take a variety of forms, but generally fall within three categories.⁵³² While we do not explicitly use these categories to frame our discussion throughout this chapter, we briefly outline them below as they provide a helpful starting point for this discussion:
- 6.14.1 Structural conditions are associated with the technologies, resources or inputs a firm would need to enter or expand. This may include factors such as the significance of economies of scale, scope or density. For example, the geographic location and relatively small size of the New Zealand market could potentially limit the scope for entry and expansion if there are significant economies of scale, scope and/or density.
 - 6.14.2 Regulatory conditions include resource management or other planning consent requirements, licensing requirements for a business or product, and regulations governing standards and quality. For example, the resource consent process for obtaining permission to build grocery stores could affect the ability for grocery retailers, either existing or new, to open new stores.
 - 6.14.3 Strategic conditions arise where incumbent firms take actions to discourage prospective entrants or expansion. For example, existing retailers may seek to restrict potential competitors’ access to suitable land for grocery retailing.

⁵³⁰ Section 48 of the Act.

⁵³¹ *Commerce Commission v New Zealand Bus Ltd* (2006) 11 TCLR 679 (HC) at [147]-[155], citing Dennis Carlton “Why Barriers To Entry are Barriers to Understanding” (2004) 94 *American Economics Review* 466; *Air New Zealand v Commerce Commission (No 6)* (2004) 11 TCLR 347 (HC) at [102]. This approach was confirmed by the Court of Appeal in *New Zealand Bus Ltd v Commerce Commission* [2007] NZCA 502 at [252].

⁵³² Commerce Commission “Mergers and acquisitions Guidelines” (July 2019) at [3.109]-[3.111].

Conditions of entry and expansion and different business types

Assessing conditions of entry and expansion at different levels of the supply chain

- 6.15 The terms of reference directs us to any factors that may affect competition for the supply or acquisition of groceries by retailers including a focus on ‘the structure of the grocery industry at the wholesale and retail levels’. In this chapter we consider the conditions for entry and expansion at the retail level (or the conditions relevant to changing the structure of the industry at the retail level). In considering this we also consider the relevance of the wholesale level of the sector.
- 6.16 Access to competitively priced products (by which we mean access – whether directly from suppliers or via a wholesaler – at prices which enable other grocery retailers to compete effectively with the major grocery retailers) is a key factor for retail entry and expansion. Factors preventing wholesale competition may therefore have a flow-on impact of reducing the viability of retail entry. This chapter therefore also includes a discussion of wholesale conditions of entry and expansion.

Assessing conditions of entry and expansion for different business models

- 6.17 As discussed in Chapter 2, there are a range of retailers operating in the grocery sector. Some conditions of entry and expansion we discuss in this chapter may impact grocery retailers consistently regardless of their business model. Other conditions of entry and expansion may impact grocery retailers to differing degrees or not at all.
- 6.18 As discussed in Chapter 4, many consumers appear to have a preference for shopping at major grocery retailers’ stores, irrespective of the type of shopping mission they are engaged in.
- 6.19 We have considered the conditions of entry and expansion into the retail grocery sector broadly, recognising that there are diverse customer preferences and therefore a range of offerings provided by grocery retailers. We have particularly focused on entry and expansion conditions relating to the ability of new entrants or existing firms to compete effectively with the major grocery retailers. In our view this ability is critical to increasing the level of competition.

6.20 Coriolis told us that historically there has been no organic entry (ie, excluding acquisition of existing stores) into established grocery markets which are adequately serviced by existing supermarkets operating in the traditional supermarket format.⁵³³ However, they also considered that new entrants could successfully enter using other formats. This was defined relatively broadly and included a number of retailers offering a full range of grocery products such as Aldi (a limited-assortment store) and Costco (a wholesale club).⁵³⁴ This appears consistent with our view that if factors hindering entry and expansion are addressed, there would likely be room for entry by grocery retailers (potentially in alternative formats) which may have the ability to compete effectively with the major grocery retailers. It is also consistent with taking a future-focused view of competition in the sector. We have therefore focused our assessment on entry and expansion conditions across a wide range of potential retail formats in the retail grocery sector.

Recent entry and prospect of imminent entry

6.21 In this section, we consider the extent to which recent entry and expansion into the grocery sector and the prospect of future entry and expansion are likely to constrain incumbent firms.

6.22 Woolworths NZ considered the entry of a variety of new and expanding entrants adopting a variety of different business models demonstrates that there are no material barriers to entry or expansion by retail grocery competitors.⁵³⁵ Similarly, Foodstuffs NI's view is that there are no material barriers to entry and expansion for different shopping missions other than barriers imposed by planning law, as illustrated by recent or upcoming instances of entry and expansion (eg, Supie, My Food Bag, Circle K, Geezy Go, Briscoes).⁵³⁶

6.23 We are aware that there continues to be some entry and expansion by grocery retailers (see paragraph 5.92 for further details), and acknowledge that recent entry has and may further increase the choices offered to consumers.

6.23.1 However, as discussed in paragraph 5.98, we do not consider that they will significantly increase the effectiveness of competition or impose significant competitive constraints on the major grocery retailers.

⁵³³ Coriolis "Post conference submission on Market study into grocery sector" (18 November 2021) at [56].

⁵³⁴ Coriolis "Post conference submission on Market study into grocery sector" (18 November 2021) at [60].

⁵³⁵ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 62.

⁵³⁶ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [133-136].

- 6.23.2 The conditions of entry and expansion we discuss in this chapter are of varying relevance to different business models. For example, as discussed in paragraph 6.54, factors reducing site availability are less likely to be relevant to an online-only retailer like Supie or My Food Bag. The ability of some retailers to enter and/or expand in the grocery sector using differentiated business models does not necessarily mean that these factors do not restrict or hinder entry and expansion by other retailers. For example, factors reducing site availability are still likely to be highly relevant to bricks-and-mortar retailers.
- 6.23.3 We also note that entry or expansion by a retailer does not necessarily indicate that they are able to compete effectively, or that they are no longer impacted by the factors discussed in this chapter. For example, Supie has indicated that its inability to source some grocery products or brands at competitive prices due to a lack of scale hinders its ability to compete effectively with the major grocery retailers.⁵³⁷
- 6.24 There have not been any instances of entry into the retail grocery sector by a retailer capable of significantly constraining the major grocery retailers in the last decade. We are also not aware of any specific plans for entry and expansion into the retail grocery sector by a retailer capable of significantly constraining the major grocery retailers.⁵³⁸

Impact of New Zealand's size and geography on entry and expansion

- 6.25 Development of new stores in the retail grocery sector requires capital expenditure (eg, land costs, building costs, store fit-out) from a prospective new entrant or expanding firm. In order for entry and expansion to be viable, there needs to be a customer base of sufficient size to enable new stores to earn enough return to justify investment.
- 6.26 Population density is therefore likely to be relevant to entry and expansion as it affects the size of customer bases which stores would have access to in their catchment area. Areas with high population density would be more likely to give a prospective store access to a suitably sized customer base. Low population density may be a factor impacting the viability of entry and expansion as it reduces the likelihood that the customer base in a catchment area would be of a sufficient size to justify investment in a new store.

⁵³⁷ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 19-23).

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- 6.27 This is supported by stakeholders (including Foodstuffs SI) generally indicating through submissions and statements at meetings that New Zealand’s small population and/or low population density are factors which reduce potential returns on investment for a grocery store (noting Foodstuffs SI indicated this was particularly the case for a full-service supermarket) and/or make it difficult to achieve sufficient scale to compete effectively.⁵³⁹
- 6.28 By contrast, Foodstuffs NI submitted that:⁵⁴⁰
- 6.28.1 New Zealand’s size and geography is materially less relevant to entry and expansion than has previously been the case given the range of competing businesses (such as online-only supermarkets) with significantly different factors affecting entry and expansion; and
- 6.28.2 size and population density may affect the absolute operation costs but this is different to the prospects of entry, which are more likely to be affected by the proportion of the market that needs to be captured to achieve minimum efficient scale.
- 6.29 While we agree population size and density may affect different business models differently, we consider that it is still highly relevant to entry and expansion by supermarkets.
- 6.30 We also consider that population density is relevant to a potential entrant’s ability to achieve minimum efficient scale.⁵⁴¹ As population density generally affects the size of the customer base for an individual store, it is likely to be a factor influencing a potential entrant’s ability to set up viable stores with sufficiently large customer bases to justify the investment into store development. The ability of a potential entrant to capture a sufficient proportion of the total market through a collection of these individual stores will in turn impact its ability to achieve minimum efficient scale.

⁵³⁹ Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18; Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [34]; NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [138]-[141];

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]; Retail NZ “Submission on Market study into grocery sector draft report” (26 August 2021) at 2.

⁵⁴⁰ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 28.

⁵⁴¹ Minimum efficient scale is the level of output that minimises average cost, relative to the size of demand. HR Varian “Intermediate Microeconomics: A modern approach” 6th ed, W.W. Norton & Company, New York (2003) at 432.

- 6.31 Woolworths NZ submitted that it considers the New Zealand market is small and geographically dispersed, but the entry of large international retailers (eg, Costco, Chemist Warehouse, Ikea, Sephora, Zara, H&M, Mecca, Nick Scali and Tiffany & Co.) in recent years indicates that New Zealand is increasingly considered for entry and expansion, and entries which have occurred demonstrates there are no material barriers to further retailers coming.⁵⁴² Foodstuffs NI and Foodstuffs SI similarly noted that New Zealand's size and geography have not deterred Costco and other 'Big Box' retailers from entering the New Zealand market.⁵⁴³
- 6.32 We do not consider entry by most of these multinational retailers (except Costco) to be necessarily relevant to entry by grocery retailers as they operate in different sectors and would likely face different sets of conditions of entry and expansion. We do not consider Costco's entry demonstrates that current conditions are conducive to the scale of entry or expansion that would be sufficient to constrain the major grocery retailers for the reasons discussed in Chapter 5.
- 6.33 New Zealand has low population density on average although regional density varies. New Zealand's population density of 19 people per square kilometre in 2018 is low compared with the average for OECD members (38) and the world average (58).⁵⁴⁴ However, New Zealand has high rates of urbanisation at around 87%, compared with the OECD average of 81% and the world average of 56%.⁵⁴⁵
- 6.34 This suggests that while there are large areas which are sparsely populated (suggesting potential customer bases are generally likely to be smaller), much of New Zealand's population is clustered into relatively small areas (which suggests customer bases in these areas may be relatively larger). Large-scale entry and expansion may be made more difficult if New Zealand's population profile restricts the number of places a supermarket can be profitably operated. However, it may be easier to enter or expand in urban areas containing larger population clusters.
- 6.35 In any event, population density is more likely to impact on grocery retailers to different extents depending on their business model. Population density may be a more significant factor for entry and expansion by retailers operating larger stores or a potential large-scale supermarket entrant, and for retailers selling relatively niche products. However, it may be less significant for retailers operating smaller stores and online-only supermarkets.

⁵⁴² Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 62.

⁵⁴³ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [321]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [291].

⁵⁴⁴ The World Bank "Population density (people per sq. km of land area) – New Zealand" https://data.worldbank.org/indicator/EN.POP.DNST?locations=NZ&most_recent_value_desc=false.

⁵⁴⁵ The World Bank "Urbanisation (% of population living in urban areas) – New Zealand" https://data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS?locations=NZ&most_recent_value_desc=true.

Store density

- 6.36 Store density may also be a factor potentially affecting entry and expansion as it is likely to be more difficult to enter a saturated market where the maximum number of competitors that an area can support has already been reached. However, even in saturated markets, the competitive process may mean that successful firms can still enter and replace existing firms.
- 6.37 We have been provided with analysis which indicates that New Zealand's supermarket density does not appear out of line with other OECD countries.⁵⁴⁶ We also analysed supermarket density in New Zealand in order to understand the extent to which demand is likely to be served by existing supermarkets. Our methodology and more detailed findings are set out in Attachment G.
- 6.38 Our analysis indicates that relative to the 19 European countries considered, New Zealand has the lowest total number of supermarkets (Small supermarkets, Large supermarkets and Hypermarkets) per million people at 88 but the sixth-equal highest number of Hypermarkets per million people at 25.⁵⁴⁷
- 6.39 The extent to which there is a sufficiently large customer base in New Zealand to facilitate entry and expansion will depend on the offsetting effects of our relatively higher number of Hypermarkets, and relatively smaller total number of supermarkets.
- 6.40 It is difficult to tell what the overall impact of these two contrasting factors is on the size of New Zealand's contestable customer base. However, New Zealand's overall supermarket density does not appear to be out of line when compared with European countries. We cannot conclude that the market is saturated, and there may be opportunities for entry and expansion, particularly in areas of expected population growth.
- 6.41 We would expect supermarket density to largely impact on entry and expansion by supermarket operators (eg, the major grocery retailers and potential large-scale supermarket entrants). Other grocery retailers generally differentiate their offerings from the major grocery retailers rather than competing directly, which means that high supermarket density may not be a significant factor impacting on their entry and expansion.

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As defined in Nielsen "Nielsen Grocery Universe 2017" (2017), available at: <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/nielsen-grocery-universe-2017.pdf>.

Potential feasibility

- 6.42 Our view is that the New Zealand market could sustainably accommodate at least one more large-scale rival. Two main observations support this view.
- 6.43 First, New Zealand previously had another large-scale grocery retailer, before Progressive Enterprises' acquisition of the former Woolworths New Zealand entity in 2002.
- 6.44 Second, entry at a scale sufficient to compete effectively with large supermarket chains appears to have been possible in other countries with similar demographic and geographic characteristics to New Zealand. For example, Finland has been able to sustainably support the entry and expansion of a third large grocery retailer (Lidl) over a 20-year period.⁵⁴⁸
- 6.45 As noted above, Coriolis submitted that organic entry by traditional supermarkets is impossible. Based on observations from other markets, Coriolis noted that once the transition from many small grocery stores to larger supermarkets has occurred, no new entrant has succeeded in entering with traditional supermarkets.⁵⁴⁹ However, Coriolis uses a narrow definition of traditional supermarkets which excludes store formats such as 'super warehouses' (for example, PAK'nSAVE), 'limited-assortment stores' (for example, Aldi) and 'wholesale clubs' (for example, Costco).
- 6.46 Our assessment of the potential for large-scale entry and expansion is based on a wider range of potential store formats. Coriolis acknowledges that new entrants can succeed with alternative formats.
- 6.47 We agree with submissions from the major grocery retailers that entry at a scale to effectively compete with them is viable. While we consider there are currently constraints on such competition emerging, our view is that these could be resolved, rather than these being the inevitable consequence of scale economies combined with New Zealand's population and geography.
- 6.48 We acknowledge that additional large-scale entry could impact the revenues and costs of existing grocery retailers. However, we consider it unlikely that large-scale entry would fundamentally undermine the viability of any of the existing major grocery retailers.

⁵⁴⁸ Lidl entered the Finnish retail grocery market in 2002. As of 2020 it was the third largest retailer, with 9.5% market share (up from 6.7% in 2012), J. Clausnitzer "Grocery retailers in Finland – statistics & facts" (16 September 2021) <https://www.statista.com/topics/4230/grocery-retailers-in-finland/>.

⁵⁴⁹ Coriolis Ltd "Post conference submission on Market study into grocery sector" (18 November 2021) at [51]-[53].

Site availability and development

- 6.49 A wide range of stakeholders indicated via submissions and comments at meetings that site availability is a significant factor impacting on entry and expansion, and/or that conduct (eg, land banking, restrictive covenants) by incumbent firms may reduce site availability.⁵⁵⁰
- 6.50 In this section we begin by introducing the requirements for a site to be suitable for grocery store development, before discussing factors which may impact on site availability or development. They include:
- 6.50.1 planning regulations;
 - 6.50.2 restrictive covenants and exclusivity covenants in leases; and
 - 6.50.3 land banking.
- 6.51 The impact of some of these factors on entry and expansion conditions for a retailer is likely to vary depending on the retailer's business model.

Site requirements

- 6.52 There is a minimum set of requirements for a site to be considered viable for supermarket development.
- 6.53 In general, a site for a supermarket would be expected to:
- 6.53.1 meet certain size requirements, which may vary depending on factors such as:⁵⁵¹
 - 6.53.1.1 retail banner (eg, PAK'nSAVE stores tend to be larger than Four Square stores);
 - 6.53.1.2 format (eg, a Countdown large-format supermarket would tend to be larger than a Countdown Metro store); and

⁵⁵⁰ [];
[]; The Warehouse Group "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 4 – mentions limited access to supply of suitable sites, and that certain property leases contain restrictive covenants; Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [37] – mentions land banking to prevent potential rivals from establishing a presence; NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [135] – mentions land banking as a well-established strategic barrier to entry and expansion.

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- 6.53.1.3 sales potential (larger stores generate higher overhead costs and require larger populations with more sales potential);
 - 6.53.2 have a suitable degree of access (eg, located on or close to a main road to allow consumers and delivery trucks easy access);
 - 6.53.3 have a high level of exposure to passing traffic and pedestrians and be easy for consumers to find, particularly for Metro stores which are typically located in areas with high pedestrian counts and good public transport;
 - 6.53.4 have sufficient land area to provide carparking for consumers, which is of greater importance to larger format supermarkets than smaller Metro stores (which sometimes do not offer carparking);
 - 6.53.5 comply with planning regulations (eg, zoning requirements as defined in the Local Council's District Plan and resource consent applications as required); and
 - 6.53.6 have truck loading areas to allow products to be delivered and received into the store.
- 6.54 Site requirements are likely to vary significantly depending on a grocery retailer's business model.
- 6.54.1 Grocery retailers with online-only business models (eg, meal kit providers, online-only supermarkets) would likely have different land requirements. While they might require physical warehouses or packing centres for the purposes of their operations, they would likely have many more options than bricks-and-mortar retailers when choosing locations.⁵⁵²
 - 6.54.2 Other grocery retailers (eg, other supermarkets, international food stores) have site requirements which may be similar in some ways to those required by the major grocery retailers. For example, easy access for consumers and exposure to passing traffic and pedestrians would still be important requirements. However, there may also be some differences depending on the grocery retailer in question, such as potentially requiring smaller floor areas or not requiring dedicated carparking.

- 6.54.3 Costco operates using a different concept from supermarkets and would likely have different land requirements, notably requiring significantly larger sites. For example, Costco’s Auckland store, which is under construction, will be about 14,000 sqm. This is significantly larger than supermarkets currently run by the major grocery retailers.⁵⁵³ In addition, as mentioned in Woolworths NZ’s submission, Costco is widely regarded as being a shopping destination for its members.⁵⁵⁴ It may therefore have differing site location requirements as it might expect consumers within a larger catchment area to visit its stores, which would lessen the requirements for its stores to have exposure to passing traffic and pedestrians and potentially create a need for a larger carparking area.⁵⁵⁵

Site availability

- 6.55 Suitable sites are a key requirement for successful entry and expansion of supermarkets. Entry or expansion on a regional or national basis would require access to numerous suitable sites. The ease of locating and acquiring suitable sites at a price which is viable for store development, are likely to be key factors affecting entry and expansion of supermarkets (particularly in urban areas).
- 6.56 Foodstuffs NI and Foodstuffs SI agreed that site availability is a factor impacting on entry and expansion by supermarkets but indicated their view that it should not be given inappropriate prominence in our analysis and recommendations.⁵⁵⁶
- 6.57 Land for suitable sites may not be physically available due to geography or existing patterns of urban development. Beyond this, we have identified two key conditions of entry and expansion which may impact site availability or development:
- 6.57.1 issues relating to planning regulations for supermarket development;

⁵⁵³ Anuja Nadkarni and Debrin Foxcroft “Costco is coming to New Zealand, changing the way we shop” (11 June 2019) Stuff <https://www.stuff.co.nz/business/113355280/costco-is-coming-to-new-zealand>.

⁵⁵⁴ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 27 – Woolworths NZ also mentions it has seen analysis suggesting that Costco stores have in-person catchments of about 25 km; [].

⁵⁵⁵ Anuja Nadkarni and Debrin Foxcroft “Costco is coming to New Zealand, changing the way we shop” (11 June 2019) Stuff <https://www.stuff.co.nz/business/113355280/costco-is-coming-to-new-zealand> – suggests Costco will have about 800 car parks. For reference, PAK’nSAVE Papakura has 265 car parking spaces, PAK’nSAVE Papakura <https://www.paknsave.co.nz/upper-north-island/auckland/papakura>.

⁵⁵⁶ Foodstuffs NI “Submission on Market study into grocery sector draft report” (15 September 2021) at 78; Foodstuffs SI “Submission on Market study into grocery sector draft report” (15 September 2021) at 66.

- 6.57.2 conduct by the major grocery retailers which may affect the availability of store sites, including:
 - 6.57.2.1 lodging of restrictive covenants (including encumbrances) restricting supermarket development;
 - 6.57.2.2 exclusivity covenants in leases which prevent competing supermarkets or other retail grocery businesses from being set up (this largely appears to take place in relation to malls or shopping centres); and
 - 6.57.2.3 buying land and holding it for future use without any specific plans for its development (land banking).

- 6.58 We have not assessed the individual impact of each land banked or covenanted site on competition, or considered the availability of alternatives in each area where there is a land banked or covenanted site. We have instead analysed the impact each type of conduct is likely to have on the availability of sites more generally.

Planning regulations

- 6.59 In addition to site availability, another key element required for store development is compliance with relevant planning regulations. This may include tasks such as:
 - 6.59.1 complying with zoning requirements within a District Plan;
 - 6.59.2 determining whether a proposed store development requires consent; and
 - 6.59.3 where required, applying for a resource consent and engaging with the subsequent process.

- 6.60 Submissions on our draft report (including by the major grocery retailers) were generally supportive of addressing the potential impact of planning regulations on site availability.⁵⁵⁷

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For example: NZ Initiative “Submission on Market study into grocery sector draft report” (26 August 2021) at 7-8; Te Waihanga – New Zealand Infrastructure Commission “Submission on Market study into grocery sector draft report” (26 August 2021) at 3. Also see the major grocery retailers’ submissions on this point: Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 90; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 82; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 38.

Key features of planning regulation

- 6.61 New Zealand’s planning laws are currently contained principally in the Resource Management Act 1991 (RMA). The Government recently undertook a full review of the RMA,⁵⁵⁸ and intends to undertake significant reform.⁵⁵⁹
- 6.62 We do not intend to discuss current planning regulation in detail as it is not necessary to do so for the purposes of this chapter, and in light of the upcoming reform. However, some key features of current planning regulation are outlined below.
- 6.62.1 Under District Plans (set by City and District Councils) and Regional Plans (set by Regional Councils), activities are assigned to a category which affects whether resource consents will be required, and the conditions imposed. Examples include permitted activities which are allowed to occur without a resource consent, and controlled activities which require a resource consent.
- 6.62.2 The RMA provides scope for parties to oppose their competitors’ resource consent applications for anticompetitive reasons, such as to prevent or delay competitive entry.⁵⁶⁰ In an attempt to limit this:
- 6.62.2.1 Section 104(3)(a) states that a consent authority must not have regard to trade competition or its effects when considering a resource consent application.⁵⁶¹ There are other equivalent provisions relating to the development of instruments such as District Plans.
- 6.62.2.2 Part 11A limits the ability for trade competitors to participate in objection and appeal processes, unless they are directly affected by an adverse effect of the activity on the environment. It also discourages the covert use of third parties by trade competitors.⁵⁶²

⁵⁵⁸ Ministry for the Environment “New Directions for Resource Management in New Zealand” (June 2020) <https://www.mfe.govt.nz/publications/rma/new-directions-resource-management-new-zealand>.

⁵⁵⁹ Hon David Parker “RMA to be repealed and replaced” (10 February 2021) <https://www.beehive.govt.nz/release/rma-be-repealed-and-replaced>.

⁵⁶⁰ Ministry for the Environment “Resource Management Amendment Act 2009 – Fact Sheet 2: Trade Competition, Representation at Proceedings and Environment Courts Costs” (October 2009), available at: <https://environment.govt.nz/assets/Publications/Files/Resource-management-amendment-act-2009-Fact-Sheet-2.pdf>.

⁵⁶¹ Resource Management Act 1991, s 104(3)(a).

⁵⁶² Resource Management Act 1991, Part 11A.

Relevance of planning regulation to our study

- 6.63 Planning regulations have the potential to impede or slow the ability of retailers to develop new stores if they create additional costs or significant delays in the store development process. We note that overseas market studies have found that planning regulation can impede entry, including by acting as a barrier to the establishment of new supermarkets, or by increasing the cost or time associated with development of a new retail outlet.⁵⁶³
- 6.64 Based on information we have received regarding recent resource consent applications by the major grocery retailers, we observe that some applications have taken multiple years, and that there appears to have been significant cost involved with pursuing applications for resource consent in some instances.⁵⁶⁴
- 6.65 Aspects of the current planning process have the potential to impede or slow entry and expansion. Examples of the ways in which this may occur include:
- 6.65.1 Council zoning policies may significantly limit the number of sites available for the purposes of grocery retail development.⁵⁶⁵
- 6.65.2 Relatedly, parties may seek to influence plans (eg, District Plans) in a way that restricts development of a new supermarket, or may attempt to slow down attempts to liberalise existing restrictions. Changing the category that supermarket activity falls into will significantly change the difficulty involved in obtaining resource consent. Appeals against plan changes take time, and plans generally remain idle while under appeal.

⁵⁶³ UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [29]-[31]; Irish Competition Authority “Grocery Monitor Report No. 3: The Retail Planning System as Applied to the Grocery Sector: 2001 to 2007” (July 2008) at viii.

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⁵⁶⁵ Comments by NZ Initiative, Transcript of Grocery Market Study conference – Day 5 (28 October 2021) at 20 (lines 7-14); Te Waihanga – New Zealand Infrastructure Commission “Submission on Market study into grocery sector draft report” (26 August 2021) at 3; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 78; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 66; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 38.

- 6.65.3 Notification decisions, in relation to plan changes and resource consents, may be challenged by judicial review, and later appealed. This can delay resolution and result in the relevant plan change or consent being set aside, and may result in firms being unwilling to invest pending resolution of the challenge.
- 6.65.4 Notified consent processes will involve submissions or hearings which can slow down or influence the grant of consent.⁵⁶⁶ This may result in a declined consent, or a consent with conditions that render a supermarket operation less successful or even unviable.
- 6.65.5 The timing of large-scale entry could be significantly affected by inconsistency of approach across the country. The lack of consistency between District Plans means each site will need to be considered independently, and if consent is required it will be subject to the relevant local rules. Even where the District Plans are similar, there can be significant differences between consent processing times across local authorities.
- 6.66 We note that, in the past, the major grocery retailers have, in some instances, opposed each other's resource consent applications under the RMA. In at least some cases, these disputes have created significant impediments or delays in the store development process.
- 6.67 This point is illustrated by the Wairau Road PAK'nSAVE resource consent application, where resource consent disputes (including appeals to the Environment Court and High Court) raised by Progressive Enterprises delayed opening of the store for approximately 20 years. This was despite the likely benefits to consumers which would result from the opening of the store, as illustrated by the Environment Court finding that there was "a clear consensus among all the economist witnesses that the introduction of a strong competitor into the North Shore supermarket market would be a good thing for customers, even if its competitors would not welcome it".⁵⁶⁷

⁵⁶⁶ Notified consent processes allow potentially affected parties and members of the public to give feedback on resource consent applications that affect them. For further information see Wellington City Council "Notified resource consents" <https://wellington.govt.nz/property-rates-and-building/building-and-resource-consents/resource-consents/applying-for-a-resource-consent/notified-resource-consents>.

⁵⁶⁷ *Progressive Enterprises Limited v North Shore City Council* [2008] NZEnvC 311 at [71], available at: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2008/311.html?query=progressive%20enterprises%202008>.

6.68 The RMA was amended in 2009 to limit trade competitors' use of the objection process under the RMA (as described in paragraph 6.62.2). The Environment Court, in a subsequent resource consent dispute between the major grocery retailers (*General Distributors Ltd v Foodstuffs Properties (Wellington) Ltd*), noted that in making the amendments to the Act, Parliament was motivated by:⁵⁶⁸

...the frustration of seeing developments (not least supermarket developments) being bogged down in seemingly endless RMA litigation that, in the end, was motivated by nothing more than the wish to stifle the opening of a rival store in a given location.

6.69 These amendments have limited the circumstances under which supermarket operators can oppose store developments by their competitors under the RMA.⁵⁶⁹ However, there may still be barriers (in terms of time and cost) created by the resource consent process in relation to supermarket development.

6.70 For example, as we understand it, the principle that the Courts have generally applied is that while they may not have regard to the direct effects of trade competition, it is legitimate to take into account flow-on 'retail distribution effects' such as a downturn in business in an existing shopping centre from approving a resource consent. The Supreme Court has stated that relevant effects may be taken into account when they are "significant". This does not mean that an adverse effect must threaten the viability of existing centres in order to be considered. Rather, when deciding whether or not to grant a resource consent, decision-makers may – in effect – choose to decline a consent if it would lead to a significant downturn in economic activity in existing retail or commercial centres.⁵⁷⁰

⁵⁶⁸ *General Distributors Ltd v Foodstuffs Properties (Wellington) Ltd* [2011] NZEnvC 212 at [11], available at: [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2011/212.html?query=title\(general%20distributors%20and%20foodstuffs%20\)](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZEnvC/2011/212.html?query=title(general%20distributors%20and%20foodstuffs%20)).

⁵⁶⁹ Relevant commentary: Brookfields Lawyers "Smoke Settles on Supermarket Wars" (12 August 2011) <https://www.brookfields.co.nz/publications/environmental-resource-mangement/214-smoke-settles-on-supermarket-wars>; Simpson Grierson "End of the supermarket circus" (15 September 2011) <https://www.lexology.com/library/detail.aspx?g=8cea536f-2c61-44bf-b994-884503391398>.

⁵⁷⁰ *Westfield (New Zealand) Limited v North Short City Council* [2005] NZSC 17 at [119]-[120]. This interpretation appears to continue to have been applied despite amendments to the Resource Management Act in 2009 to clarify that decision-makers may not have regard to not just trade competition, but also the effects of trade competition. For example: Property Economics "New World Dominion Road Retail Impact Assessment" (March 2021) at 24, available at: https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Dominion-Rd/Application-documents/App_21_Retail_Impact_Assessment.pdf; Auckland Council "Section 32 report on the Proposed Auckland Unitary Plan: Appendix 3.4.1 – Case law – centres and commercial activity" (2013) at 139, available at: <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/unitary-plan/history-unitary-plan/documentssection32reportproposedaup/appendix-3-4-1.pdf>.

The role of competition under the current resource consent process

- 6.71 It is difficult to determine the extent to which competition and consumer choice is in practice taken into account under the RMA at present. A review of applications filed and decisions made in relation to proposed supermarket developments will necessarily involve a degree of selection bias. Nevertheless, the evidence before us suggests that the benefits of competition and consumer choice appear to be raised by parties in some cases, but not all. Where competition is discussed in relation to a proposed supermarket development, it appears to be mentioned as part of a broader assessment of the “positive effects” which are likely to arise as a result of a resource consent application, and it is difficult to determine how much weight, if any, it was given. Competition does appear to have been taken into account by decision-makers in some cases. Equally, in some cases it has been raised by the applicant but not taken into account by the decision maker.
- 6.72 The lack of consistency may in part be due a lack of clarity over the effect of section 104(3)(a) of the RMA, and other equivalent provisions. On the face of it, these provisions limit consideration of both negative and positive effects of trade competition. However, the Courts have also stated that these provisions can be read as allowing the positive impacts of competition to be considered.⁵⁷¹
- 6.73 We consider that the benefits of competition and consumer choice are not being considered in a consistent or systematic manner in the determination of applications or consistently incorporated into the plans and processes that underpin individual applications. We acknowledge that we have only reviewed a limited sample of resource consent applications and decisions in relation to supermarket developments. It is possible that a wider review might reveal greater consistency of treatment than we have identified.
- 6.74 In summary, we are aware that there are a wide range of factors which are generally considered as part of the decision-making process for a resource consent application. However, our view is that decision-makers do not consistently take into account the benefits to consumers that arise from increased actual or potential competition (in part due to statutory barriers), and in some cases are taking into account what the Courts have determined to be negative flow-on effects from competition.

⁵⁷¹ *Bunnings Ltd v Queenstown Lakes District Council* [2018] NZEnvC 135 at [35]-[36].

Restrictive covenants and exclusivity covenants in leases

- 6.75 The major grocery retailers lodge covenants on land which prevent or restrict supermarket or other food retail store development (restrictive covenants).⁵⁷² The prevalence with which this conduct occurs varies amongst the major grocery retailers.
- 6.76 Submissions on our draft report (including by the major grocery retailers) were generally supportive of improving site availability by addressing restrictive covenants and exclusivity covenants in leases.⁵⁷³
- 6.76.1 Comments by the major grocery retailers at the conference indicated that they did not find these covenants to be a significant constraint on their ability to acquire sites.⁵⁷⁴
- 6.76.2 Woolworths NZ noted that the ACCC considered actions taken to address exclusivity covenants in leases in Australia has had a positive impact on competition.⁵⁷⁵

⁵⁷² As part of our retail fuel market study, we observed that when fuel companies close retail sites, they sometimes place “restrictive covenants” on the land to prevent its future use by another fuel retailer, Commerce Commission “Market study into the retail fuel sector – Final report” (5 December 2019) at [X109]-[X110]. The UK Competition Commission’s groceries market investigation also identified restrictive covenants and exclusivity arrangements in leases as potential barriers to entry, UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [7.121].

⁵⁷³ For example, submissions by Monopoly Watch, NZFGC, and The Warehouse Group supported addressing restrictive covenants and/or exclusivity covenants in leases: Monopoly Watch “Submission on Market study into grocery sector draft report” (26 August 2021) at 5; The Warehouse Group “Post conference submission on Market study into grocery sector” (23 November 2021) at 1; NZFGC “Submission on Market study into grocery sector draft report” (26 August 2021) at 21-22. Also see major grocery retailers’ submissions on this point: Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 90; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 82-83; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 35-37.

⁵⁷⁴ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 18 (lines 8-11); comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 19 (lines 4-10); comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 19 (lines 12-13).

⁵⁷⁵ Woolworths NZ noted that the ACCC had commented that releasing exclusivity covenants in leases increased the number of shopping centres with more than one supermarket, and that Aldi grew from 170 stores at the time to 590 this year, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 22 (lines 25-36).

- 6.77 We have identified more than 90 restrictive covenants entered into by the major grocery retailers, the majority of which are still active.⁵⁷⁶ At least 60 instances of these restrictive covenants were either not time-limited or had terms of 20 years or more.⁵⁷⁷ These covenants have been lodged across the country, with the majority in Wellington, Auckland, or Christchurch.⁵⁷⁸
- 6.78 A restrictive covenant is attached to or runs with the land. This means that the covenants restricting supermarket developments that we have identified would bind any third parties who subsequently acquire (or lease) that land. Examples of how and when restrictive covenants can be lodged include:
- 6.78.1 on sale of land by a grocery retailer to a third party; or
- 6.78.2 where a site is acquired by a grocery retailer from a third party, and in consideration for that purchase the vendor agrees to register a covenant against other land in the area that the vendor is retaining.
- 6.79 We are also aware that major grocery retailers enter into leases which contain covenants restricting the development of rival supermarket and/or other retail grocery businesses (eg, butcheries, bakeries, fruit and vegetable stores) on adjacent or proximate premises.⁵⁷⁹ These exclusivity covenants in leases appear to largely take place in relation to shopping centres or malls. The prevalence with which this conduct occurs varies amongst the major grocery retailers.
- 6.80 We have identified over 100 exclusivity covenants in leases entered into by the major grocery retailers, the majority of which are still active.⁵⁸⁰ At least 90 instances of these exclusivity covenants in leases had potential terms of 20 years or more (after taking into account rights of renewal).⁵⁸¹ These exclusivity covenants in leases have been lodged across the country, with the majority in major urban areas (eg, Auckland, Wellington and Christchurch).⁵⁸²

⁵⁷⁶ []. These figures include restrictive covenants which may have expired as they could have impacted on entry and expansion for the period of time when they were active.

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⁵⁷⁹ Exclusive leases have also been discussed in overseas market studies, notably by the ACCC and South African Competition Commission. The ACCC found that in the vast majority of leases in larger metropolitan centres, there appears to be little justification for exclusivity clauses other than to prevent competitive entry, ACCC “Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries – July 2008” (20 July 2008) at XVIII; The South African Competition Commission found that long-term exclusive leases in shopping centres have the effect of raising barriers to entry for small and independent retailers, Competition Commission: South Africa “The Grocery Retail Market Inquiry (Final Report, non-confidential)” (25 November 2019) at [40].

⁵⁸⁰ []. These figures include exclusivity covenants in leases which may have expired as they could have impacted on entry and expansion for the period of time when they were active.

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- 6.81 Exclusivity covenants in leases are contained in lease agreements between the major grocery retailers and landlords. In general, they would not be binding on subsequent tenants or landlords, unless a subsequent tenant assumes possession as a consequence of an assignment of an existing lease during its term (rather than entry into a new lease).

Relevance of restrictive covenants and exclusivity covenants in leases

- 6.82 The lodging of restrictive covenants and exclusivity covenants in leases on sites that might otherwise be suitable for retail grocery development (including expansion of existing stores) is likely to be a significant factor preventing or slowing entry and expansion. This is particularly the case where there are no other suitable sites, or only less suitable sites in the vicinity. These arrangements also have the potential to breach sections 27 and 28 of the Act, which is discussed from paragraph 6.97 below.
- 6.83 Restrictive covenants and exclusivity covenants in leases may allow incumbent firms to benefit from reduced competition and receive higher sales and profits than they would otherwise be able to. We have observed instances where:
- 6.83.1 a major grocery retailer noted the existence of covenants restricting supermarket entry when assessing potential opportunities for entry;⁵⁸³ and
- 6.83.2 Foodstuffs NI commenced proceedings in the High Court against Woolworths NZ over a restrictive covenant which would prevent Foodstuffs NI from operating a PAK'nSAVE on a site. Comments from Foodstuffs NI's GM Membership & Property in a media article indicated while Woolworths NZ's view was that the restrictive covenant prohibited a supermarket operating on the site, Foodstuffs NI considered the restrictive covenant to be anticompetitive and not legally enforceable.⁵⁸⁴ Subsequent comments indicated Foodstuffs NI wanted to "ensure customers benefit from substantially increased and vigorous competition, better prices, more choice and a brand new PAK'nSAVE".⁵⁸⁵

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584 FMCG Business "Battle at Highland Park" (August 2019) <https://www.fmcgbusiness.co.nz/battle-at-highland-park/>.

585 FMCG Business "Battle at Highland Park" (August 2019) <https://www.fmcgbusiness.co.nz/battle-at-highland-park/>;

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- 6.84 A restrictive covenant reduces the scope of activities which can be conducted on a piece of land. In some instances, restrictive covenants may significantly reduce the value of the land in relation to which they are lodged.⁵⁸⁶ This indicates that retailers may expect the benefits of lodging restrictive covenants (eg, increased sales and/or profits as a result of reduced competition) to outweigh any foregone asset value incurred as a result.
- 6.85 However, the extent to which a restrictive covenant or exclusivity covenant in a lease reduces competition will vary depending on factors such as:
- 6.85.1 the duration of the restrictive covenant or exclusivity covenant, as a lengthy duration or the absence of an expiry date results in a greater restriction on site availability; and
 - 6.85.2 the availability of other suitable sites in the area, as placing restrictive covenants or exclusivity covenants in leases over sites when there are few or no alternatives in the area is likely to be more restrictive of competition.
- 6.86 Restrictive covenants and exclusivity covenants in leases are particularly likely to impede entry and expansion where:
- 6.86.1 they are used in areas where there is a shortage of land appropriate for retail grocery use;
 - 6.86.2 they prevent former retail grocery sites from being used for that purpose, since these are likely to have a proven customer base; and/or
 - 6.86.3 they prevent undeveloped land in major urban areas and their fringes from being developed into a retail grocery site, but would permit other retail uses.
- 6.87 In addition, we note that these arrangements have a cumulative effect. As more restrictive covenants and lease covenants are lodged over time, the total number of sites subject to restrictive covenants and exclusivity covenants in leases is likely to increase. This is particularly the case where the covenants have significant durations or no expiry dates. As such, the impact which restrictive covenants and exclusivity covenants in leases have on entry and expansion may continue to grow over time.

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- 6.88 The lodging of a restrictive covenant or exclusivity covenant in a lease is also significantly less costly than land banking as:
- 6.88.1 it either means not having to incur the cost of acquiring land (exclusivity covenants in leases), or being able to recover at least some of the purchase price (by selling it after lodging a restrictive covenant); and
 - 6.88.2 it allows parties to avoid incurring costs associated with holding land for an extended period of time.

Lack of a pro-competitive rationale for restrictive covenants and exclusivity covenants in leases

- 6.89 Restrictive covenants and exclusivity covenants in leases on sites which would have otherwise been suitable for grocery retailing (including expansion of existing stores) have the effect of reducing the availability of suitable sites for grocery store development, and thus make it more difficult for a competing grocery retailer to enter or expand. While these effects are the same regardless of the grocery retailer's purpose for holding that land, if a pro-competitive purpose can be articulated for the conduct, this may be relevant to our framing of recommendations relating to the conduct.⁵⁸⁷
- 6.90 We consider that the claimed benefits for many of the restrictive covenants or exclusivity covenants in leases we have observed are unlikely to outweigh the competitive harm flowing from the restrictions they place on site availability (and by extension, the impact they have on entry and expansion). The explanations we have received do not sufficiently explain why covenants of this nature are commercially legitimate such that their restrictive effect on competition should be justified. Rather, we are aware that this conduct may, at least in some instances, be intended to prevent entry and expansion in an area.

⁵⁸⁷ For example, we note that the restrictive covenants we observed as part of our retail fuel market study may have been placed on former retail sites by fuel stations to prevent potential disputes from occurring if a re-used site was found to have contaminated the land. This rationale does not appear to be relevant to the operation of supermarkets.

6.91 For instance, we understand that a restrictive covenant may often be registered against the title before it is sold, limiting future operation of a food or retail grocery business at the site.⁵⁸⁸ We consider this illustrates that restrictive covenants may be lodged for the purposes of preventing competitive entry (and a corresponding reduction in an incumbent firm's store revenues and profits).

6.92 We understand that:

6.92.1 a rationale for lodging restrictive covenants can be to prevent competitive entry into an area where the incumbent firm has no direct supermarket competition in the area;⁵⁸⁹ and

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6.92.2 sites are sometimes acquired for the purposes of restricting the development of a competitor’s store and subsequently sold after a restrictive covenant was lodged.⁵⁹⁰

6.93 Covenants can be put in place because grocery store development on the remaining land or elsewhere in the shopping centre would reduce sales and the financial viability of the acquiring retailer’s own store development, which is the commercial basis upon which any rent or purchase price would commonly be set.⁵⁹¹ The potential for covenants to allow retailers to recoup development costs in relation to new developments was mentioned in a submission on our draft report.⁵⁹²

6.93.1 These arrangements, by reducing site availability, prevent or lessen the likelihood of competitive entry into an area. This in turn has the potential to reduce the level of competition faced by the incumbent firm, allowing them to receive higher revenues (in the form of increased sales) than they would likely have achieved in a more competitive market with the threat of entry.

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Ernie Newman “Submission on Market study into grocery sector draft report” (26 August 2021) at 8.

- 6.93.2 These increased revenues may subsequently be shared with the associated land owner or landlord in the form of higher rent payable or a higher purchase price for land intended to be used for store development. However, we consider this unlikely to be pro-competitive as it comes at the expense of consumers in the area who might have otherwise received the benefits of increased competition (eg, lower prices) absent the restrictive covenant or exclusivity covenant in the lease. In essence, we consider this may be the equivalent of the two parties sharing the benefits of reduced competition.
- 6.94 The ACCC's study into the grocery sector mentioned that in some circumstances, a possible rationale for offering a period of exclusivity would be to attract a supermarket as an anchor tenant to a shopping centre or complex which might not have otherwise been built.⁵⁹³ We note that this was raised as a rationale (particularly in relation to exclusivity covenants in leases) both in submissions on our draft report and during the conference.⁵⁹⁴
- 6.94.1 The extent to which this rationale applies in a New Zealand context is unclear as we have not assessed each restrictive covenant and exclusivity covenant in a lease on an individual basis. However, the ACCC also noted that while guaranteeing a period of exclusivity may be justified in some circumstances, restrictive provisions in supermarket leases appear to be employed simply to maximise the profitability of a supermarket by restricting its exposure to competition in many cases.⁵⁹⁵ We note that the undertakings accepted by the ACCC in relation to exclusivity covenants in leases only included a period of exclusivity for stores that had already commenced trading, not future stores.⁵⁹⁶
- 6.94.2 As discussed in paragraphs 6.77 and 6.80, most of the restrictive covenants and exclusivity covenants in leases we have observed have relatively lengthy durations (or potential durations) of more than 20 years. Our view is that the anchor tenant rationale is unlikely to justify exclusivity for such extensive periods.

⁵⁹³ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries – July 2008" (20 July 2008) at [XVIII].

⁵⁹⁴ Comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 19 (lines 17-26); NZ Initiative "Submission on Market study into grocery sector draft report" (26 August 2021) at [3.21].

⁵⁹⁵ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries – July 2008" (20 July 2008) at 189.

⁵⁹⁶ ACCC "Supermarket agreement opens way for more competition" (18 September 2009), available at: <https://www.accc.gov.au/media-release/supermarket-agreement-opens-way-for-more-competition>. Undertakings from grocery retailers in Australia were accepted by the ACCC following its enquiry report which identified concerns that restrictive provisions in lease agreements in respect of supermarket space could restrict the ability of supermarket operators to establish supermarkets in shopping centres, for example, Woolworths Limited "Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B by Woolworths Limited" (17 September 2009) at [15], available at: <https://www.accc.gov.au/system/files/public-registers/undertaking/893470-1-Undertaking.PDF>.

6.95 A further rationale for restrictive covenants described in paragraph 6.77 may be to protect goodwill associated with existing retail banners.⁵⁹⁷ For example, a grocery retailer which sells its former site may be concerned that goodwill relating to its retail banner or the location of its former store might be appropriated by a competing retailer. Goodwill could be generated where consumers develop a habit of shopping for groceries at a particular location. A grocery retailer could potentially appropriate location-related goodwill by developing a grocery store at a competitor's former store site.

6.95.1 However, the major grocery retailers have relatively distinct store brandings (including colours and logos) for each of their retail banners, and we consider it unlikely that competing retailers could capture significant brand-related goodwill when a store changes retail banner (eg, if a Countdown is turned into a New World).

6.95.2 In any event, we consider that any concerns relating to the protection of goodwill would not extend beyond the short term. However, as discussed in paragraph 6.94.2, most restrictive covenants have relatively lengthy durations.

6.96 In summary, restrictive covenants and exclusivity covenants in leases in relation to sites which would otherwise be suitable for grocery store development impact on entry and expansion conditions as they reduce site availability. Our view is that the rationales provided for many of the restrictive covenants and exclusivity covenants in leases do not sufficiently explain why they are commercially legitimate such that their restrictive effect on competition should be justified.

Restrictive covenants and exclusivity covenants in leases under the Commerce Act

6.97 While the restrictive covenants and exclusivity covenants in leases we have identified are relevant to our study due to their potential to prevent or slow entry and expansion, they may also be relevant to us in our role as an enforcement agency.

6.98 Section 27 and 28 of the Commerce Act already apply to exclusivity clauses in leases and restrictive covenants, respectively. Restrictive covenants and exclusivity covenants in leases may breach sections 27 and/or 28 of the Act:

6.98.1 section 27 prohibits the entering into or giving effect to a contract, arrangement or understanding containing a provision which has the purpose, effect, or likely effect of substantially lessening competition in a market; and/or⁵⁹⁸

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Commerce Act 1986, s 27.

- 6.98.2 section 28 prohibits the requiring or giving of, or enforcing, a covenant that has the purpose, effect or likely effect of substantially lessening competition in a market. Such covenants are unenforceable.⁵⁹⁹
- 6.99 Independent of this study, we have been reviewing whether there are any historic or ongoing matters raised in the context of the use of restrictive covenants and exclusive covenants in leases that might be at risk of breaching these provisions of the Commerce Act. We will continue to consider whether all or some of these matters warrant prioritisation for further investigation. We discuss this further in Chapter 9.⁶⁰⁰

Land banking

- 6.100 We are aware that the major grocery retailers identify, acquire, and hold land (including suitable store sites) without specific plans for using that land for their operations within a set timeframe (also known as land banking).⁶⁰¹ Land banking was mentioned by stakeholders in submissions on our preliminary issues paper as being a factor which may impact on entry and expansion.⁶⁰²
- 6.101 Our starting point when assessing the effect of land banking on the conditions for competition is that it has the potential to impede entry and expansion by restricting the ability of competing retailers to access a key input in the form of suitable sites.⁶⁰³ The extent to which land banking impacts on the ability of a new entrant or existing firm to find a suitable site would depend largely on factors such as the number of alternative sites available and the length of time which land is held for (the longer the period between the acquisition and development of a site, the greater the impact it has on entry and expansion).

⁵⁹⁹ Commerce Act 1986, s 28.

⁶⁰⁰ Commerce Commission “Enforcement Response Guidelines” (October 2013) https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

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⁶⁰² Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [37] – mentions land banking to prevent potential rivals from establishing a presence; NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [135] – mentions land banking as a well-established strategic barrier to entry and expansion.

⁶⁰³ The UK Competition Commission’s groceries market investigation also discussed land banking as a potential barrier to entry or expansion, UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [7.69].

- 6.102 Over the period of time we have examined, we have identified over 200 sites held (owned or leased) or previously held by the major grocery retailers which either were not used or have ceased being used for supermarket development. These sites appear to be located across the country, with the majority in major urban areas (eg, Auckland and Christchurch).⁶⁰⁴ At least 30 of these sites have been held or were previously held by the major grocery retailers for more than 20 years.⁶⁰⁵ This provides an indication that there are a number of sites which may have been land banked (and the corresponding impact of any land banking which may have taken place).
- 6.103 The acquisition and holding of land is often necessary for grocery retailers for a range of reasons such as planned supermarket development, planned warehouse development, carparking or developing a property portfolio for investment purposes (ie, aggregating a number of contiguous titles as they become available).
- 6.104 Information we have gathered indicates that the major grocery retailers tend to take a long-term approach towards store development, which includes identifying and acquiring suitable sites or sites which may become suitable for future supermarket development (eg, based on forecast or anticipated population growth and residential expansion well in advance on a prospective basis) as they become available.⁶⁰⁶
- 6.105 However, grocery retailers may also have other reasons for acquiring and holding potential retail grocery sites – including to prevent use of that land by competing grocery retailers. Where land is acquired and held without being utilised, this can have an effect on entry and expansion conditions by reducing the availability of suitable sites.

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⁶⁰⁶ Foodstuffs NI commented “We don’t land bank, if that’s a term that means we hold assets for the sake of holding out others, we strategically buy land well ahead for the reasons that I’ve described, and we need to do that to ensure that we can provide supermarkets for our customers in the future cause it takes a long time”, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 23 (lines 13-16);

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6.106 In general, as discussed at paragraph 6.91, the preferred strategy from the major grocery retailers appears to be to use restrictive covenants or exclusivity covenants in leases to impede store development by competitors. We have seen relatively few instances of the major grocery retailers buying and holding land for significant lengths of time primarily for this purpose.⁶⁰⁷ These sites generally appear to be sold once their purpose is fulfilled (potentially after lodging a restrictive covenant).⁶⁰⁸

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- 6.107 There appears to have been instances when the potential for a competitor to purchase or acquire a site is taken into consideration when making decisions regarding the purchase of land.⁶⁰⁹ However, in the decisions we have reviewed, this was usually one of a number of factors considered in the decision-making process as opposed to being the primary driver.
- 6.108 We note that land banking is likely to be relatively costly as it would involve paying the purchase price for land and any subsequent costs associated with holding the land for extended periods of time (including the capital servicing costs).⁶¹⁰

Land banking under the Commerce Act

- 6.109 While we have discussed land banking as a factor relevant to our study due to its potential to prevent or slow entry and expansion, it may also be relevant to us in our role as an enforcement agency.
- 6.110 Land banking may, in some circumstances, contravene section 47 of the Commerce Act,⁶¹¹ which relates to anticompetitive acquisitions, or otherwise section 27,⁶¹² which relates to anticompetitive agreements.
- 6.111 Independent of this study, we have been reviewing whether there are any historic or ongoing matters raised in the context of the acquisition of land that might be at risk of breaching these sections of the Commerce Act. We will continue to consider whether all or some of these matters warrant prioritisation for further investigation.⁶¹³

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611 Commerce Act 1986, s 47.

612 Commerce Act 1986, s 27.

613 Commerce Commission "Enforcement Response Guidelines" (October 2013)
https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

Position on restrictive covenants, exclusivity covenants in leases, and land banking

6.112 In summary, while land banking, restrictive covenants and exclusivity covenants in leases in relation to sites which would otherwise be suitable for grocery store development create similar reductions in site availability, our view is that restrictive covenants and exclusivity covenants in leases are currently more likely to be more of a concern.

6.112.1 While there are a number of legitimate and potentially pro-competitive commercial reasons for grocery retailers to acquire and hold land (for example, future development of their own stores), we do not consider there to be similar significant pro-competitive rationales in relation to many restrictive covenants or exclusivity covenants in leases, particularly those with relatively lengthy durations.

6.112.2 Where parties intend to restrict a competitor's ability to enter or expand, they would appear more likely to do so using restrictive covenants and exclusivity covenants in leases than land banking given the costs associated with acquiring and holding land for extended periods of time.

6.112.3 However, we note that if restrictive covenants and exclusivity covenants in leases were no longer options for restricting entry and expansion by competitors, there might be a subsequent increase in the use of land banking for these purposes.⁶¹⁴

Relative significance of different factors impacting on site availability

6.113 NZ Initiative commented in its submissions and at the conference that restrictive zoning policies are the primary reason for limited availability of sites for grocery retail development.⁶¹⁵ Its view is that restrictive covenants and exclusivity covenants in leases only impact site availability due to restrictive zoning limiting the number of sites which can be developed into supermarkets. In accordance with this view, the NZ Initiative has also suggested doing additional mapping work to better understand the relative impact of current zoning policies on site availability.⁶¹⁶

⁶¹⁴ NZFGC has also made similar comments on this point, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 19 (lines 35-37).

⁶¹⁵ Comments by NZ Initiative, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 20 (lines 7-14). Foodstuffs NI and Woolworths NZ also endorsed this view: Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [214]; Woolworths NZ “Submission on Market study into grocery sector draft report” (24 November 2021) at 38.

⁶¹⁶ The NZ Initiative suggested assessing the actual number of sites that could become supermarkets in existing council plans, and the proportion of those sites that are not already encumbered by covenants restricting against their use in grocery retail, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 20 (lines 15-20).

- 6.114 We agree that zoning policies are likely to fundamentally impact on site availability for supermarket development. We have not conducted additional mapping as we do not think it will significantly impact our view that there is likely room to provide a more permissive path towards the enablement of retail grocery store development.

Cost advantages available to the major grocery retailers

- 6.115 The major grocery retailers have significant cost advantages over other grocery retailers and new entrants. They are able to:
- 6.115.1 generate cost efficiencies through vertically-integrated wholesale and distribution;⁶¹⁷
 - 6.115.2 access economies of scale by spreading their fixed costs across large volumes or numbers of stores, achieving lower costs per unit;
 - 6.115.3 receive lower product prices due to:
 - 6.115.3.1 purchasing terms (including volume discounts);⁶¹⁸ and
 - 6.115.3.2 supplier promotional funding (also known as trade or marketing terms);⁶¹⁹ and

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⁶¹⁸ This refers to the price paid for products, less volume discounts and supply chain related services offered by the retailer: Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at 78; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at 47.

⁶¹⁹ This refers to the amounts that suppliers pay retailers to market, promote and discount their products: Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at 78; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at 47. The major grocery retailers have indicated that this is a significant factor impacting the net cost price which they receive for products. For example, Woolworths NZ indicated promotional funding lowers the effective cost it pays for goods by an average of [] of a supplier’s upfront cost (and often much more for larger multinationals), Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at 81.

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- 6.115.4 receive lower fees (eg, merchant service fees).⁶²⁰
- 6.116 Submitters and conference participants generally agreed that factors such as vertical integration and economies of scale deliver significant benefits to grocery retailers and allow them to compete more effectively.⁶²¹
- 6.117 Comments by the major grocery retailers indicated their view that scale advantages are not required to compete effectively, and that there is no minimum scale required for entry.⁶²² They mentioned that retailers can overcome the cost advantages discussed above by:
- 6.117.1 using global economies of scale (eg, Costco, Aldi);⁶²³
- 6.117.2 using differentiated business models (eg, online only, smaller retail sites) to drive lower costs;⁶²⁴
- 6.117.3 focussing on different aspects of PQRS (eg, product differentiation);⁶²⁵

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621 Woolworths NZ mentioned that its scale and vertical integration deliver significant efficiency benefits. It also noted that its business model is highly sensitive to scale, with unit costs likely to go up if its scale is impacted by our recommendations, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 8 (lines 6-17); Foodstuffs NI noted that volume results in price advantages, and that economies of scale and volume discounts are common features of retail sectors, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 10 (lines 21-24); A number of submissions commented on the benefits of vertical integration in grocery retailing and/or the prevalence of vertically integrated overseas grocery retailers, for example: Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 43-44; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 99; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 81; The Warehouse Group “Post conference submission on Market study into grocery sector” (23 November 2021) at 2; Northelia “Post conference submission on Market study into grocery sector” (29 November 2021) at 8.

622 Woolworths NZ indicated that there is no minimum scale or pre-requisite model required for entry by an effective competitor, and that it faces competition on a range of different dimensions, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 8 (lines 1-6); Foodstuffs NI and Foodstuffs SI indicated that there is no minimum scale required for entry and that retailers do not need access to scale or efficiencies to compete on price, Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [145]-[147]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [123]-[125].

623 Comments regarding global scale: comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 9 (lines 1-2); Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [327]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [296].

624 Comments regarding differentiated business models: see Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [147.2]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [124].

625 Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [326]. Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [296].

- 6.117.4 entering at a small scale and subsequently scaling up;⁶²⁶
- 6.117.5 using joint buying groups to access volume discounts.⁶²⁷
- 6.118 Scale is a factor which provides the major grocery retailers with cost advantages over other retailers and entrants. This is consistent with comments from the major grocery retailers which highlight the importance of scale in driving unit costs down for their businesses.⁶²⁸ New entrants and retailers would therefore need to find a way to overcome the inherent cost disadvantages they face in order to compete effectively on price with the major grocery retailers.
- 6.119 We have been told that scale is a requirement for an online-only grocery retail channel to be successful.⁶²⁹ We acknowledge that some of the methods suggested in paragraph 6.117 may assist retailers when entering or expanding in the retail grocery sector (either by allowing them to access the benefits of scale or mitigating the impact of cost disadvantages associated with lack of scale). However, we view them as ways of attempting to overcome the inherent cost disadvantages faced by retailers and entrants which lack scale, rather than demonstrating that scale is not required for effective entry and/or competition.
- 6.120 Even if retailers were to enter or expand using these methods (which, as discussed in Chapter 5, they have), our view remains that access to scale is a factor impacting on entry and expansion.
- 6.120.1 Inability to access scale benefits which are available to the major grocery retailers is inherently a factor limiting the effectiveness of competition (particularly price competition but also competition in the range of goods available and the provision of a convenient one-stop shopping experience) in the sector. As discussed in paragraph 5.98, we consider that observed and imminent entry and expansion is unlikely to present a significant competitive constraint on the major grocery retailers.

⁶²⁶ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 8 (lines 31-33).

⁶²⁷ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [18]; Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [147.3].

⁶²⁸ Woolworths mentioned that its scale and vertical integration deliver significant efficiency benefits. It also noted that its business model is highly sensitive to scale, with unit costs likely to go up if its scale is impacted by our recommendations, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 8 (lines 6-17); Foodstuffs NI noted that volume results in price advantages, and that economies of scale and volume discounts are common features of retail sectors, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 10 (lines 21-24).

⁶²⁹ Comments by Supie, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 4 (lines 34-40).

- 6.120.2 We also note that the effectiveness of these proposed methods of overcoming scale disadvantages is unclear. For example, Supie (online only) and Night 'n Day (smaller retail sites) use differentiated business models, but still have difficulty accessing competitively priced supply of products due to lack of scale.⁶³⁰
- 6.121 Our view remains that cost disadvantages generated by the inability of other retailers and entrants to access economies of scale are currently and are likely to continue to remain a significant factor impacting on entry and expansion.
- 6.122 The ability of the major grocery retailers to generate cost efficiencies for the reasons listed in paragraph 6.115 does not inherently raise competition issues. Economies of scale, volume discounts and vertical integration are all common features of a number of other retail sectors and overseas grocery markets. They generate significant efficiency benefits which ultimately benefit consumers if they are passed on in the form of lower prices.
- 6.123 However, incumbent firms' access to these cost efficiencies mean that they are likely to have cost advantages over new entrants that are not vertically integrated or operating at scale.
- 6.124 This is likely to make it difficult for new entrants and other grocery retailers to enter, expand, and compete effectively on price, even while operating at a small scale. This will also reduce their ability to gain market share by growing their customer base, and will, in turn, reduce their ability to achieve economies of scale or receive lower prices from buying in bulk and/or negotiating competitive supplier promotional funding terms. Statements by existing retailers indicate that this has impacted on their ability to compete.⁶³¹

⁶³⁰ Night 'n Day indicated that it is currently unable to obtain competitive prices for grocery products, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 9-12); Supie indicated that it has limited access to competitive pricing from suppliers due to a lack of scale, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 40-41).

⁶³¹ Supie mentioned that scale (to receive competitive pricing and to lower per unit costs) is required to compete effectively with the major grocery retailers, and that it does not currently have sufficient scale to be an effective competitor, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 4 (line 35) to 5 (line 4). Night 'n Day indicated that the significant difference in scale between the major grocery retailers and other grocery retailers is an issue, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 37-40).

6.125 While we have observed that other grocery retailers are able to compete with the major grocery retailers on price in relation to some products, they are unable to do so for the full range of groceries (as discussed in Chapter 4). This is likely because they:

6.125.1 may receive less competitive prices from suppliers due to their lower volumes and apparent inability to access comparable promotional funding terms;⁶³²

6.125.2 do not enjoy economies of scale and scope in wholesaling, warehousing and distribution;⁶³³ and

6.125.3 are unable to spread their fixed costs across significant retail volumes as the major grocery retailers do.

6.126 As a result, other grocery retailers generally differentiate their offering using non-price factors such as product range (as discussed in Chapter 4). This indicates that the cost efficiencies which major grocery retailers are able to access are likely to restrict the extent to which there can be effective large-scale entry, expansion and competition for consumer spend across all shopping missions.

6.127 In summary, the major grocery retailers' significant cost advantages resulting from factors such as economies of scale are in our view likely to be limiting effective entry and expansion and hence direct competition with the major grocery retailers. However, the scale factor would be less important if entrants were able to access a full range of competitively priced groceries. This is discussed in greater detail in the following section.

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Wholesale access to grocery products

- 6.128 A grocery retailer cannot provide a widespread, full range, competitively priced offering without first obtaining groceries on reasonable terms from either a range of suppliers or a grocery wholesaler.⁶³⁴ This section explores the extent to which wholesale access to grocery products – as one mechanism of obtaining competitively priced offerings – is impacting on the conditions of entry and expansion.
- 6.129 It is not uncommon in overseas grocery markets for large incumbent firms to be vertically integrated in terms of performing both retail and wholesale functions.
- 6.130 However, a key feature of some overseas grocery markets is the presence of significant grocery wholesalers (eg, C&S Wholesale Grocers in the US, Bestway in the UK). Wholesaling provides the ability to purchase in bulk and negotiate lower prices by aggregating volumes from smaller grocery retailers, and can also generate cost efficiencies by organising centralised storage (eg, at their own warehouses) and distribution to retail stores.
- 6.131 Coriolis argued that, worldwide, there are no “independent wholesalers” left apart from Metcash (which is changing its business model), where “independent wholesaler” is defined as a separately owned, non-aligned, stand-alone “broadline” wholesaler of a full range of everyday groceries at competitive prices enabling any and all independent stores to compete with chain store operators in their region. We do not consider this statement inconsistent with our observation that there is wholesale available in other jurisdictions as those wholesalers may not meet some elements of the Coriolis definition of an “independent wholesaler” (eg, they may not be independently owned).⁶³⁵
- 6.132 Grocery retailers who purchase from competitive grocery wholesale markets therefore have the potential to receive lower prices than they would likely be able to negotiate from suppliers directly,⁶³⁶ in addition to reducing transaction costs.

⁶³⁴ In this context “competitively priced” refers to prices which enable other grocery retailers to compete effectively with the major grocery retailers.

⁶³⁵ Coriolis “Post conference submission on Market study into grocery sector” (18 November 2021) at [42-44].

⁶³⁶ We note that whether or not this potential is realised may depend on the extent to which there is effective competition between grocery wholesalers. A single large independent wholesaler of groceries may not be incentivised to charge competitive prices to its customers.

Availability of wholesale in New Zealand

- 6.133 Current wholesale options for a full range of groceries at competitive prices and associated services in New Zealand are limited. This was generally supported by submitters and participants at the conference.⁶³⁷
- 6.134 We are aware that wholesale options exist for sourcing some product categories in New Zealand such as fresh produce (eg, T&G Fresh and MG Marketing) and meat.⁶³⁸
- 6.134.1 We also note retailers have indicated that they are able to acquire some groceries from wholesalers of imported products (eg, AB International, Acorn Group, Tai Ping, Asian Savour). This appears to largely be the case for international products (eg, Indian, Chinese, Korean) and some categories of globally branded products (eg, confectioneries).⁶³⁹ However, we note that importing may not provide access to locally branded products, including some core brand products which consumers expect to see in a supermarket.

⁶³⁷ Night 'n Day indicated that retailers do not have access to cost-effective purchasing due to a lack of independent wholesale, Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 17-21); Supie indicated that current wholesale offerings are not viable in terms of cost, range, and consistency of supply, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 19-23); Monopoly Watch "Post conference submission on Market study into grocery sector" (29 November 2021) at 10; Hexis Quadrant "Post conference submission on Market study into grocery sector" (1 December 2021) at 37; NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at [2.3].

⁶³⁸ See Beef + Lamb NZ's website for examples of meat suppliers and wholesalers
<https://www.beeflambnz.co.nz/suppliers>.

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- 6.134.2 There are some larger suppliers which can essentially perform a wholesale function in some product categories (eg, bread and milk) through a “direct store delivery” model.⁶⁴⁰ While directly purchasing from suppliers may be an option in relation to some product categories, information provided by other grocery retailers indicates that purchasing directly from suppliers may not be a viable option in many instances. As the major grocery retailers purchase large volumes directly, they commonly receive volume discounts and promotional funding terms which other grocery retailers are unable to match.⁶⁴¹ Some suppliers also impose volume requirements (such as requiring minimum order quantities) which render it difficult for other grocery retailers or new entrants to purchase directly.⁶⁴²
- 6.134.3 While the major grocery retailers own and operate firms which perform wholesale functions, receiving wholesale supply of a full range of groceries from these firms does not appear to be a viable option for most other grocery retailers.⁶⁴³
- 6.134.3.1 Wholesale Distributors Limited, which is owned by Woolworths NZ, does not wholesale to New Zealand grocery retailers other than those associated with Woolworths NZ (eg, FreshChoice and SuperValue stores).⁶⁴⁴

⁶⁴⁰ The potential for retailers to receive supply of products directly from suppliers was emphasised by the major grocery retailers in submissions following our draft report: Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [5.5]; Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [221].

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⁶⁴³ Night ‘n Day indicated that wholesale supply by the major grocery retailers has the potential to give them insights into a competing retailer’s business, and further enhances their buying power with suppliers, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 6 (lines 4-19).

⁶⁴⁴ [].

6.134.3.2 Trents (which is owned by Foodstuffs SI) and Gilmours (which is part of Foodstuffs NI) are primarily foodservice wholesalers. Trents supplies some products to dairies, and Gilmours also supplies some products to grocery retailers (primarily convenience stores, petrol stations, and dairies).⁶⁴⁵ However, information provided indicates that they have a different offer from supermarkets, and that supermarkets such as PAK’nSAVE is often a better product sourcing option for other grocery retailers (eg, convenience stores) in terms of price or product availability.⁶⁴⁶

6.134.3.3 Information we have received indicates that prices charged by Gilmours and Trents for some products are, in some instances, higher than the prices charged at supermarkets for the same products (Night ‘n Day indicated at the conference that the price difference was approximately 43%).⁶⁴⁷

6.134.4 TheMarket has been cited by the major grocery retailers as being a potential option for grocery wholesale. Information provided by The Warehouse Group indicates that TheMarket does not directly sell groceries. Rather, it is largely an e-commerce platform which allows merchants to list their products and sell to consumers.⁶⁴⁸ TheMarket does not appear to be a significant source of supply of groceries.⁶⁴⁹

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⁶⁴⁷ Comments by Night ‘n Day, Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 24 (lines 9-13); Foodstuffs NI indicated the price differential can be attributed to factors such as Gilmours benefiting from volume discounts but not trade and marketing spend, and needing to add services (for example, delivery, account management), Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 29 (lines 27-33); Cathie Gould “Post conference submission on Market study into grocery sector” (23 November 2021) at 2;

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⁶⁴⁸ The Warehouse Group “Comments on submissions on preliminary issues paper” (12 April 2021).

⁶⁴⁹ The Warehouse Group “Comments on submissions on preliminary issues paper” (12 April 2021). The Warehouse noted that less than 0.6% of products offered on TheMarket are grocery related.

- 6.134.5 We are aware that Night 'n Day currently receives supply of some grocery products from Woolworths NZ. This indicates that smaller retailers may be able to enter into commercial negotiations with the major grocery retailers to get access to a wide range of products.⁶⁵⁰ However, we understand that Woolworths NZ's assets and grocery supply chain are not currently set up for large-scale third-party wholesale supply, and that significant system and process overhaul and investment would be required to provide this.⁶⁵¹
- 6.135 Major grocery retailers display a large degree of vertical integration, which (while likely an efficient outcome for the major grocery retailers) contributes to the lack of availability of competitively priced wholesale options for other retailers seeking access to a full range of grocery products and brands in New Zealand. We have observed that other supermarkets negotiate with and purchase directly from large numbers of suppliers and arrange distribution to their stores, which may include the operation of their own warehouses and distribution centres.⁶⁵²

⁶⁵⁰ Comments by Night 'n Day, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 36 (lines 14-15).
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⁶⁵¹ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [5.3].
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6.136 As discussed in paragraph 6.134.2, other grocery retailers have consistently indicated that they generally receive less competitive prices than the major grocery retailers when purchasing from suppliers directly due to differences in scale.⁶⁵³ We are aware that in at least some instances, wholesale prices offered by suppliers to convenience stores and dairies may be higher than prices displayed in retail supermarkets.⁶⁵⁴ The presence of volume requirements (eg, minimum order quantities) may prevent some retailers or new entrants from purchasing from some suppliers entirely.⁶⁵⁵

Potential for increased wholesale availability in future

6.137 Woolworths NZ, Foodstuffs NI and Foodstuffs SI submitted that there could be other avenues for accessing wholesale services in the market such as current foodservice wholesalers that could pivot to supplying groceries.⁶⁵⁶ Woolworths also submitted that potential or future international entrants (Costco and Metcash) could potentially perform a wholesale function. However, we do not consider these are likely to be viable options for wholesale supply of a full range of groceries.

Foodservice wholesalers as a grocery wholesale option

6.138 Foodservice wholesalers which are owned by, or are part of, the major grocery retailers (Gilmours and Trents) supply some groceries to some grocery retailers (primarily convenience stores, petrol stations and dairies). However, as discussed at paragraph 6.134.3, they may not be a viable source of wholesale for a full range of groceries.

6.139 Woolworths NZ noted that the investment requirements (eg, distribution centre, logistics and transport) would be the same for a grocery and foodservice wholesaler, and that both Bidfood and Service Foods have made such investments.⁶⁵⁷

⁶⁵³ Night 'n Day indicated that it is currently unable to obtain competitive prices for grocery products, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 9-12); Supie indicated that it has limited access to competitive pricing from suppliers due to a lack of scale, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 40-41); above n 632.

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⁶⁵⁵ Above n 642.

⁶⁵⁶ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 63; Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 28-29; Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 18-19.

⁶⁵⁷ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [31.3].

6.140 While foodservice wholesalers (eg, Bidfood, Service Foods, Trents and Gilmours) may have the infrastructure required to wholesale grocery products, they operate in a different market from grocery wholesalers, and do not appear to be a viable source of a full range of groceries. Key reasons for this include:

6.140.1 many of their products are sold in formats that are suitable for foodservice but not retail grocery (eg, in bulk as opposed to packaged);⁶⁵⁸ and

6.140.2 their likely inability to obtain competitive prices from suppliers if they were to purchase groceries suited to retail grocery sale due to low purchase volumes.⁶⁵⁹

6.141 In addition, as discussed at paragraph 6.170, it is our view that the level of concentration in the retail grocery sector could present challenges for potential grocery wholesale entrants by significantly limiting their potential customer base.

6.142 We are not aware of any foodservice wholesalers which supply groceries to grocery stores on a significant scale.⁶⁶⁰ In addition, we have not seen evidence of any specific plans by independent foodservice wholesalers to expand into selling more groceries.⁶⁶¹

Potential or future international entrants as a grocery wholesale option

6.143 Woolworths NZ submitted that Costco’s entry into New Zealand will provide another significant cash-and-carry option for retailers, and that Metcash already has a sizeable presence in New Zealand via its liquor business (Tasman Liquor, Bottle-O), which would provide a basis on which to expand in New Zealand.⁶⁶²

6.144 We have not received any information or evidence regarding specific plans for entry by a potential wholesale entrant (eg, Metcash) offering a full range of grocery products and brands into the New Zealand grocery sector.⁶⁶³

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662 Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 63.

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- 6.145 We anticipate that Costco’s prices may be significantly lower than those currently charged by the major grocery retailers, raising the possibility that it could be a wholesale option for grocery retailers.⁶⁶⁴ However, there are some key limitations to Costco as a wholesale option for grocery retailers.
- 6.145.1 Costco purchases large quantities of branded products (eg, one brand of a type of product) in order to achieve higher volumes and negotiate for lower prices.⁶⁶⁵ This means that it is unlikely to stock a wide variety of brands available for purchase at wholesale by grocery retailers. The larger package sizes of its products may also be unsuitable for sale by other grocery retailers.
- 6.145.2 Woolworths indicated that it did not agree Costco’s pack sizes or range would restrict its viability as a potential wholesale supply option to grocery retailers, mentioning that Costco is still estimated to have more than 3700 SKUs.⁶⁶⁶ We understand that these 3700 SKUs include all product categories stocked by Costco, including non-grocery products (eg, whitegoods).⁶⁶⁷ As such, the number of grocery SKUs stocked at Costco is likely to be significantly lower than 3700. We also understand that the number of grocery product SKUs stocked by Costco is significantly lower than the number of SKUs typically offered at a supermarket, and Costco is unlikely to have a wide variety of brands for grocery wholesale purposes.⁶⁶⁸
- 6.145.3 Costco’s focus is on providing its members with quality goods and services at the lowest possible price. Its aim is to provide good value to its customers, which involves a constantly rotating product range.⁶⁶⁹ This means that Costco does not carry a core range of products outside of key commodities such as flour. While Costco may be a viable option for foodservice customers, the lack of certainty involved in its product range may also make it difficult for a grocery retailer to consistently source a full range of products.

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⁶⁶⁶ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [31.5.1].

⁶⁶⁷ Costco Wholesale 2020 Annual Report, available at: <https://investor.costco.com/static-files/7ef7bed6-c48f-4687-9c82-eb104b4823a5>.

⁶⁶⁸ Costco Boolaroo Economic Impact Assessment on behalf of Costco Wholesale Australia Pty Ltd (10 November 2020) at 10, available at: <https://apps.planningportal.nsw.gov.au/prweb/PRRestService/DocMgmt/v1/PublicDocuments/DATA-WORKATTACH-FILE%20PEC-DPE-EP-WORK%20PPSHCC-53!20201117T004625.536%20GMT>.

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6.145.4 Costco has confirmed that it intends to open one store in Auckland, and it appears that it is actively looking for store sites in Christchurch and Wellington.⁶⁷⁰ However the development of additional stores may depend on the success of its Auckland store.⁶⁷¹ Unless it expands its store network further, Costco may not be a significant wholesale option for many grocery retailers due to the locational constraints involved with only having one store (or a potential three stores).

6.145.4.1 Similar to its views on Costco as a retail competitor, Woolworths NZ indicated that Costco's viability as a grocery wholesaler would not be restricted by its small number of stores, due to the large catchment areas of its stores.

6.145.4.2 Woolworths NZ noted that Costco offers delivery for business customers within 20 km from one of its stores in Australia.⁶⁷² If Costco was to make a similar offering from its planned store in Auckland, this would likely reduce the impact of the locational constraints for some retailers located in Auckland. However, this would not materially impact the wholesale availability constraints we have identified for retailers in other regions.

⁶⁷⁰ Melanie Carroll Stuff "Costco delays its New Zealand launch, but is actively looking for additional sites" (29 October 2020) <https://www.stuff.co.nz/business/industries/123230944/costco-delays-its-new-zealand-launch-but-is-actively-looking-for-additional-sites>;

[]; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [24.4.1].

⁶⁷¹ RadioNZ "Costco experience opens in NZ mid-August" (9 February 2022) <https://www.rnz.co.nz/national/programmes/first-up/audio/2018829795/costco-experience-opens-in-nz-mid-august>.

⁶⁷² Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [31.5.2].

- 6.146 Woolworths NZ noted that economic analysis prepared on behalf of Costco indicated that Costco's estimated sales-to-business customers are generally in the order of 30% of total sales in Australia.⁶⁷³ However, the analysis indicated that the 30% of total sales was attributable to eight different categories of "business customers", including independent restaurants and take-away food outlets, professional businesses (doctors, lawyers, consultants etc), and hotels and motels.⁶⁷⁴ As "small supermarkets and convenience stores" was only one of the eight categories of business customers, sales to grocery retail customers are likely to be significantly lower than 30% of total sales.
- 6.147 We are not aware of any factors which are likely to significantly change the current lack of competitively priced wholesale for a full range of grocery products and brands in the New Zealand grocery sector.

Impact of wholesale availability on different types of retailers

- 6.148 The lack of wholesale options for a full range of groceries is likely to have significantly different impacts on entry and expansion for different types of retailers.
- 6.149 The major grocery retailers told us that lack of wholesale access to grocery products is not a significant impediment to entry and expansion. They indicated that new entry and expansion is likely to be from vertically-integrated retailers which are unlikely to use a wholesaler, as demonstrated by recent or planned entry and expansion into the grocery sector by:⁶⁷⁵
- 6.149.1 larger retailers (eg, Costco, The Warehouse);
 - 6.149.2 meal kit providers (eg, Hello Fresh, My Food bag); and
 - 6.149.3 other retailers (eg, Farro Fresh).

⁶⁷³ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [31.4.1]. Costco Boolaroo Economic Impact Assessment on behalf of Costco Wholesale Australia Pty Ltd (10 November 2020), at 11, available at:

<https://apps.planningportal.nsw.gov.au/prweb/PRRestService/DocMgmt/v1/PublicDocuments/DATA-WORKATTACH-FILE%20PEC-DPE-EP-WORK%20PPSHCC-53!20201117T004625.536%20GMT>.

⁶⁷⁴ Costco Boolaroo Economic Impact Assessment on behalf of Costco Wholesale Australia Pty Ltd (10 November 2020), at 10-11, available at:

<https://apps.planningportal.nsw.gov.au/prweb/PRRestService/DocMgmt/v1/PublicDocuments/DATA-WORKATTACH-FILE%20PEC-DPE-EP-WORK%20PPSHCC-53!20201117T004625.536%20GMT>.

⁶⁷⁵ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [31.1]; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [400]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [335].

- 6.150 They also indicated that based on our analysis, meaningful competition is more likely to come from entry and expansion of globally vertically-integrated retailers (eg, Costco, Aldi) than retailers which are likely to use wholesale access (eg, convenience stores and dairies).⁶⁷⁶
- 6.151 Some of the retailers specified by the major grocery retailers operate in categories where wholesale is available (eg, meal kit providers). Others appear largely unable to receive competitive prices for supply of grocery products and thus differentiate their offerings on other dimensions of competition.
- 6.152 We agree that larger retailers which might seek to enter or expand in the retail grocery market in the future – such as Aldi, Costco and The Warehouse – are unlikely to use wholesale in the long term (or, for some, at all) as they would likely have sufficient volumes and scale to receive competitive pricing by purchasing directly from suppliers. However, retailers will often expand their offering (eg, number of stores or range of available products) over time after entering. Access to wholesale grocery products may help retailers obtain a competitively priced supply of grocery products in the short-to-medium term, until they achieve a level of scale which allows them to receive competitive prices directly from suppliers.⁶⁷⁷
- 6.153 While wholesale supply is unlikely to be sought or used over the long term by existing or aspiring large retailers, wholesale supply may be viewed as an attractive long-term mechanism for existing small independent retailers and small new entrants to obtain the full range of competitively priced grocery products needed for them to provide a competitive offering comparable to the major grocery retailers.
- 6.154 Small independent retailers do not have access to competitively priced wholesale in a number of product categories, and would have to negotiate directly with a range of suppliers for the purchase of their products.⁶⁷⁸ They would likely receive less competitive prices than major grocery retailers unless they are able to purchase significant volumes, in addition to incurring significant transaction costs.⁶⁷⁹

⁶⁷⁶ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [29.1.5]; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [401.2]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [336.2].

⁶⁷⁷ For example, Northelia suggested that wholesale could assist new entrants during the transitional period while they build new distribution centres, Northelia "Submission on Market study into grocery sector draft report" (26 August 2021) at 3. The Warehouse Group also noted that potential large-scale entrants may seek access to wholesale supply to expedite market entry, but are less likely to use wholesalers in the medium to long term as they are likely to purchase directly from suppliers once they have built sufficient scale, The Warehouse Group "Submission on Market study into grocery sector draft report" (26 August 2021) at 2.

⁶⁷⁸ Above n 652.

⁶⁷⁹ For example, Supie has indicated that it has limited access to competitive pricing from suppliers due to a lack of scale, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 26 (lines 40-41);

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- 6.155 We also note that some product categories have larger suppliers which sell core brand products which consumers would expect to see as part of a supermarket offering. However, as discussed at paragraph 6.134.2, other grocery retailers have indicated that they are largely unable to match the prices which the major grocery retailers receive for products from larger suppliers due to differences in volume. We have received information indicating that an inability to purchase core brand products for a product category at competitive prices may in turn make it difficult for retailers and new entrants to compete effectively within that product category even if they are able to source alternative brands.⁶⁸⁰ As such, inability to access particular core brands of products at competitive prices may also hinder a retailer's ability to compete effectively with the major grocery retailers.
- 6.156 As discussed at paragraphs 6.134 and 6.134.1, there appears to be viable wholesale options for some grocery product categories (eg, fresh produce, meat, international products). As such, grocery retailers which largely sell products falling within these product categories, such as international food stores, meal kit providers and some specialist grocery retailers, appear to have access to wholesale options for the purposes of their customer offering. These businesses are less likely to have their entry and expansion impacted by the factors discussed in this section. It seems plausible that access to wholesalers catering to their needs has facilitated the entry of these differentiated grocery retailers.
- 6.157 Despite the lack of access to wholesale supply, some small grocery retailers, such as convenience stores or dairies, generally appear to be able to offer a viable business proposition at present. However, their inability to obtain a full range of groceries at competitive prices (as illustrated by some dairies purchasing products from supermarkets at retail prices for resale at their own stores) may impact on the prevalence of such retailers, and likely significantly inhibits their ability to expand and compete directly with the major grocery retailers on price, and necessitates competition on the basis of non-price aspects of PQRS (such as convenience).⁶⁸¹

Relevance of wholesale options for a full range of groceries

- 6.158 We consider that access to competitively priced groceries (whether directly from suppliers, or via a wholesaler) is a significant factor affecting the conditions for entry or expansion on a scale sufficient to challenge the major grocery retailers.

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- 6.159 We therefore consider that a lack of wholesale availability for a full range of groceries is likely to have a material – albeit limited – impact on the conditions of entry and expansion in the New Zealand retail grocery sector. In particular, as discussed above, it is likely to hinder the entry and expansion of small independent retailers. It may also hinder the entry or expansion of some existing or aspiring large retailers, which are unlikely to make use of wholesale supply in the long term, but may make use of it in the short-to-medium term (so as to, amongst other possible reasons, reduce capital risk of up-front investments) until they achieve sufficient scale in the grocery sector.
- 6.160 In the absence of comprehensive wholesale supply options, other grocery retailers and new entrants may:
- 6.160.1 face high per-unit transaction costs in dealing with a wide range of suppliers, given their lack of scale;
 - 6.160.2 be unable to access as wide a range of products as the major grocery retailers, either due to the transaction costs described above, or because suppliers do not want to deal with them because of their small scale;
 - 6.160.3 pay a higher per-unit cost for the goods they obtain from suppliers than the major grocery retailers, due to their lack of scale; and/or
 - 6.160.4 in some cases, find purchasing goods directly from the major grocery retailers' retail stores to be their best option, given the issues described above.

Reasons for lack of entry and expansion in the grocery wholesale market

- 6.161 Demand for wholesale groceries from a sufficiently large customer base of retailers is a key requirement for viable entry at the wholesale level. Insufficient demand would limit the volumes that a wholesaler would be able to aggregate from retailers, in turn limiting their ability to negotiate lower prices from suppliers.

Impact of supplier concentration on demand for wholesale

- 6.162 Foodstuffs NI and Foodstuffs SI submitted that there is not a separate wholesale level in the market for the full range of groceries. They submitted that this is because concentration at the supplier level across multiple product categories means that the number of suppliers that a grocery retailer has to deal with is small, and supplier relationships can be effectively managed by grocery retailers without the need for a comprehensive wholesale functional level of the market.⁶⁸²

⁶⁸² Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 18-19; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 28-30.

- 6.163 If these submissions are accurate, entry into the grocery wholesale market may be unlikely even if volumes from non-major grocery retailers would otherwise be sufficient for entry to be viable.
- 6.164 However, we generally do not consider there is significant concentration at a supplier level for most groceries.
- 6.164.1 We have observed that other supermarkets tend to purchase products directly from a large number of suppliers.⁶⁸³
- 6.164.2 Information provided by major grocery retailers also indicates that they each purchased from over a thousand suppliers in the 2020 financial year.⁶⁸⁴ In addition, the major grocery retailers also appear to deal with 20 or more suppliers in relation to more than 60% of product categories.⁶⁸⁵ This suggests that a majority of product categories do not appear to be significantly concentrated.
- 6.164.3 There may be a degree of concentration in some product categories, particularly where there are a few core brands of products that consumers would expect to see as part of a supermarket offering. However, while the major grocery retailers are able to purchase directly from suppliers of these core brand products at competitive prices, other grocery retailers appear largely unable to receive competitive prices from larger suppliers due to lack of scale (as discussed at paragraph 6.134.2). This is supported by our observation that other grocery retailers tend to differentiate their customer offerings (including brands sold) from the major grocery retailers.
- 6.165 We have observed that both major grocery retailers and other supermarkets tend to purchase from a large number of suppliers, and there does not appear to be a significant degree of supplier concentration in most product categories. Even in product categories where there might be some supplier concentration, other grocery retailers find it difficult to achieve competitive prices. It therefore appears unlikely that there would be a lack of demand for wholesale resulting from supplier concentration.

⁶⁸³ Above n 652.

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Impact of vertical integration by small grocery retailers on demand for wholesale

- 6.166 The evidence appears to show that many grocery retailers tend to purchase some products directly from a wide range of suppliers. However, this is not necessarily indicative of a lack of demand for wholesale of a full range of groceries. Rather, it is possible that small grocery retailers purchase directly from suppliers out of necessity given their lack of alternative options. Based on comments made by participants at the conference and in submissions, there is likely to be some demand for wholesale of a full range of grocery products and brands as well as associated services (eg, distribution and warehousing), both on a short-term and longer-term basis.⁶⁸⁶
- 6.166.1 As discussed at paragraph 6.126, other grocery retailers (including other supermarkets) have indicated they tend to differentiate their customer offerings from the major grocery retailers. One key reason for this is that differences in volumes mean that they are unable to receive competitive prices for the same products or brands. The availability of wholesale options for a full range of groceries may grant them access to more competitive prices for some products than they would be able to negotiate purely with their own volumes. Chapter 4 discusses how other grocery retailers largely compete on non-price dimensions.
- 6.166.2 We also note that other grocery retailers that negotiate and make individual distribution arrangements with a large number of individual suppliers likely incur additional transactions costs, which could be mitigated to some extent if they had access to centralised distribution services.⁶⁸⁷

⁶⁸⁶ For example, Night 'n Day, Supie, and Northelia have indicated that they are likely to form part of the customer base for a wholesaler: Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 15-25); Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 17-27); Northelia "Post conference submission on Market study into grocery sector" (29 November 2021) at 11-12.

⁶⁸⁷ Above n 633.

6.166.3 Convenience stores and dairies currently do not have a cost-effective avenue for sourcing a wide range of groceries, which restricts their ability to move into selling more groceries.⁶⁸⁸ They would likely be part of a retail customer base for new wholesale service providers selling a full range of groceries at competitive prices.

6.167 As part of their business model, even with the presence of a wholesale option, some grocery retailers may choose to purchase products directly from smaller suppliers.⁶⁸⁹ However, these retailers may nevertheless seek wholesale supply as a mechanism for purchasing a wider range of products while still sourcing some products directly from smaller suppliers as they are currently doing.

Impact of vertical integration by major grocery retailers on demand for wholesale

6.168 A key factor reducing retailer demand for a full range of wholesale groceries is the fact that the major grocery retailers are unlikely to form part of a potential wholesale entrant's customer base. As the major grocery retailers have sufficiently large volumes to negotiate competitive prices from suppliers and gain efficiencies by internalising their wholesale and distribution functions, it is unlikely that they would form part of the contestable customer base for a potential wholesale entrant selling a full range of groceries.

6.169 The customer base which a potential wholesale entrant selling a full range of groceries could potentially service is therefore likely to be limited to grocery retailers challenging the major grocery retailers.

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- 6.170 Market share estimates based on existing sales provided in Chapter 4 provide an indication of a potential customer base. However, it appears unlikely that demand from grocery retailers (excluding the vertically-integrated major grocery retailers) would form a sufficiently large customer base now or in the future to sustain entry by an independent wholesaler offering a full range of groceries.
- 6.170.1 Based on discussions at the conference and in submissions, we are aware of some retailers or potential entrants (eg, Night 'n Day, Northelia, and Supie) which could form part of the customer base for a grocery wholesaler.⁶⁹⁰
- 6.170.2 However, as discussed in paragraph 6.131 above, there appear to be few international examples of fully independent wholesalers.
- 6.170.3 In addition, it is our view that the level of concentration in the retail grocery sector may well present challenges for potential wholesale entrants by significantly limiting their potential customer base. Submitters and conference participants generally agreed with this view.⁶⁹¹
- 6.171 As previously discussed, a lack of wholesale options for a full range of groceries may in turn limit other grocery retailers' or potential retail entrants' abilities to source products at competitive prices. This may have a compounding "chicken and egg" effect, in that constraints on the number and scale of independent retailers may limit the viability of entry of an independent wholesaler and the lack of independent wholesale supply may limit the number and scale of independent retailers.

⁶⁹⁰ Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 15-25); Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 17-27); Northelia "Post conference submission on Market study into grocery sector" (29 November 2021) at 11-12.

⁶⁹¹ For example: Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [412]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [347]; comments by Supie, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 27 (lines 5-8);
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- 6.172 These factors may make it more difficult for parties to enter the New Zealand retail grocery sector at either the wholesale or retail levels. Rather, it may be the case that any potential new entrant looking to compete with the major grocery retailers at present might need to enter two markets simultaneously (retail and wholesale), thus achieving vertical integration in order to be viable. This would presumably involve additional costs (eg, start-up capital) and risk, and may be a factor impeding or slowing entry and expansion into the market by making it more difficult to enter or expand on a scale sufficient to challenge the major grocery retailers.⁶⁹²
- 6.173 As discussed at paragraph 6.24, we are not aware of specific plans for future entry or expansion into the retail grocery sector by a retailer capable of significantly constraining the major grocery retailers. As such, we do not have sufficient information to assess what might be required for a potential supermarket entrant to achieve the necessary scale required for effective entry at both the retail and wholesale levels.
- 6.174 However, we understand that Aldi's method of entry typically involves entering at both the retail and wholesale levels by building a number of stores (with approximately 10 stores being cited as a benchmark figure) as well as distribution centres to service them.⁶⁹³ While this may not be directly applicable to the New Zealand market, we consider that it still provides a useful indicator of the scale which may be required for successful entry.
- 6.175 Comments by Northelia/Monopoly Watch at the conference indicated their view that the minimum scale required for a supermarket entrant to be viable would be approximately 15% market share (at around \$3.5 billion) with about 150 stores.⁶⁹⁴ However, we have not been provided with the analysis underpinning these figures.
- 6.176 As illustrated by paragraph 6.171, the likely need to enter at both the wholesale and retail levels means a significant amount of investment would likely be required for a supermarket operator to achieve sufficient scale in the New Zealand grocery sector to challenge the major grocery retailers.

⁶⁹² For example, comments by Supie – Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 14 (lines 8-26); Supie "Post conference submission on Market study into grocery sector" (23 November 2021) at [3.1]-[3.3.3].

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⁶⁹⁴ Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 7 (lines 4-14).

Access to supply chain infrastructure

- 6.177 The Warehouse Group identified access to end-to-end supply chain infrastructure (including multi-temperature distribution, fulfilment capabilities and a transport fleet) as a potential factor restricting or hindering entry and expansion by large-scale entrants. Its view was that access to supply chain infrastructure would be more helpful to facilitate entry by larger grocery retailers (which are likely to purchase directly from suppliers in the longer term) than access to wholesale of grocery products (which would be more helpful to smaller retailers).⁶⁹⁵
- 6.178 There appears to be a number of third-party providers of logistics services, both for ambient and temperature-controlled products.⁶⁹⁶ We also understand that the major grocery retailers use services provided by third-party logistics providers, indicating that they are likely to be viable options for a grocery retailer to use.⁶⁹⁷ While partnering with a third-party logistics provider may require a retailer to commit to a certain degree of investment, this appears unlikely to be a significant factor impeding or restricting entry and expansion by retailers which are entering at scale.

⁶⁹⁵ The Warehouse Group "Submission on Market study into grocery sector draft report" (26 August 2021) at 2.

⁶⁹⁶ For example: Halls' Transport and Americold, which provide logistics services in relation to temperature-controlled products: <https://halls.co.nz/about-the-company>; <https://www.americold.co.nz/home/services/>; Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [28.3]-[28.5]; comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 12 (lines 33-40); comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 13 (lines 4-5 and 15-16);
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⁶⁹⁷ Woolworths NZ uses third-party options extensively throughout its supply chain – it has transport and logistics contracts with third parties and uses Americold as service provider for chilled, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 13 (lines 20-25); comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 12 (lines 32-33); Foodstuffs SI indicated that more than 40% of the transport it uses is from third-party providers (although a majority of this is for ambient products), Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 13 (lines 5-13).

- 6.179 In addition to the availability of third-party logistics providers, we also note that:
- 6.179.1 A significant proportion of products sold by the major grocery retailers are delivered directly to store by suppliers (which also use third-party providers).⁶⁹⁸ This indicates that retailers purchasing directly from suppliers would presumably also have the option of receiving direct to store delivery for some products.
 - 6.179.2 Supie was able to vertically integrate by building its own supply chain, which suggests that building supply chain infrastructure may be an option for some businesses.⁶⁹⁹ However, the extent to which this would apply to a bricks-and-mortar retailer is unclear given that Supie is an online-only retailer with a differentiated business model and supply chain requirements (eg, distribution to physical stores would not be required).⁷⁰⁰
 - 6.179.3 We understand that some of Woolworths NZ's distribution centres are owned by third-party investors and leased to Woolworths NZ.⁷⁰¹ This may be another option for retailers to build their own supply chain infrastructure without requiring significant up-front capital investment.
- 6.180 To the extent that a lack of access to supply chain infrastructure may be a condition preventing or hindering entry or expansion by smaller retailers which lack scale to use the options discussed above, these functions may be able to be fulfilled by a wholesaler.

Summary of our views on wholesale access to grocery products

- 6.181 We consider that improved wholesale access to grocery products would likely result in a material improvement in competition and outcomes for consumers.

⁶⁹⁸ Foodstuffs NI indicated that only about a quarter of its products went through its own supply chain infrastructure, with the rest being delivered directly by suppliers to store using their own infrastructure or third-party providers, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 12 (lines 19-29); Foodstuffs SI indicated that 49% of its products go direct to store from suppliers, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 13 (lines 6-9); Woolworths NZ indicated that [] of its total sales (by value) are delivered by suppliers direct to store, and [] of Wholesale Distributors Limited's franchisee total sales (by value) consist of products delivered direct to store by suppliers, Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [28.3].

⁶⁹⁹ Comments by Supie, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 5 (lines 17-27).

⁷⁰⁰ Comments by Supie, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 27 (lines 9-14).

⁷⁰¹ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [28.6]-[28.11].

6.182 In summary:

- 6.182.1 There is currently a lack of competitively priced wholesale options for a full range of groceries. While existing or potential large-scale retailers are unlikely to make use of wholesale supply in the long term (or in some cases, at all), the lack of wholesale supply nevertheless places a constraint on the ability of other grocery retailers to enter or expand.
- 6.182.2 The lack of access to wholesale means that, often by necessity, other grocery retailers must purchase directly from suppliers or in some cases from the retail stores of the major grocery retailers. This limits their ability to obtain goods at competitive prices and may increase transaction costs.
- 6.182.3 The impact of a lack of wholesale options on other grocery retailers' ability to enter or expand may have a compounding "chicken and egg" effect, in that constraints on the number and scale of independent retailers may limit the viability of entry of an independent wholesaler and the lack of independent wholesale supply may limit the number and scale of independent retailers.
- 6.182.4 Potential supermarket entrants may therefore have to enter at both the retail and wholesale levels simultaneously in order to achieve sufficient scale to effectively challenge the major grocery retailers, which would likely require significant investment and carry increased risk.

Conduct by suppliers and retailers which could potentially affect product sourcing

- 6.183 In this section, we discuss conduct which was raised by stakeholders in submissions and subsequent meetings which in our view may potentially affect the ability of new entrants or existing firms to source products at competitive prices.
- 6.184 This conduct primarily falls into two categories:
 - 6.184.1 suppliers refusing to supply retailers; and
 - 6.184.2 supply arrangements affecting the basis on which suppliers can supply to other parties.

Refusal to supply

6.185 The NZFGC has raised concerns about established grocery retailers seeking to limit entry and expansion by other grocery retailers, by pressuring suppliers. It submitted that:⁷⁰²

...pressure on suppliers has been aimed at limiting the access to products by the online provider, The Honest Grocer. After agreeing to supply The Honest Grocer and supplying the new player, many suppliers have withdrawn products due to genuine fear that they risk other parts of their business

6.186 This pressure could occur either directly or indirectly (eg, a supplier making the decision not to supply a new entrant to preserve their relationship with existing retailers).⁷⁰³ We have also heard that the level of concentration in the retail grocery sector (as discussed in Chapter 4) is likely to be a contributing factor as suppliers are likely to be reluctant to jeopardise their existing relationships with the major grocery retailers, for example, by supplying a new entrant on favourable terms.⁷⁰⁴

6.187 We are aware of examples of some suppliers indicating that they are only willing to supply if a grocery retailer does not undercut the retail prices set by other grocery retailers of the supplier’s products.⁷⁰⁵

6.187.1 We are also aware of several examples of suppliers allegedly refusing to supply grocery retailers where they are concerned that the retail prices being offered are too low.⁷⁰⁶

6.187.2 We have received information which appears to suggest that in some cases the refusal to supply occurred after concerns were raised by another grocery retailer the supplier trades with.⁷⁰⁷

⁷⁰² NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [134].

⁷⁰³ Comments by NZFGC, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 28 (lines 3-11); Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 13 (lines 17-23).

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- 6.188 We are aware that some suppliers may decline to supply potential entrants (or choose to supply potential entrants on terms that are less favourable) even without direct pressure, due to concern about the possible response from major grocery retailers.⁷⁰⁸
- 6.189 Refusal by suppliers to supply other retailers, or choosing to supply other retailers only on less favourable terms, has the potential to impact entry and expansion by reducing the ability of new entrants and grocery retailers to source products while competing effectively.
- 6.190 We note that refusal to supply due to low retail pricing could also potentially breach sections 37 and 38 of the Act, which prohibit the practice of resale price maintenance.⁷⁰⁹ They could also breach section 36 of the Act, to the extent that a refusal to supply reflects the influence of a major grocery retailer with substantial market power.⁷¹⁰
- 6.191 We have not enquired further into the types of conduct described above at this stage. However, independent of this study, we intend to open an investigation into compliance with the Commerce Act in respect of certain conduct that we have become aware of during the course of this study.⁷¹¹

Contractual terms and understandings affecting supply to other parties

- 6.192 A submission raised exclusive buying and contractual provisions affecting prices suppliers can charge to other grocery retailers as possible examples of major grocery retailers using buyer power to exclude competition, which suggests they could impact on entry and expansion.⁷¹²

⁷⁰⁸ Supie mentioned that suppliers are nervous supplying to a new entrant for the risk of being cut by one or both of the major grocery retailers, and that it has had to provide suppliers with assurances that it would not undercut the major grocery retailers' retail prices, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 24 (lines 22-26);
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⁷⁰⁹ Commerce Act 1986, ss 37 and 38.

⁷¹⁰ Commerce Act 1986, s 36.

⁷¹¹ Commerce Commission "Enforcement Response Guidelines" (October 2013) https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

⁷¹² NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [15].

- 6.193 We are aware of clauses in supply agreements which may affect the ability of suppliers to supply other parties.⁷¹³ Examples include:
- 6.193.1 best price clauses, or most favoured nation (MFN) clauses, which ensure a particular buyer obtains products from a supplier on terms that are at least as good as (or, in some cases, better than) those provided to other buyers;⁷¹⁴ and
 - 6.193.2 clauses specifying that a supplier is to supply products or certain brands of products exclusively to a particular grocery retailer.⁷¹⁵
- 6.194 The clauses described in paragraph 6.193 may potentially impact on entry and expansion if they limit other grocery retailers' ability to receive supply of products, or purchase products at prices which will enable them to compete effectively in the retail market (noting that other grocery retailers can still be competitive if they can be supplied at the same price). The extent to which this conduct impacts on entry and expansion would depend on factors such as:
- 6.194.1 term durations;
 - 6.194.2 the importance of the products or brands which are subject to these clauses (ie, whether the products are core brand products which consumers would expect to see in a supermarket);⁷¹⁶ and
 - 6.194.3 the extent to which there are alternative suppliers or products available in the market.

⁷¹³ The prevalence with which this conduct occurs varies amongst the major grocery retailers.

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Paragraph 6.155.

- 6.195 We understand that these clauses may be mutually negotiated for pro-competitive reasons, and that suppliers may sometimes offer them to retailers as part of the negotiation process.⁷¹⁷ There may also be efficiency benefits associated with best price and exclusivity clauses.
- 6.195.1 Suppliers may receive benefits in exchange for agreeing to such clauses (eg, volume or exclusivity commitments).⁷¹⁸
- 6.195.2 Best price clauses may reduce transaction costs between parties by reducing the need for renegotiations whenever prices fluctuate over time (eg, due to seasonal changes in availability or quality).^{719, 720}
- 6.195.3 They may also be used if a buyer has made relationship-specific investments into a product and wants to avoid other buyers free-riding on them.

⁷¹⁷ Comments by NZFGC, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 14 (lines 29-37); comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 16 (lines 1-6); comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 30-33); comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 20 (lines 27-30).

⁷¹⁸ Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 8-12);
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6.196 We consider that the clauses described in paragraph 6.193 have the potential to impact on the conditions of entry and expansion. However, at present, they appear unlikely to have a significant impact on entry and expansion in the retail grocery sector.

6.196.1 The best price clauses do not appear to be very common, and parties have not generally indicated that they significantly restrict the availability of supply to grocery retailers or the price at which grocery retailers can purchase products from suppliers.⁷²¹

6.196.2 Information provided by the major grocery retailers similarly indicated that exclusive supply arrangements do not appear to be widespread.⁷²²

6.196.3 However, we note that comments made by a Supie at the conference indicated that exclusive supply arrangements had a significant impact on its ability to stock a full range of products.⁷²³

⁷²¹ Woolworths NZ indicated that it had removed best price clauses from its standard terms as it did not see a need for them, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 15 (lines 16-21); Foodstuffs NI indicated that it very rarely uses best price clauses (they are not contained in its standard terms or conditions), and that they are usually exchanged for a volume commitment, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 8-17); Foodstuffs SI indicated that it very rarely uses best price clauses, noting that it currently has two agreements containing such clauses; Foodstuffs NI indicated that it very rarely used best price clauses (they are not contained in its standard terms or conditions), and that they were usually exchanged for a volume commitment, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 20 (lines 22-24); [].

⁷²² Woolworths NZ indicated that it only had a small number of exclusive supply arrangements, and that they would normally involve some kind of co-investment, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 16 (lines 9-13); Foodstuffs NI indicated that it very rarely uses exclusivity arrangements (they are not contained in its standard terms or conditions), and that they are usually used in partnership type arrangements given they have the potential to benefit both parties, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 30-38); [];
[];
[].

⁷²³ Supie indicated that it was unable to access a large number of products because of the major grocery retailers' exclusive supply arrangements, which made it difficult to stock a full range of brands and compete for the main shop, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 39 (lines 20-23); Supie also indicated that based on its experience, products and/or pack sizes being subject to exclusivity with the major grocery retailers was relatively common, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 24 (lines 19-21); [].

- 6.197 Foodstuffs NI submitted that it does not seek to anti-competitively limit the terms on which suppliers may supply other retailers. Foodstuffs NI said that best price or exclusivity clauses are rare, mutually agreed with suppliers, and comply with section 27 of the Act.⁷²⁴
- 6.197.1 Foodstuffs NI and Foodstuffs SI told us that they very rarely use best price clauses, but where they do, this is with large supply contracts to ensure they remain competitive over time.⁷²⁵
- 6.197.2 Foodstuffs SI said that it forms strategic relationships with suppliers to provide exclusive arrangements around controlled label branded products. Foodstuffs SI will work with a supplier to maximise an opportunity by committing to a volume forecast and a new product development program.⁷²⁶
- 6.197.3 Foodstuffs NI uses exclusivity agreements for partnership arrangements, and noted that suppliers also seek exclusivity agreements with Foodstuffs NI as a retailer.⁷²⁷
- 6.198 Woolworths NZ told us it has not attempted to enforce best price provisions, and has removed these from its standard terms because it does not see a need for them.⁷²⁸ It does not have many exclusive supply contracts, and only considers them appropriate when there is a legitimate business purpose such as co-investment with a supplier.⁷²⁹

⁷²⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [323] and [355].

⁷²⁵ For example, best price clauses are offered in exchange for a volume commitment in a market with fluctuating prices, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 6-21); Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [150.1]; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [128.1].

⁷²⁶ Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [319]-[320].

⁷²⁷ Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 19 (lines 30-33).

⁷²⁸ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [15.1].

⁷²⁹ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [14.1]-[14.2]; Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 15 (lines 37-40) and 16 (lines 9-13).

- 6.199 Our view of these clauses (as discussed in paragraph 6.196) was based on our understanding of how they are currently used in the retail grocery sector, and should not be taken as a general endorsement of the use of such clauses, either in relation to the retail grocery sector or more generally.
- 6.199.1 If the circumstances surrounding the usage of these clauses were different (eg, if they were to be used in a more widespread manner), they would likely have a more significant impact on entry and expansion. In light of Supie’s comments at the conference, it is possible that exclusive supply arrangements could be more widespread than we had previously considered.
- 6.199.2 While some major grocery retailers have indicated they rarely use exclusive supply arrangements, there is also a risk that their incentives could change (and that the use of these arrangements could become more common) if entry or expansion in the wholesale or retail grocery markets was likely.
- 6.200 Section 27 of the Act (as outlined in paragraph 6.98.1) would potentially apply to agreements of this nature if they were to have the purpose, effect or likely effect of substantially lessening competition in a market.
- 6.201 In the course of this study, we have not identified agreements of a nature or scale that are sufficient to justify opening an investigation into whether this conduct is likely to be in breach of the Act. Independent of this study, if we identify any agreements that we consider may breach the Act in the future, we may consider appropriate action utilising our Commerce Act compliance and enforcement functions and powers at that time.⁷³⁰

Other forms of strategic behaviour

- 6.202 Submitters and conference participants have told us about other conduct by the major grocery retailers which may constitute strategic behaviour. For example, we are aware that:
- 6.202.1 Night ‘n Day previously had access to wholesale supply through Foodstuffs SI until its membership was revoked⁷³¹ (although Woolworths NZ submitted that it is important to understand the context in relation to that supply relationship);⁷³² and

⁷³⁰ Commerce Commission "Enforcement Response Guidelines" (October 2013) https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

⁷³¹ Comments from Night ‘n Day, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 9 (lines 10-25).

⁷³² Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [25.3];
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- 6.202.2 the major grocery retailers partially acquired (and attempted to fully acquire) The Warehouse Group when it attempted to enter the grocery market through the Warehouse Extra.⁷³³
- 6.203 In addition, Northelia told us that a large new entrant might expect a variety of strategic responses from the major incumbents, including likely pricing reductions.⁷³⁴ Northelia's expectations are consistent with other evidence we have seen during this study.⁷³⁵
- 6.204 We note that, notwithstanding the lack of evidence of smaller scale entry and expansion impacting on the pricing behaviour of the major grocery retailers (see Chapter 5), we would generally expect incumbents to respond to new entry by a significant new entrant by lowering their prices. This is usually pro-competitive and of long-term benefit of consumers. However, we note that if potential entrants expect a significant pricing or other responses from incumbents that lower the expected profitability of entry, these expectations can themselves deter entry.⁷³⁶
- 6.205 Unlike the other forms of strategic behaviour discussed in this chapter, much of this conduct appears to be historical, and we do not have evidence of it occurring on a systemic basis. It is also subject to a number of the Commerce Act's provisions relating to anticompetitive conduct:
- 6.205.1 As previously discussed, section 27 of the Act prohibits provisions in contracts, arrangements, or understandings which have the purpose, effect or likely effect of substantially lessening competition in a market.

⁷³³ Commerce Commission "Commission declines applications from Foodstuffs and Woolworths to acquire The Warehouse" (8 May 2007) <https://comcom.govt.nz/news-and-media/media-releases/archive/commission-declines-applications-from-foodstuffs-and-woolworths-to-acquire-the-warehouse>; Radio NZ "Foodstuffs selling stake in Warehouse Group" (21 May 2021) <https://www.rnz.co.nz/news/business/443067/foodstuffs-selling-stake-in-warehouse-group>; Stuff "Foodstuffs keeps mum on Warehouse stake" (5 March 2015) <https://www.stuff.co.nz/business/industries/66987021/foodstuffs-keeps-mum-on-warehouse-stake>.

⁷³⁴ Northelia "Post conference submission on Market study into grocery sector" (29 November 2021) at 22-23.

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⁷³⁶ See Motta M, "Competition Policy Theory and Practice" Cambridge University Press (2004) for a discussion of entry deterring strategies.

- 6.205.2 Section 36 of the Act currently prohibits parties with a substantial degree of market power from taking advantage of that market power for a proscribed anticompetitive purpose. The Commerce Amendment Bill, which is currently going through Parliament, is intended to strengthen this prohibition.⁷³⁷
- 6.205.3 Section 47 of the Act prohibits the acquisition of assets or shares of a business where the acquisition would have the effect or likely effect of substantially lessening competition in a market.
- 6.206 Except where noted above, in the course of this study, we have not identified any recent or systemic acquisitions or other conduct of a nature or scale that are sufficient to justify opening an investigation into whether this conduct is likely to be in breach of the Act. Independent of this study, if we identify any anticompetitive acquisitions or other strategic conduct in the future, we may consider appropriate action utilising our Commerce Act compliance and enforcement functions and powers at that time.⁷³⁸

Access to capital

- 6.207 Some submissions on our draft report raised lack of access to domestic capital as a factor impacting on entry and expansion in the retail grocery sector.⁷³⁹
- 6.208 However, we note that some recent or potential entrants appear to have been able to raise some domestic capital for entry and expansion.⁷⁴⁰ For example:
- 6.208.1 Northelia's submission indicates that under certain conditions it would be able to mobilise a capital base in excess of \$1 billion for potential entry into the sector.⁷⁴¹

⁷³⁷ New Zealand Parliament "Bill aims to limit misuse of market power" (1 April 2021) <https://www.parliament.nz/en/get-involved/topics/all-current-topics/bill-aims-to-limit-misuse-of-market-power/>.

⁷³⁸ Commerce Commission "Enforcement Response Guidelines" (October 2013) https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

⁷³⁹ Supie "Submission on Market study into grocery sector draft report" (26 August 2021) at 1-2; Kore Hiakai "Submission on Market study into grocery sector draft report" (26 August 2021) at 4.

⁷⁴⁰ Woolworths NZ discusses other examples of new entrants successfully raising capital for entry/expansion, including My Food Bag and Geezy Go, Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at 78.

⁷⁴¹ Northelia "Submission on Market study into grocery sector draft report" (26 August 2021) at 2.

- 6.208.2 Supie recently managed to raise \$2.5 million in seed funding and indicated that it would be looking at a funding round the following year for a significant amount (expected to be more than \$10 million) to fund its national expansion.^{742, 743}
- 6.208.3 Ngāti Kahungunu Iwi Incorporated noted that iwi Māori have reached a point of having resources (both asset and liquid) to be able to invest in ventures such as grocery retailing.⁷⁴⁴
- 6.209 While these examples indicate that it may be possible to access capital for entry and expansion into the sector, this does not necessarily mean that there are low barriers to doing so. We note that some submitters indicated that difficulties associated with access to capital were partially due to investor nervousness around the strategic behaviour which the major grocery retailers could employ to block or restrict a new entrant.⁷⁴⁵ As such, some of our recommendations which are intended to address this behaviour (eg, see paragraph 9.130) may in turn improve the conditions for access to capital to some extent.

Access to overseas capital

- 6.210 Other submissions also mentioned the Overseas Investment Act 2005 potentially making it more difficult for overseas retailers to enter (eg, by making it more difficult for them to acquire suitable sites) using overseas capital.⁷⁴⁶

⁷⁴² Bridget O’Connell “Supie bags \$2.5m seed funding, series A slated for 2022” (4 November 2021) <https://www.foodticker.co.nz/supie-bags-2-5m-seed-funding-series-a-slanted-for-2022/>.

⁷⁴³ Supie indicated that it would require access to more than \$115 million in capital to achieve scale and provide access to consumers nationwide, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 14 (lines 22-24).

⁷⁴⁴ Ngāti Kahungunu Iwi Incorporated “Post conference submission on Market study into grocery sector” (24 November 2021) at [5].

⁷⁴⁵ Comments by Supie, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 14 (lines 11-15); Comments by Northelia, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 14 (lines 33-38).

⁷⁴⁶ NZ Initiative “Submission on Market study into grocery sector draft report” (26 August 2021) at 9; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 78; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 66; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 39.

- 6.211 The Overseas Investment Act requires a transaction to go through a consenting process if it will result in overseas investment in sensitive land or significant business assets.⁷⁴⁷ This process may create disadvantages (eg, in the form of additional costs, delays and/or uncertainty in site acquisition) for overseas entities looking to invest in or enter the New Zealand retail grocery sector.⁷⁴⁸
- 6.212 We understand that changes to the Overseas Investment Act in recent years have addressed many of the concerns that stakeholders have had with the regime in the past. For example, recent changes have:
- 6.212.1 removed many lower-risk transactions from requiring consent;
 - 6.212.2 streamlined the consent process for a majority of the transactions that still require consent, including by introducing statutory decision-making timeframes, and clarifying how the tests regarding the benefit of investment to New Zealand work; and
 - 6.212.3 provided streamlined pathways which make it easier for investors to get consent for non-residential use of residential land.
- 6.213 Nevertheless, some barriers to overseas investment in retail grocery stores appear to remain. For example, the New Zealand Initiative has noted that the purchase or lease of land bordering on reserves and streams, land with any residential zoning, and land adjoining a marine or coastal area or a lake can require consent from the Overseas Investment Office.⁷⁴⁹ Woolworths NZ has noted that approval could be required in relation to developing new distribution facilities in non-urban areas, or when acquiring residential land to build a new store or extend an existing store.⁷⁵⁰
- 6.214 In addition, where consent is still required, there is a potential for incumbents to make submissions opposing applications for consent by their competitors, or judicially review decisions of the Overseas Investment Office where it grants consent. We understand that Foodstuffs has engaged in such action in the past.⁷⁵¹

⁷⁴⁷ Overseas Investment Act 2005.

⁷⁴⁸ Woolworths NZ noted that the requirement to obtain OIO consent impedes the speed at which an overseas retailer can enter or expand, may place overseas owned retailers at a competitive disadvantage in acquiring sites where there is competition for the land, and is expensive, Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at 39. See also NZ Initiative "Submission on Market study into grocery sector draft report" (26 August 2021) at 9.

⁷⁴⁹ NZ Initiative "Post conference submission on Market study into grocery sector" (19 November 2021) at [2.10].

⁷⁵⁰ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [17.2].

⁷⁵¹ *Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd and Foodland Associated Ltd and Denstree Corporation Ltd and Dairy Farm Ltd and The Overseas Investment Commission and the Attorney-General* [2002] NZHC M680-SW02; *Foodstuffs (Wellington) Co-operative v Progressive Enterprises Ltd and Foodland Associated Ltd* [2002] NZHC M929/SW02; *Foodstuffs (South Island) Ltd v Progressive Enterprises Ltd and Foodland Associated Ltd and Denstree Corporation Ltd and Dairy Farm Ltd and The Overseas Investment Commission and the Attorney-General* [2002] NZHC M929-SD02.

- 6.215 While the Overseas Investment Act process may impact on entry and expansion in the grocery sector, we note that there are a range of policy considerations underpinning the Overseas Investment Act, and it is for policymakers to determine the weight competition should be given as part of the Overseas Investment Act regime relative to other factors.

Alcohol licensing laws

- 6.216 Some retailers have raised the potential for current alcohol licensing laws to be a factor impacting on their ability to enter and expand in the retail grocery sector.⁷⁵²
- 6.217 Alcohol licensing laws were amended in 2012 with the introduction of the Sale and Supply of Alcohol Act 2012. The object of the Act is that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.⁷⁵³ The Act made a number of changes to reduce the availability of alcohol, including specifying that small retailers such as dairies or convenience stores cannot sell alcohol.⁷⁵⁴ In particular, the Act largely limits the issuance of ‘off-licences’ to sell alcohol in a retail context to specialised liquor stores, supermarkets with a floor area of at least 1000 square metres, or grocery stores. Grocery stores are defined under the Act and associated regulations as:⁷⁵⁵
- 6.217.1 having the characteristics commonly associated with a grocery store; and
 - 6.217.2 selling food products (excluding ready-to-eat, snack food, and drinks sold in a container with a capacity of 1 litre or less) and other household items; and
 - 6.217.3 having the sale of food products (as defined above) as the business’ largest single category of revenue.
- 6.218 As noted in Chapter 4, consumers value having a wide range of products in one place. Consumers seeking to purchase alcohol as part of their shopping basket might not consider shopping at grocery retailers that do not sell alcohol.

⁷⁵² Dairy and Business Owners Group “Submission on Market study into grocery sector draft report” (26 August 2021) at 5-6; Comments by Night ‘n Day, Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 24 (lines 1-7); The Warehouse Group “Post conference submission on Market study into grocery sector” (23 November 2021) at 2; []; [].

⁷⁵³ Sale and Supply of Alcohol Act 2012, s 4.

⁷⁵⁴ Ministry of Justice “Alcohol Reform 2010: Regulatory Impact Statement” <https://www.justice.govt.nz/assets/Documents/Publications/Regulatory-Impact-Statement-2010-Alcohol-Reform.pdf>; Ministry of Justice “Regulatory Impact Statement: Regulatory Regime for the new Alcohol Law” <https://www.justice.govt.nz/assets/Documents/Publications/RIS-Regulations.pdf>.

⁷⁵⁵ Sale and Supply of Alcohol Act 2012, sections 32 and 33; Sale and Supply of Alcohol Regulations 2013, ss 6 and 7.

6.219 We acknowledge that there are public policy reasons for restricting the types of businesses which are licensed to sell alcohol, most notably to restrict the prevalence of alcohol-related harm. Nevertheless, the alcohol licensing laws described above may make it difficult for some existing or prospective retailers to offer a full range of products that consumers wish to buy. This includes dairies and convenience stores, as well as other existing retailers seeking to expand into grocery products (unless food products make up their largest single category of revenue). A more level playing field that aligns restrictions at an appropriate level may improve their ability to compete effectively with the major grocery retailers for the provision of a main shop or a top-up shop.⁷⁵⁶

Loyalty programmes

6.220 Both Countdown and New World operate their own loyalty programmes (Countdown offers Onecard and New World offers Clubcard). Further details regarding specific features of these loyalty programmes are discussed in Chapter 7.

6.221 Loyalty programmes can offer benefits to consumers in the form of discounted prices and/or accumulated rewards through their loyalty programme.

6.222 However, they can also reduce price transparency and make it more difficult for consumers to make informed purchasing decisions (discussed further in Chapter 7) and create conditions that impede or slow entry and expansion. There are two main ways in which the latter can occur:

6.222.1 providing loyalty programme operators with an extensive amount of consumer data to inform business decisions and allow for personalised offers to be made which attract and retain customers in a way that is not possible for grocery retailers without access to similar consumer data; and

6.222.2 'locking in' consumers by increasing the costs to them of shopping elsewhere and making them less likely to use other grocery retailers, making it more difficult for other grocery retailers or new entrants to attract customers and capture market share.

6.223 We consider that these potential impacts are unlikely to vary significantly based on a grocery retailer's business model.

⁷⁵⁶ Comments by Night 'n Day, Transcript of Grocery Market Study Conference – Day 1 (21 October 2021) at 23 (lines 13-40) to 24 (lines 1-26);

[

];

[

].

- 6.224 However, a lack of access to consumer data gathered using loyalty programmes is likely to have a more significant impact on new entrants than existing grocery retailers looking to expand.
- 6.224.1 New entrants would likely find consumer data collected via loyalty programmes to be helpful for setting and adjusting their customer offering, but would be unable to collect this data without first entering the market.
- 6.224.2 On the other hand, existing grocery retailers either operate loyalty programmes by which they can collect consumer data, or have the option of starting their own loyalty programme to collect data from their existing customer base.
- 6.225 In addition, we explain in Chapter 7 that the major grocery retailers' loyalty programmes could adversely affect consumers, for example, by making it harder to make well-informed decisions, reducing retail competition and leading to different prices for different groups of consumers.⁷⁵⁷
- 6.226 While some have differing views,⁷⁵⁸ we generally have not heard during the course of our study that loyalty programmes are a significant factor impacting on entry and expansion.

Access to data

- 6.227 Access to consumer data may be helpful to firms looking to enter and expand in the retail grocery sector as it would assist them to set and adjust their customer offerings, but they would be unable to collect this data without first entering the market. Meanwhile, existing competitors would have an advantage in attracting and retaining customers because of their established loyalty programmes and access to the data that they generate. We do not currently see this as a significant impediment to retail entry.

⁷⁵⁷ Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [72]-[87]; NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [207]-[223].

⁷⁵⁸ The NZFGC submitted that the major grocery retailers can access consumer data which they use to tailor their offerings and increase profitability, while entrants do not have access to this data. The NZFGC's submission also mentioned that loyalty programmes make it less likely or harder for consumers to switch to another major grocery retailer (ie, increase switching costs). See NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [135] and [208]. See also Monopoly Watch "Post conference submission on Market study into grocery sector" (29 November 2021) at 4.

- 6.228 The major grocery retailers collect data from consumers through their loyalty programmes.⁷⁵⁹ This data can be analysed and used to inform business decisions such as product ranging or pricing decisions, which may give them a competitive advantage over new entrants or other grocery retailers without access to similar data. As such, there is potential for this access to consumer information generated by the collection of loyalty programme data to be a factor affecting entry and expansion. In addition, data may also be used to give grocery retailers with loyalty programmes a unique ability to target advertising to consumers, and this could be used to defend their market position from the threat of entry or expansion.
- 6.229 By its nature, loyalty programme data can only be collected after a grocery retailer enters the market and begins to build a customer base, and it would not be available to potential entrants. This in turn has the potential to impact on their ability to provide a competitive offering to consumers at start up and following.
- 6.230 However, we note that a number of other grocery retailers such as other supermarkets and international food stores also have their own loyalty programmes (eg, Farro Fresh, Moore Wilson’s, Jadan and Huckleberry). This tends to indicate that it is possible for grocery retailers to collect consumer data to some extent using their own loyalty programmes after successful entry. They can use this to inform their business decisions and make personalised offers to consumers. Moreover, it is possible to source aggregated scanner data from Nielsen which would provide an initial basis for ranging decisions.
- 6.231 In addition, we have observed that in some circumstances grocery retailers do not have the ability to analyse or use the data collected using their loyalty programmes for the purposes of making business decisions.⁷⁶⁰ This suggests that while loyalty programme data may be a helpful tool for a grocery retailer, it may not be a key requirement for a grocery retailer to operate.
- 6.232 While there is potential for access to data to impede entry and expansion for a competing grocery retailer, given this range of use of loyalty programmes and consumer data at present, we do not consider that the different abilities to access loyalty programme data is a key factor impeding entry and expansion.

⁷⁵⁹ For example: Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 24-25; Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 74.

⁷⁶⁰ [].

Loyalty programmes ‘locking in’ consumers

- 6.233 Loyalty programmes may impede entry and expansion to the extent that consumers that are reluctant to change grocery retailer, are effectively “locked in” to a particular grocery retailer. Potential competitors may conclude it is not possible to capture viable market share and/or capturing market share is more difficult because customers are reluctant to shop elsewhere where they do not receive and/or accumulate the benefits offered by a loyalty programme.⁷⁶¹ The loyalty programmes offered by New World and Countdown do not require exclusive membership by consumers. Consumers can and do participate in multiple programmes.
- 6.234 Nevertheless, loyalty programmes operated by the major grocery retailers may have the effect of incentivising some consumers to shop with a particular retail banner and increase their reluctance to shop with others, particularly consumers who value accumulated rewards. This is because those consumers may be less inclined to switch their spend to another grocery retailer if they may risk delaying the reward or losing accumulated points. A competing retailer may need to offer an additional benefit to compensate a consumer who feels they are forfeiting a benefit with their existing grocery retailer or loyalty programme by shopping with the competing retailer. We discuss the potential effects of accumulated rewards in more detail in Chapter 7.
- 6.235 Our view is that loyalty programmes are unlikely to have a material constraint on entry or expansion as a consequence of lock-in effects because:
- 6.235.1 Consumers have a diverse range of preferences and there are multiple factors influencing store choice. As discussed in Chapter 4, price and convenience appear to be key drivers of choice for many consumers. While loyalty programmes may drive store choice for some consumers, it is not a key driver of store choice.
- 6.235.2 This appears to be consistent with the observation that, as noted above, consumers can and do participate in more than one loyalty programme. Consumers are able to join multiple programmes and enjoy many of the benefits of each so they do not appear particularly committed to one loyalty programme and one grocery retailer each.

⁷⁶¹ We note that the ACCC considered that retailers use loyalty programmes to influence consumer behaviour by, for example, encouraging consumers to make repeat or additional purchases (and by default, spend less with their competitors) and introducing resistance to competing offers. ACCC “Customer loyalty schemes – Final report” (December 2019) at 17 and 90, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

- 6.235.3 Some consumers value accumulated rewards and may therefore be more inclined to exclusively shop with one grocery retailer in order to accumulate points. However, many consumers value member-only discounts instead which provide an immediate reward at the time of each transaction. Our consumer survey, the Ipsos research, and research conducted by the major grocery retailers (see Chapter 7 for further detail) consistently indicates that many consumers sign up to grocery loyalty programmes primarily to gain access to the member-only discounts.⁷⁶² These consumers are less likely to experience perceived lock-in effects from loyalty programmes or be as disincentivised to shop around as those who value accumulated rewards and risk losing progress towards those rewards if they switch to an alternative retailer.⁷⁶³
- 6.235.4 The minimum spend required to earn accumulated food rewards through Onecard or Clubcard can be relatively high, compared with the rate of reward.⁷⁶⁴ We therefore consider it unlikely that accumulated food rewards would significantly raise costs for consumers to switch retailers in the longer term. However, there may be short-term effects for consumers that value these rewards when they are closer to the expiry date of already accumulated points.⁷⁶⁵
- 6.236 Our view is that Clubcard and Onecard are unlikely to significantly impede entry or expansion by making it more difficult to attract consumers. However, the potential effects of these programmes may change as these programmes and the use of consumer data develops, for example, in relation to personalised offers. We discuss this potential, and the basis for our conclusions in more detail in Chapter 7.

⁷⁶² This may be because they appear more tangible and consumers receive instant gratification, for example, Matilda Dorotic et al., “Loyalty Programmes: Current Knowledge and Research Directions” (2011) 14 International Journal of Management Reviews 217 at 226.

⁷⁶³ ACCC “Customer loyalty schemes – Final report” (December 2019) at 93, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁷⁶⁴ As discussed in Chapter 7, the minimum spend requirement for a Onecard e-voucher, or New World Dollars via a Clubcard, is relatively high. The minimum spend requirement for Flybuys or Airpoints via a Club Card is much lower.

⁷⁶⁵ New World Dollars expire after 24 months, and Onecard points and e-vouchers expire after one year.

Chapter 7 Consumer-facing issues

Summary of findings

- Promotions and loyalty programmes can provide value to consumers and drive competition between the major grocery retailers. When consumers can make meaningful comparisons between offers, they can make informed choices between them and develop more accurate perceptions of value over time, to help them choose where they would like to shop. This incentivises retailers to improve their offers to attract consumers from one another. Conversely, if it is difficult for consumers to compare offers, they may make less-informed purchasing decisions which can reduce price competition.
- The major grocery retailers use an array of different promotional mechanisms. Their complexity and frequent use, particularly when used in combination with one another, may make it harder for consumers to accurately assess the value of competing offers or to develop accurate perceptions of value over time, even when there are genuine savings on offer and the information provided is clear.
- This may make consumers less likely to shop around between products and between grocery retailers, affecting the quality of information retailers receive about consumer preferences and impacting competition.
- Use of unit pricing can assist consumer decision making and competition. However, these benefits are less likely to be achieved when unit pricing is inconsistently or unclearly displayed.
- Consumer understanding of loyalty programmes appears low. This is particularly in relation to how accumulated rewards are earned and redeemed, and how consumer data is collected and used by the major grocery retailers. This can make it difficult for consumers to assess the value of these programmes to them and make well-informed decisions about their participation. This can make consumers less responsive to price competition, reduce the major grocery retailers' incentives to engage in price competition and inhibit competition for consumers with certain privacy or data use preferences.
- Loyalty programmes may also cause some consumers, particularly those that value accumulated rewards, to focus on earning rewards through a particular loyalty programme and be less inclined to shop around.
- Personalised or targeted promotional offers for loyalty programme members can facilitate price discrimination which may raise competition concerns as it becomes more sophisticated.

Introduction

- 7.1 This chapter considers how the major grocery retailers' pricing and promotional practices, and loyalty programmes, affect consumers' ability to seek out the best deals based on their preferences, and in turn stimulate competition among the major grocery retailers.
- 7.2 Consumers play an important role in ensuring competition is effective. Markets work better when consumers are confident market participants. Consumers have confidence when they have access to accurate information that helps them make informed purchasing decisions and when they can assess whether businesses are trading fairly.⁷⁶⁶
- 7.3 When consumers can make meaningful comparisons between offers, firms are more likely to be incentivised to improve their offerings or reduce prices to attract consumers from one another.⁷⁶⁷ Conversely, if it is difficult for consumers to compare offers, this could lead to less-informed purchasing decisions which can reduce price competition. In addition, this may lead to retailers receiving poor information on actual consumer preferences, making it more difficult to respond to consumer demand.
- 7.4 The major grocery retailers told us that consumers have access to a large amount of information to enable comparisons including advertising and in-store price information.⁷⁶⁸ However, Consumer NZ raised concerns that the major grocery retailers' pricing and promotional practices are a major barrier to informed consumer choice including because they are confusing.⁷⁶⁹ These submissions are not necessarily in conflict with each other: both could be correct. This chapter considers the impact of these practices on competition.

⁷⁶⁶ Commerce Commission "Statement of Intent – Our Approach for 2020-2024" (30 July 2020), available at: https://comcom.govt.nz/_data/assets/pdf_file/0014/222305/Statement-of-Intent-20202024.PDF at 13.

⁷⁶⁷ Competition Markets Authority "Consumer protection: enforcement guidance" (17 August 2016) CMA58 at 2.2, available at: <https://www.gov.uk/government/publications/consumer-protection-enforcement-guidance-cma58>.

⁷⁶⁸ For example: Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 68-69; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 32; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 22.

⁷⁶⁹ Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [45].

- 7.5 Our consumer survey has helped us to better understand consumer behaviour and provided us with consumers' views on how they decide where to shop and what to buy. Our promotional pricing analysis, qualitative research and experimental economic research have also informed our understanding of how consumers shop for groceries. In addition, submitters provided us with a range of helpful information relating to retail conduct and consumer decision making. We discuss the insights we gained through these sources of information in more detail later in this section.
- 7.6 We have found that some consumers find it hard to make purchasing decisions in store, particularly when retailers use complex and/or multiple pricing and promotional mechanisms, and when loyalty programmes have complex rewards structures and terms and conditions. These complexities have the potential to limit consumers' ability and willingness to access, assess and act on information when choosing between grocery retailers.
- 7.7 This chapter focuses on the effects of these practices on in-store decision making. However, these practices may also impact the accuracy of consumers' perceptions of the overall price and value of the major grocery retailers which can influence where consumers choose to shop.
- 7.8 In addition to the effects on competition we discuss in this chapter, some practices discussed may also raise issues relevant to consumer experience which are beyond our terms of reference for this study. These include issues in relation to:
- 7.8.1 whether the promotional mechanisms and pricing strategies used by the major grocery retailers are in some cases misleading;
 - 7.8.2 the potential for consumer data collection and use practices to raise privacy concerns; and
 - 7.8.3 whether the terms and conditions governing the major grocery retailers' loyalty programmes are fair to consumers.
- 7.9 We provide comments on these issues at the end of this chapter.
- 7.10 The remainder of this chapter discusses:
- 7.10.1 our approach to analysing consumer-facing issues;
 - 7.10.2 how pricing and promotional practices used by the major grocery retailers can affect consumer behaviour, and the effect this has on competition;
 - 7.10.3 whether and how price comparison services can facilitate competition by helping consumers decide what to buy and decide where to shop;
 - 7.10.4 whether and how unit pricing can help to facilitate informed decision making by consumers;

- 7.10.5 our analysis of potential competition concerns arising out of loyalty programmes, particularly in relation to consumer understanding of how these programmes work, effects on consumer willingness to shop around, and how they may facilitate price discrimination; and
- 7.10.6 other issues within the retail grocery sector arising during the course of our study which fall outside the scope of our study and we will consider further independent of our findings and recommendations.

Our approach to analysing consumer-facing issues

- 7.11 This section sets out some key concepts and background information relevant to our analysis of issues facing grocery consumers in the rest of this chapter. It explains:
 - 7.11.1 the importance to competition of ensuring consumers are well-informed;
 - 7.11.2 the pricing and promotional practices that we have considered;
 - 7.11.3 the nature of the loyalty programmes offered by the major grocery retailers including the different types of benefits offered to consumers; and
 - 7.11.4 the information we have relied upon for the purposes of our analysis.

Well-informed and confident consumers are a key driver of competition

- 7.12 Consumer confidence in the integrity of pricing and promotional activity is a key driver of competition.⁷⁷⁰ Promotions are an important marketing tool for retailers, and discounting strategies are common in New Zealand retail markets. They can drive competition among retailers and value for consumers.
- 7.13 Markets work better when consumers can easily compare offers and choose the products and the provider that best meets their needs. Consumers who shop around incentivise retailers to meet these needs by offering new products and services, and/or by reducing prices.⁷⁷¹

⁷⁷⁰ Commerce Commission “Misleading pricing: An open letter to New Zealand retailers” (11 May 2017), available at: https://comcom.govt.nz/data/assets/pdf_file/0019/90073/Misleading-pricing-An-open-letter-to-New-Zealand-retailers-11-May-2017.pdf; Competition Markets Authority “Pricing Practices in the Groceries Market – Response to a super-complaint made by Which? on 21 April 2015” (16 July 2015) at [1.9], available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>.

⁷⁷¹ Competition Markets Authority “Consumer protection: enforcement guidance” (17 August 2016) CMA58 at [2.2], available at: <https://www.gov.uk/government/publications/consumer-protection-enforcement-guidance-cma58>; Christine Riefa, Harriet Gamper and Paolo Siciliani “Consumer Theories of Harm: An Economic Approach to Consumer Law Enforcement and Policy Making” (Hart Publishing, 2019) at 142.

- 7.14 Competition is therefore facilitated by consumers having:
- 7.14.1 ready access to the information they need to compare offers by alternative providers;
 - 7.14.2 the ability to easily assess this information; and
 - 7.14.3 the ability and willingness to act on this information (ie, use the information to inform decisions).
- 7.15 This also enables consumers to accurately signal their preferences to retailers. When retailers have accurate information about what consumers want, they are better placed to compete for consumers by providing the mix of price, range, quality and service they value. Consumers have a diverse range of preferences that influence where they choose to shop and what products to buy once in store.⁷⁷² As discussed in Chapter 4, there are multiple drivers of store choice and these vary, including by demographic and shopping mission. Key drivers of store choice include non-price factors such as location and ease of access, familiarity with the store, product range and product quality. Consumers may therefore use different types of information to help make these decisions.
- 7.16 Nevertheless, price-related factors contribute to store choice and consumer decisions relating to what products to buy. Price comparisons can give consumers helpful information to develop perceptions of value and can promote competition among retailers.
- 7.17 This chapter primarily focuses on pricing information available to consumers, by considering pricing and promotional mechanisms used by the major grocery retailers in store and related issues such as consumer awareness of rewards structures and the terms and conditions of loyalty programmes. These issues all impact the ease with which consumers can assess the best deals based on their preferences and form a broader view of where they want to shop.

Pricing and promotional mechanisms considered in this chapter

- 7.18 Price is consistently cited as one of the key drivers of store choice for many consumers.

⁷⁷² See paragraphs 4.58 to 4.76. This is also evidenced in documents provided by major grocery retailers, for example: []; [].

- 7.19 Two thirds of the respondents to our consumer survey report “always” or “usually” comparing prices between similar products when shopping for groceries.⁷⁷³ Some consumers report using an internal reference point of value, rather than relying on external information. Internal reference points could include a general perception that private label products are cheaper than branded products, or that multi-buy offers provide good value.⁷⁷⁴ However, many consumers report using external information such as unit prices and promotional price tickets to guide their decision making.⁷⁷⁵ We have seen evidence that these factors, including promotions, discounts, and loyalty programmes affect consumers’ perceptions of price and value.⁷⁷⁶
- 7.20 This chapter considers the effect of pricing and promotional activity on consumers’ ability to make product choices in store that best reflect their preferences and to develop accurate perceptions of value, and the potential effects on competition between the major grocery retailers. These include:
- 7.20.1 promotional mechanisms, such as the use of reference prices when advertising products on special and other general promotional claims about value, including everyday low pricing (EDLP);
 - 7.20.2 non-promotional pricing information such as unit prices;
 - 7.20.3 loyalty programmes; and
 - 7.20.4 one-off, non-price promotions such as collectibles and give-aways.

⁷⁷³ See Figure E26. This is consistent with: Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 44; Internal research provided by the major grocery retailers, for example, [].

⁷⁷⁴ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 16. See also, for example: BDRC Continental “Grocery Pricing – Qualitative Research Report” (12 June 2015) prepared for the Competition Markets Authority, at 4, available at: https://assets.publishing.service.gov.uk/media/55a68c41ed915d151b000005/Annex_F_-_Grocery_Pricing_Qualitative_Research_Report_Prepared_by_BDRC_Continental_for_the_CMA_12_June_2015.pdf; Nadine Sonnenberg and Daleen Van der Merwe “An exploratory investigation into the role of shelf-edge signage in urban grocery consumers’ decision-making behaviour” (July 2006), available at: https://www.researchgate.net/publication/266260370_An_exploratory_investigation_into_the_role_of_shelf-edge_signage_in_urban_grocery_consumers'_decision-making_behaviour.

⁷⁷⁵ For example, a piece of research commissioned by [] found that about [] of consumers regularly look for ticketing devices when shopping []. Respondents to our consumer survey reported a high rate of checking unit price, see Figure E26.

⁷⁷⁶ For example: []; [].

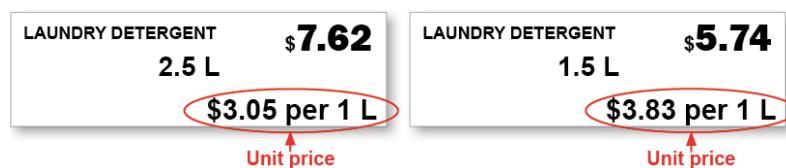
Pricing and promotional mechanisms

- 7.21 Grocery retailers commonly use a range of discounting mechanisms to encourage consumers to shop at their store and purchase certain products. Using these discount representations to advertise a product generally conveys to consumers that they can purchase the products at a lower price which is not usually available to them.⁷⁷⁷
- 7.22 In this chapter, we consider the major grocery retailers' use of pricing and promotional mechanisms and the information provided to consumers. We consider whether these mechanisms impact consumer decision making and value perceptions, and the potential effects on competition.
- 7.23 We refer to the pricing and promotional mechanisms that we have observed are commonly used by grocery retailers as follows. Examples of the visual tickets used to highlight prices are included in Table 7.1 below.
- 7.23.1 **Specials:** short-term discounts that do not require the consumer to meet any certain requirements to redeem the offer (for example, they do not have to swipe a loyalty card, or purchase a certain number of units). Retailers may signal that a discount is being offered by displaying a ticket referring to "Special" or "Saver" or "Extra Low". In some cases, but not all, retailers may also display a reference price to indicate the product is being sold at a price lower than its usual price. For example, "Was \$5, now \$3.50". This practice can also be referred to as "was-now" pricing or "reference" pricing.
- 7.23.2 **Multi-buys:** offers where consumers receive a discount if they purchase a certain number of units of a product (or a selection of products). For example, "buy two, get one free", "2 for \$5" or "any 3 for \$8". These offers can often be complemented by representations such as "Save \$2.00" or "Special". This practice may also be known as a volume offer or volume discount.
- 7.23.3 **Member-only discounts:** price discounts which are only available to consumers who swipe the relevant loyalty programme card. If the consumer is not a member, or does not swipe their card, they are charged a different, typically higher, price. For example, "Club Deals" are only available to New World shoppers who swipe their Clubcard when completing their purchase. Similarly, "Club Prices" are only available to Countdown shoppers who swipe their Onecard.

⁷⁷⁷ Commerce Commission "Pricing fact sheet", available at: <https://comcom.govt.nz/consumers/dealing-with-typical-situations/buying-goods-and-services/pricing>.

- 7.23.4 **EDLP:** a pricing strategy based on offering a “low” price on certain products for an extended period, as opposed to cycling between discounted and non-discounted prices. Products which are offered at an EDLP may also be subject to a shorter-term discount. The major grocery retailers typically promote EDLP offerings through advertising and displaying tickets such as “Great Price” (Countdown) or “Everyday Value” (New World).
- 7.23.5 **Unit pricing:** the practice of displaying the price for a product with reference to standard units of measurement (for example, per litre or per kilogram).

Figure 7.1 Example of unit price



Source: ACCC, Grocery unit prices.⁷⁷⁸










- 7.24 Where the retail banner offers an online service, we understand the same tickets are used, though different promotions may be available (ie, “online-only” promotions may be offered).
- 7.25 It appears common for other grocery retailers to offer specials and, like the major grocery retailers, to dedicate webpages or sections for browsing discounted products.⁷⁷⁹ Some smaller grocery retailers also appear to offer member-only discounts. However, these appear to be less prevalent than among the major grocery retailers.⁷⁸⁰

⁷⁷⁸ ACCC “Grocery unit prices” <https://www.accc.gov.au/consumers/groceries/grocery-unit-prices>.

⁷⁷⁹ For example: Panda Mart “Specials”, available at: <https://www.pandamart.co.nz/specials>; Farro “Specials”, available at: <https://shoponline.farro.co.nz/collections/specials>; Commonsense Organics “Specials”, available at: <https://commonsenseorganics.co.nz/shop-online/specials/>.

⁷⁸⁰ For example: Farro Fresh “Friends of Farro”, available at: <https://www.farro.co.nz/friends-of-farro/>; Japan Mart “Join Japan Mart Club Card today”, available at: <https://club.japanmart.co.nz/customer/>.

Table 7.1 Examples of promotional tickets used by the major grocery retailers

Mechanism	PAK'nSAVE	Countdown	New World
EDLP ⁷⁸¹			
Specials (including reference prices) and multi-buys ⁷⁸²		 	 
Member-only discount (including member-only multi-buys) ⁷⁸³			

Source: Commission analysis of information provided by major grocery retailers.⁷⁸⁴

One-off promotions

7.26 Grocery retailers also sometimes offer “one-off” non-price promotions to all consumers such as competition entry or collectibles campaigns. Examples of these include New World’s “KitchenAid” and “SMEG Knives” promotions and Countdown’s “Bricks” and “Disney Words” promotions. The mechanics of these promotions vary. Some may offer consumers tokens when certain spend thresholds are met, and a certain number of tokens can be redeemed on a gift, such as a SMEG knife. Others may offer consumers a gift for spending a certain amount on selected products.

7.27 We refer to these non-price promotions as “one-off promotions” in this chapter.

⁷⁸¹ For Woolworths NZ, the average duration of a Great Price offering is currently on average [], []. For New World stores, the target duration of an Everyday Value offering is approximately [], []; [].

⁷⁸² Individual New World stores in the North Island may also offer ‘Store Savers’.

⁷⁸³ New World stores in the North Island also display a yellow ‘Club Deal’ ticket.

⁷⁸⁴ []; []; [].

Relevant loyalty programmes structures and benefits

- 7.28 We have also considered potential competitive effects of loyalty programmes, as another dimension of competition.
- 7.29 Clubcard (New World) and Onecard (Countdown) are both coalition programmes, because rewards can be earned with partners such as Flybuys or AA Smartfuel, and member benefit programmes.⁷⁸⁵ Most of the programmes offered by other smaller retailers are stand-alone, member benefit programmes as rewards are generally earned and redeemed on products and services offered by those retailers.⁷⁸⁶
- 7.30 Both Clubcard and Onecard offer member-only discounts, accumulated rewards and personalised offers as described below, as well as entry into competitions. Clubcard holders must register their Clubcard to gain access to any of the benefits of that programme. Onecard holders do not need to register their Onecard to gain access to member-only discounts, they can simply swipe their card at the point of sale, but they need to register to be eligible for the other benefits.⁷⁸⁷
- 7.30.1 **Club Deals and Club Prices:** consistent with our earlier definition, we refer to Club Deals (Clubcard) and Club Prices (Onecard) as “member-only discounts” throughout this report. These discounts are instant discounts provided to Clubcard members and Onecard holders.
- 7.30.2 **Accumulated rewards:** we refer to “accumulated rewards” to mean fuel, food (eg, vouchers to use in store or online) or other travel rewards such as Flybuys and Airpoints earned via Clubcard and Onecard. This includes “New World Dollars” and Countdown “e-vouchers”.
- 7.30.3 **Personalised offers:** personalised offers are rewards or benefits that are more targeted at individual consumers. Both Countdown and New World currently provide targeted offers to some registered Onecard members and Clubcard members respectively.
- 7.31 We discuss loyalty programmes from paragraph 7.120 of this chapter.

⁷⁸⁵ Coalition points-based programmes generally involve a variety of partners within one programme so members can earn and redeem points with each partner.

⁷⁸⁶ Stand-alone points-based programmes generally offer members the ability to earn points when they buy the product or service offered by the programme operator. Member-benefit programmes offer members access to discounts and other benefits such as competition entry or personalised rewards.

⁷⁸⁷ This means consumers can gain access to member-only discounts via Onecard without registering the card with Woolworths NZ and providing certain information such as their name and contact details. Transaction information will still be provided.

Our survey, qualitative research and experimental economics helped to build our understanding of the issues facing consumers

- 7.32 As noted earlier, our consumer survey of New Zealand grocery consumers helped us identify themes relevant to our study and to better understand consumer behaviour. We particularly sought consumers' views on how they decide where to shop and what to buy, and why consumers join loyalty programmes. We received 12,269 responses to our consumer survey across a wide range of demographics. Further information on our consumer survey is contained in Attachment E.
- 7.33 The qualitative research Ipsos conducted also helped to inform our understanding of consumers' behaviour when they shop for groceries. Ipsos recruited consumers to participate in this research from across the country. They participated by preparing a "grocery diary" and attending an interview or a focus group. The research is not intended to represent the views of all New Zealanders but provides deeper insights into a range of perspectives. The report summarising the findings of this research were published alongside our draft report.⁷⁸⁸
- 7.34 Additionally, the experimental economic research conducted by WEEL at the University of Waikato assisted our understanding of consumer decision making under complexity. This research tested how complexity around promotional mechanisms affects consumer decision making, using laboratory experiment data from 180 participants. Its research also considered whether displaying unit pricing could mitigate some of these effects, if there are any. The findings of this research were published alongside our draft report.⁷⁸⁹
- 7.35 WEEL conducted this research under controlled laboratory conditions using experimental methods, which are common practice in the field of behavioural economics. There are many benefits of the experimental economic method, including credibility, observability, and replicability.
- 7.36 The findings of the WEEL research have provided valuable insights into the impact of promotional mechanisms of varying complexity on consumer decision making in the New Zealand retail grocery environment.

⁷⁸⁸ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021).

⁷⁸⁹ The University of Waikato "Consumer Decision-Making Under Complexity" (May 2021).

- 7.37 It is possible consumers may be more likely to be affected by complexity in a retail grocery context than a controlled lab environment, in which case the scale of the effects found by WEEL would tend to understate the real-world effects:
- 7.37.1 In a retail grocery environment, consumers may have less cognitive capacity to compare products and offers due to time pressures and other distractions. For example, grocery stores have a range of stimuli, not present in a lab environment, which may split focus and attention (such as smells, sounds, signage, and other shoppers).⁷⁹⁰
- 7.37.2 The experimental setting controlled for non-price preferences (ie, participants were indifferent between the “products”). Grocery products have a range of characteristics (for example, flavour, brand, nutrition) which consumers may also consider when selecting products.
- 7.37.3 Participants were required to make 20 product selection decisions, split across four stages. Although this appears higher than an average grocery basket, a grocery shopping trip likely requires many other decisions not present in the experiment (such as where to shop and which categories to purchase from).⁷⁹¹ Where more, or more complex, decisions are required to be made, this can cause consumers to exert less effort in making each decision, increasing their reliance on decision-making shortcuts.⁷⁹²
- 7.38 We also conducted a range of analysis on pricing and promotion data provided by the major grocery retailers. Relevant to this chapter, this work explored the promotional pricing practices of these retailers, including the prevalence of promotions within and between the PAK’nSAVE, New World, Countdown and Four Square, the frequency of promotions, and comparisons between promotional and non-promotional prices. Attachment D summarises the relevant findings of this analysis.

⁷⁹⁰ New Zealand grocery retailers utilise a wide variety of in-store cues, merchandising and display methods. For example: Christina Bava, Sara Jaeger and John Dawson “In-store influences on consumers' grocery purchasing decisions: a qualitative investigation” (2009) *8(3) Journal of Customer Behaviour* 221 at 226, [].

⁷⁹¹ The average units purchased per transaction appears to be in the region of 10 to 15. For example, the average units purchased per transaction from Countdown was [] for the year to 22 November 2020 []. Although we do not have data on average units for PAK’nSAVE and New World transactions, spending data indicates this is comparable to Countdown []; [].

⁷⁹² For example, Anastasia Pocheptsova, On Amir, R Dhar and R Baumeister “Deciding without Resources: Resource Depletion and Choice in Context” (2009) *46(3) Journal of Marketing Research* 344, [].

- 7.39 The analysis of promotional pricing is based on 12 months of pricing data from the major grocery retailers over calendar year 2019. This period was chosen to ensure any analysis would not be influenced by any impacts the COVID-19 pandemic had on the grocery sector.
- 7.40 Media reports noted that many grocery retailers reduced the number of discounts offered during the emergence of the COVID-19 pandemic in early 2020.⁷⁹³ We therefore consider analysis conducted on 2020 data may not have provided an accurate reflection of discounting practices in the sector.

Other sources of information we have relied upon

- 7.41 In addition to these sources of information, the major grocery retailers provided us with a range of information regarding their pricing and promotional practices, consumer research and loyalty programmes. We received a number of submissions on these topics and we drew upon academic literature and studies conducted by overseas agencies and organisations, including the ACCC and the OECD.

Promotional mechanisms and practices may affect consumers' ability to compare offerings and perceptions of value

- 7.42 Well-functioning markets build consumer confidence to participate in those markets by providing consumers with access to information that helps them to make informed decisions.⁷⁹⁴
- 7.43 Well-informed consumers may be better able to compare product offerings both within store and between retailers and may develop a more accurate perception of value that makes them more inclined to shop around between products and between retailers. This kind of consumer behaviour encourages retailers to compete for consumers and creates value for consumers in the form of better prices, range and quality of goods and services that competition can be expected to produce.
- 7.44 The major grocery retailers told us that they provide information to assist consumers with making informed decisions, including in relation to product shelf prices, any promotional pricing, and, for some products, unit pricing.⁷⁹⁵

⁷⁹³ Stuff "Countdown to resume 'specials' and pay staff lockdown bonuses" (30 March 2020), available at: <https://www.stuff.co.nz/business/120666733/supermarkets-coming-under-scrutiny-over-lockdown-prices>. Also see: Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 11: "[We] very temporarily suspended promotions and specials...to manage extreme demand fluctuations, avoid running out of stock, and stabilise our supply chains".

⁷⁹⁴ Commerce Commission "Statement of Intent – Our Approach for 2020-2024" (30 July 2020), available at: https://comcom.govt.nz/_data/assets/pdf_file/0014/222305/Statement-of-Intent-20202024.PDF at 13.

⁷⁹⁵ Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 33-34; Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 68-69; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 22-23; Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 68.

- 7.45 However, others told us that the information provided can be confusing.⁷⁹⁶ This can decrease consumer confidence and make it harder for consumers to develop an accurate perception of value, leading to less-informed purchasing decisions and poor information being received by retailers which could reduce competition for these consumers.
- 7.46 Each of the major grocery retailers compete for consumers by engaging in promotional pricing as part of their pricing strategies (see Table 7.1). Foodstuffs SI told us that there has been a historical consumer demand for products sold on promotion, and it has responded to this demand by offering promotional pricing.⁷⁹⁷ Woolworths NZ made a similar submission, that “New Zealand consumers are highly price conscious and love to purchase products on promotion.”⁷⁹⁸
- 7.47 Research conducted by the major grocery retailers indicates, for example, that some consumers want to see “eye-catching” specials, and many consumers report looking for promotions most or all the time when shopping.⁷⁹⁹ The Ipsos report similarly found that promotions had broad appeal to a range of participating consumers.⁸⁰⁰ Some submitters told us that some consumers rely on promotional pricing, and are not able or willing to purchase products unless they are on promotion.⁸⁰¹

⁷⁹⁶ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 9-10. Also see, National Council of Women New Zealand “Submission on Market study into grocery sector draft report” (23 August 2021) at [11]; NZFGC “Post conference submission on Market study into grocery sector” (25 November 2021) at [5.42]; Ian Jarratt “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 6.

⁷⁹⁷ Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 23.

⁷⁹⁸ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 71.

⁷⁹⁹ For example: []; []; []; [].

⁸⁰⁰ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 9-10 and 43-44.

⁸⁰¹ Comments by Kore Hiakai, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 16 (lines 21-41).

- 7.48 Promotions have been frequently offered on a significant proportion of products sold at New World, Countdown and PAK'nSAVE. In 2019, promotions (of any kind) were relatively common for products in alcohol, dairy, meat, frozen products, and general grocery categories.⁸⁰² Many of these categories appear to generate high proportions of revenue for these retail banners.⁸⁰³
- 7.49 Where promotions are not misleading and offer genuine savings, they can provide value to consumers in the form of cost savings and drive price competition. Different discounting strategies may be used to influence consumer behaviour and encourage consumers to purchase the discounted product. These are common techniques with sound commercial rationales. Discounts may be offered to manage demand for products (for example, to shift products off the shelf), to retain consumers, or attract consumers or certain types of consumers to a retailer and increase market share.
- 7.50 However, even when discounts offer a genuine saving to consumers, the way promotions are framed, and the frequency and prevalence of promotions, can add complexity to consumer comparisons of offerings.⁸⁰⁴ Additionally, this can shift consumer attention away from the price paid and towards the magnitude, or other features, of the discount.
- 7.51 Some participants in the Ipsos research expressed feelings of frustration with the frequency of specials and the inability to clearly discern whether a price represents good value.⁸⁰⁵ Research provided by the major grocery retailers also indicates that consumers want promotions to be clearer and easier to read.⁸⁰⁶

⁸⁰² For example: paragraph D33 in Attachment D; [redacted]. From October 2020 to January 2021 [redacted] of New World sales in the North Island were from products were on promotion: Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) (Confidential Version) at 36-37. This figure was [redacted] for PAK'nSAVE North Island and [redacted] of sales for Four Square sales in the North Island. The proportion of products sold on promotion at Countdown is [redacted], Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) (Confidential Version) at 68.

⁸⁰³ For example: [redacted]; [redacted].

⁸⁰⁴ Also see, Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [58]-[63].

⁸⁰⁵ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 10; also see, for example: Gorkan Ahmetoglu, Adrian Furnham and Patrick Fagan "Pricing practices: A critical review of their effects on consumer perceptions and behaviour" (2014) *Journal of Retailing and Consumer Services* 21(5) at 696-707, available at: https://www.researchgate.net/publication/263049644_Pricing_practices_A_critical_review_of_their_effects_on_consumer_perceptions_and_behaviour.

⁸⁰⁶ For example: [redacted]; [redacted].

- 7.52 In addition, participants in the WEEL research were least likely to make optimal choices and tended to experience the greatest losses, when they were asked to select the best option across multiple promotional mechanisms at the same time, or when faced with a more complex mechanism.⁸⁰⁷ We discuss this, and other findings from the WEEL research, in the next section of this chapter.
- 7.53 We have found that the major grocery retailers' use of an array of different promotional mechanisms, and their complexity and frequent use particularly in combination with one another, makes it hard for consumers to accurately assess the value of competing offers. This is unlikely to be mitigated by the major grocery retailers' current use of unit pricing, because of inconsistencies and other issues with their unit pricing practices. We discuss these practices later in this chapter.
- 7.54 In these circumstances, consumers may find it harder to shop around and compare competing price offers or to develop accurate perceptions of value. This may reduce the effectiveness of price competition in the longer term. This could also affect the quality of information retailers receive about consumer preferences, impacting their ability to respond to consumer demand. The same principles may apply to smaller grocery retailers using the same or similar promotional practices.⁸⁰⁸
- 7.55 The major grocery retailers have told us that they intend to increase their emphasis on EDLP and decrease their use of short-term promotional pricing.⁸⁰⁹
- 7.55.1 Woolworths NZ submitted that this change has been driven by an effort to simplify its pricing offer to consumers so they can make decisions that best meet their needs.
- 7.55.2 Foodstuffs SI submitted that this change reflects "growing trends" among consumers for more consistent pricing.
- 7.56 Foodstuffs NI has also indicated it plans to reduce the number of different promotional mechanisms used at its New World and PAK'nSAVE stores (with its Four Square stores currently using only one mechanism).⁸¹⁰

⁸⁰⁷ The University of Waikato "Consumer Decision-Making Under Complexity" (May 2021) at Table 6: Stage 3 Experimental Results.

⁸⁰⁸ Common Sense Organics "Specials" <https://commonsenseorganics.co.nz/shop-online/specials/>; Tai Ping "Promotions" <https://www.taiping.co.nz/>; Farro Fresh "Specials" <https://shoponline.farro.co.nz/pages/specials>. Some smaller retailers also offer discounts to loyalty programme members.

⁸⁰⁹ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [381]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [378]; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [9.1].

[
].
⁸¹⁰ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [382]. Foodstuffs SI has also indicated support for a reduction in the number of promotional mechanisms and their use in combination: Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [379].

Multiple and complex promotional mechanisms can make it harder for consumers to make comparisons

- 7.57 As illustrated in Table 7.1 above, the major grocery retailers currently use a range of pricing and promotional mechanisms in store and online (where online shopping is available). New World and Countdown each display at least four pricing tickets and use a greater number of mechanisms (for example, the same ticket might be used for a multi-buy and a special or an EDLP offering might also be part of a multi-buy). They also appear to sometimes use multiple tickets or representations to indicate a product is on promotion.⁸¹¹ For example, reference prices may be accompanied by other representations such as “Save \$2.00” or “Special”.
- 7.58 Consumer NZ considers that the major grocery retailers’ promotional pricing practices make it difficult for consumers to assess the value of a “special”.⁸¹² It raised concerns that this difficulty is compounded by the major grocery retailers’ use of different types of promotions, such as offering specials, EDLP and member-only discounts.⁸¹³
- 7.59 Consumer NZ’s view is consistent with research provided by the major grocery retailers which indicated that the number of promotional labels could be causing visual clutter and potentially confusing customers.⁸¹⁴ Consumers with lower levels of literacy may be particularly affected by the complexity of the number and layering of various promotional mechanisms.⁸¹⁵
- 7.60 The WEEL research tested how consumer purchasing decisions in a retail grocery context are influenced by the existence of multiple promotional mechanisms, and whether this leads to a reduction in consumer welfare compared to when consumers are faced with fewer, or no promotional mechanisms. We commissioned this research to help us to test any impact these mechanisms may be having on consumer choice and competition.

⁸¹¹ []; [];
[].

⁸¹² Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [60].

⁸¹³ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [60]-[61]. Also see Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 17 (lines 7-19).

⁸¹⁴ For example: []; [];
[]; [].

⁸¹⁵ Comments by Kore Hiakai, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 16 (lines 6-11); The Salvation Army Te Ope Whakaroa “Submission on Market study into grocery sector draft report” (23 August 2021) at [17].

- 7.61 The experiment was conducted in four stages, with each stage consisting of multiple decision rounds with varying mechanisms. In each decision round, participants were asked to decide how many (if any) units of the fictitious good(s) on offer they would like to buy. The aim in each decision round was to maximise the value of the purchase.
- 7.62 To calculate the value of each purchase, WEEL assigned “buy back values” for the goods which decreased with each additional unit purchased. Participants’ earnings from each round were determined by the difference between the price they paid for that unit and the “buy back value” of that unit.
- 7.63 The four stages of the experiment were:
- 7.63.1 **Stage 1: One pricing mechanism at a time.** Participants were presented with only one mechanism at a time and asked to select the quantity of units which would provide them the most value.
 - 7.63.2 **Stage 2: Multiple pricing mechanisms but participants could only purchase from one mechanism.** Participants selected the quantity from one mechanism which would provide them the most value.
 - 7.63.3 **Stage 3: Multiple pricing mechanisms and participants could purchase from any combination of mechanisms.** Participants selected the combination of mechanisms and quantities which would provide them the most value.
 - 7.63.4 **Stage 4: Multiple pricing mechanisms with unit price.** The same as Stage 3 but each product also displayed the unit price.
- 7.64 The mechanisms and tickets used in this experiment were modelled on those commonly used by the major grocery retailers, described earlier in this chapter, and incorporated both “simple” and “complex” mechanisms.⁸¹⁶ For example:
- 7.64.1 One mechanism was a non-discounted price label “Good Value” and another was a 20% discount labelled “Special”. These were considered “simple” mechanisms.
 - 7.64.2 More complex mechanisms were also tested, such as a multi-buy labelled “Extra Saver” which offered a 25% discount if participants bought five units or a “Club Discount” which offered a 15% discount if participants “joined” the programme.

⁸¹⁶ For a description of all mechanisms used, The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at Table 2: Pricing schemes.

- 7.65 The WEEL report found that the use of multiple promotional mechanisms caused participants to make sub-optimal purchasing decisions.⁸¹⁷ This means participants were less likely to choose the offer providing the best value (ie, the pricing mechanism and product quantity combination that offered the greatest benefit) when faced with multiple pricing mechanisms, compared with when faced with one, simple mechanism such as a “Special”.⁸¹⁸
- 7.66 Depending on the range of mechanisms offered, participants were between 50% and 90% less likely to make the optimal choice to meet their needs, compared to when participants were presented with only one option with no discounting (ie, a product at full price with either no label or a “Good Value” label).⁸¹⁹
- 7.67 The WEEL report also found that participants tended to experience greater losses when they had to choose between a greater number of mechanisms in Stages 2 and 3, than in Stage 1.⁸²⁰ This means the difference between the value of the choice the participant made, and the value of the optimal choice, tended to be larger than when making other less-complex decisions.
- 7.68 We consider these findings are relevant to the use of similar mechanisms and practices in the retail grocery sector. The use of multiple promotional mechanisms by the major grocery retailers may be making it harder for consumers to make purchasing decisions that best reflect their preferences and meet their particular needs. This is because:
- 7.68.1 participants faced real financial consequences in the experiment, as their payment was dependent on their ability to choose the best outcome;⁸²¹
 - 7.68.2 the schemes presented to participants in the experiment were designed to replicate those commonly offered by the major grocery retailers;⁸²² and
 - 7.68.3 decision making in the retail context is likely to be more challenging than the conditions participants were presented with in a laboratory environment (discussed above at paragraph 7.35).

⁸¹⁷ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at iii and 16.

⁸¹⁸ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at iii and 16. The magnitude of this effect did not depend on how the “special” was framed ie, “was/now” or “save \$x”.

⁸¹⁹ This result controls for unobservable, and some observable, differences between participants, such as their willingness to exert effort and their performance in the simplest task. The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at Table 6: Stage 3 Experimental Results.

⁸²⁰ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at Table 6: Stage 3 Experimental Results in comparison to Table 4: Stage 1 Experimental Results.

⁸²¹ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at 2 and 6.

⁸²² The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at 6.

- 7.69 We have found that the use of complex and/or multiple promotional mechanisms by the major grocery retailers may make it harder for consumers to compare prices of products in store, even when there are genuine savings and the information provided is clear. Similar observations were made in Consumer NZ's submission and research provided by the major grocery retailers, as noted in paragraphs 7.57 and 7.58. This means consumers may not be able to easily choose the best option for them, which may feed inaccurate information on preferences back to retailers and reduce the effectiveness of price competition between grocery retailers in the longer term.

Framing of promotions may distort consumer decision making

- 7.70 The way that a promotional mechanism is framed can also affect consumer decision making. Our view is that the more complex the mechanism, the more difficult it may be for consumers to reach an informed decision about the value that it offers them. Nevertheless, as previously discussed, discounts can provide value to consumers and drive price competition between the major grocery retailers.
- 7.71 While the use of any single discount mechanism does not necessarily impact competition in a material way, the frequent and prevalent use of multiple and/or complex mechanisms makes it harder for consumers to easily understand and evaluate price information, and to form accurate perceptions of price and value. It may also cause consumers to be less inclined to shop around for products and retailers.⁸²³
- 7.72 Participants in the WEEL research were less likely to make the optimal purchase decision (ie, purchase the correct number of units) when asked to select from a complex discount mechanism, compared to when they were asked to select from a simple mechanism.⁸²⁴ The effect on participants' decision making depended on the mechanism:⁸²⁵
- 7.72.1 **Multi-buy:** 85% less likely to make the optimal choice.
- 7.72.2 **Buy 3, get 1 free:** 59% less like to make the optimal choice.
- 7.72.3 **Member-only discount:** 46% less likely to make the optimal choice.

⁸²³ For example: Gorkan Ahmetoglu, Simon Fried, John Dawes, and Adrian Furnham "Pricing Practices: Their Effects on Consumer Behaviour and Welfare – prepared for the Office of Fair Trading" (March 2010) at 20, available at: https://webarchive.nationalarchives.gov.uk/20140402172955/http://oft.gov.uk/shared_oft/business_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf; Gorkan Ahmetoglu, Adrian Furnham and Patrick Fagan "Pricing practices: A critical review of their effects on consumer perceptions and behaviour" (2014) *Journal of Retailing and Consumer Services* 21(5) at 699, available at: https://www.researchgate.net/publication/263049644_Pricing_practices_A_critical_review_of_their_effects_on_consumer_perceptions_and_behaviour.

⁸²⁴ The University of Waikato "Consumer Decision-Making Under Complexity" (May 2021) at 15.

⁸²⁵ The University of Waikato "Consumer Decision-Making Under Complexity" (May 2021) at Table 4: Stage 1 Experimental Results.

- 7.73 In addition to participants being less likely to make the optimal choice, the WEEL report found that participants tended to experience greater losses when faced with a single more complex mechanism. This means the difference between the value of the choice the participant made, and the value of the optimal choice, tended to be larger than when making less-complex decisions (such as choosing between fewer, or simpler, mechanisms).
- 7.74 For example, in Stage 1, when participants were presented with only the complex “5 for \$x” multi-buy, and then asked to select the quantity that would provide them the best value, they experienced a 16% greater loss compared to when they had to select from a simpler mechanism.⁸²⁶
- 7.75 Participants’ losses were slightly less in Stage 3 when they were presented with many mechanisms (including the complex multi-buy offer), but were able to select from any of them.⁸²⁷ However, the proportion of participants who made the optimal choice was similarly low in both Stage 1 and 3. WEEL considered this may be because, when given the option, some participants chose to ignore the complex mechanisms and instead focus on the simpler ones.⁸²⁸
- 7.76 In this section of this chapter, we describe the features of the commonly used promotional mechanisms that have the potential to benefit consumers, and those that may distort consumer decision making.
- 7.77 As we discuss in the final section of this chapter, we regularly receive complaints from consumers about promotional mechanisms creating confusion or being misleading. Whether or not complaints disclose any breach of the FTA, the fact that complaints are made, and the volume of complaints, may indicate that some consumers lack confidence in the major grocery retailers’ pricing practices and this may decrease consumer sensitivity to price-based competition.⁸²⁹

Reference pricing

- 7.78 Research shows that some consumers find secondary cues, such as a reference price, important for assessing the value of longer-term offers.⁸³⁰

⁸²⁶ In the case of the multi-buy, participants could purchase five units at a discount, or single units at the full price. This may explain why participants faced losses even under one scheme, as the optimal quantity may have required purchasing a combination of the multi-buy and single units.

⁸²⁷ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021), Table 6: Stage 3 Experimental Results at 19.

⁸²⁸ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at 16.

⁸²⁹ We discuss our approach to the complaints we have received in paragraphs 7.201 to 7.205.

⁸³⁰ For example:

[
].

- 7.79 Accurate and clearly indicated reference prices that offer a genuine saving can be beneficial for consumers trying to select the offer that best reflects their preferences.⁸³¹ Reference prices can be an efficient way for retailers to demonstrate discount price offers that may be valued by consumers and help reduce search costs associated with finding a good deal.⁸³²
- 7.80 However, even when they offer a genuine saving, reference prices may also influence consumer perceptions of the value of the product and shift consumer focus away from the actual price paid to the size of the discount or perceived savings.⁸³³ For example, reference pricing can affect consumer perceptions of the lowest price available in the market and the potential savings they may gain by purchasing the advertised product.⁸³⁴
- 7.81 This may influence consumers to buy products they would not otherwise have considered buying and/or be less inclined to shop around and compare prices.⁸³⁵ This can limit their ability to develop a well-informed perception of value and their awareness of alternative offers between retailers, influencing where they choose to shop.
- 7.82 Some research indicates the effect of reference prices on consumer perceptions appears to be larger with unfamiliar brands, and with expensive or infrequently encountered products.⁸³⁶ It does not appear that familiarity with reference prices over time reduces or mitigates the distortion of consumer decision making.⁸³⁷

⁸³¹ Gorkan Ahmetoglu, Simon Fried, John Dawes, and Adrian Furnham “Pricing Practices: Their Effects on Consumer Behaviour and Welfare – prepared for the Office of Fair Trading” (March 2010) at 20, available at: https://webarchive.nationalarchives.gov.uk/20140402172955/http://oft.gov.uk/shared_oft/business_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf.

⁸³² Office of Fair Trading “Advertising of Prices” (December 2010) at [4.3]-[4.4], available at: https://webarchive.nationalarchives.gov.uk/20140402173016/http://oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf.

⁸³³ For example: Office of Fair Trading “Advertising of Prices” (December 2010) at [4.4], available at: https://webarchive.nationalarchives.gov.uk/20140402173016/http://oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf.

⁸³⁴ Gorkan Ahmetoglu, Adrian Furnham and Patrick Fagan “Pricing practices: A critical review of their effects on consumer perceptions and behaviour” (2014) *Journal of Retailing and Consumer Services* 21(5) at 696-707, available at: https://www.researchgate.net/publication/263049644_Pricing_practices_A_critical_review_of_their_effects_on_consumer_perceptions_and_behaviour.

⁸³⁵ Office of Fair Trading “Advertising of Prices” (December 2010) at [4.4] and [4.9]-[4.22], available at: https://webarchive.nationalarchives.gov.uk/20140402173016/http://oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf.

⁸³⁶ Biswas and Blair “Contextual effects of reference prices in retail advertisements” (1991) at 1-12; Nottingham University Business School. “Research Into Misleading Price Comparisons: A report prepared for the Office of Fair Trading” (June 2005).

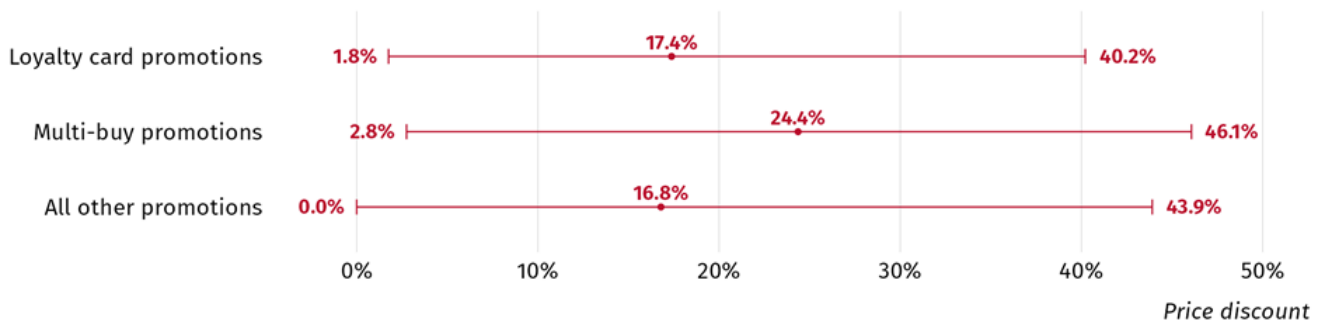
⁸³⁷ Office of Fair Trading “Advertising of Prices” (December 2010) at [4.26] to [4.31], available at: https://webarchive.nationalarchives.gov.uk/20140402173016/http://oft.gov.uk/shared_oft/market-studies/AoP/OFT1291.pdf.

Multi-buy offers

7.83 Where multi-buy (or volume) offers are clear, there can be benefits to consumers in the form of a lower per-unit price. Foodstuffs NI submitted that multi-buy offers are an important mechanism to offer value to consumers, used across a range of retailers throughout New Zealand.⁸³⁸ However, they are a more complex promotional mechanism which may make it harder for consumers to assess the value of the promotion. Consumer NZ submitted that “confusing multi-buys are [a] barrier to product comparisons”.⁸³⁹

7.84 Multi-buy offers appear to be used relatively less frequently by the major grocery retailers than other forms of promotions.⁸⁴⁰ However, as shown in Figure 7.2 below, in 2019 multi-buys offered slightly greater discounts than other promotions. Across retail banners, the median discount ranges from around 10% to 30% depending on the retail banner and type of promotion, compared to the weighted average non-promotional price.

Figure 7.2 Median and 2.5th/97.5th percentiles of weighted average promotional prices versus non-promotional prices across all retail banners, by promotion type



Source: Commission analysis of pricing and promotional data.⁸⁴¹

⁸³⁸ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [384].

⁸³⁹ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [55]. Health Coalition Aotearoa similarly submitted that “multiple product promotional options...make it confusing for shoppers”, Health Coalition Aotearoa “Submission on Market study into grocery sector draft report” (2 September 2021) at 3.

⁸⁴⁰ While their prevalence varied by retail banner, and by store, multi-buy offers were offered anywhere between five and 25 times less often than simple discounts in any given week in 2019, see Figure D6. Woolworths NZ has advised that in calendar year 2019, approximately [] SKUs on average were on multi-buy in any single week, [].

⁸⁴¹ [].

- 7.85 The major grocery retailers offer multi-buys to drive consumer engagement, attract certain groups of customers that may be more inclined to purchase discounted products and/or grow sales of a particular product.⁸⁴² However, some evidence shows that some consumers feel sceptical of multi-buy offers or they feel that they had to purchase more than they need.⁸⁴³ This may harm consumer confidence. Complex multi-buy offers may also:⁸⁴⁴
- 7.85.1 induce some consumers to buy more of a product than they would if it was subject to a single-unit discount even if the level of the discount is the same;
 - 7.85.2 induce some consumers to switch towards the promoted product, even when they do not purchase enough units to qualify for the offer and are therefore not benefitting from the saving; and
 - 7.85.3 signal to some consumers that there is a saving, even if consumers are unable to verify this.
- 7.86 As noted above, the WEEL research found that, out of all discounting mechanisms tested, multi-buy offers (either “buy 3 get 1 free” or “5 for \$x”) caused the greatest loss in consumer welfare for participants, compared to when they were displayed with only the simplest pricing display (ie, no discount).⁸⁴⁵ This is consistent with the Ipsos report where some participants said that multi-buy offers can make it more difficult to determine value.⁸⁴⁶

⁸⁴² []; [].

⁸⁴³ [].

⁸⁴⁴ For example, Gorkan Ahmetoglu, Simon Fried, John Dawes, and Adrian Furnham “Pricing Practices: Their Effects on Consumer Behaviour and Welfare – prepared for the Office of Fair Trading” (March 2010) at 30, available at: https://webarchive.nationalarchives.gov.uk/20140402172955/http://oft.gov.uk/shared_of/business_leaflets/659703/Advertising-of-prices/Pricing-Practices.pdf. See also, Gorkan Ahmetoglu, Adrian Furnham and Patrick Fagan “Pricing practices: A critical review of their effects on consumer perceptions and behaviour” (2014) *Journal of Retailing and Consumer Services* 21(5) at 701, available at: https://www.researchgate.net/publication/263049644_Pricing_practices_A_critical_review_of_their_effects_on_consumer_perceptions_and_behaviour.

⁸⁴⁵ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at 15.

⁸⁴⁶ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 45. This is consistent with qualitative research conducted in the UK: BDRC Continental “Grocery Pricing – Qualitative Research Report” (12 June 2015) prepared for the Competition Markets Authority, at 23, available at: https://assets.publishing.service.gov.uk/media/55a68c41ed915d151b000005/Annex_F_-_Grocery_Pricing_Qualitative_Research_Report_Prepared_by_BDRC_Continental_for_the_CMA_12_June_2015.pdf; participants reported finding multi-buy offers confusing and made it harder to compare the value of products.

Member-only discounts

- 7.87 When offering a member-only discount, both New World and Countdown display the member-only and non-member/standard shelf price for products. However, Consumer NZ receives regular complaints from consumers who choose an item expecting to receive a discount which they are not entitled to as a non-member.⁸⁴⁷
- 7.88 The Ipsos report noted that some participants disliked that the price shown on in-store signage may be a members-only price and differ from the product price that they may be expected to pay. Some participants said this is ‘unfair’ and ‘misleading’.⁸⁴⁸ We received approximately 20 comments in response to our consumer survey raising difficulties with ascertaining and comparing prices where a member-only discount was offered.⁸⁴⁹ Most of these comments related to New World’s Club Deals.
- 7.89 Our pricing analysis for the calendar year 2019 found that Club Deals in New World across the North Island and Club Prices in Countdown appeared to be less prevalent than other types of promotions such as New World’s “Saver” and “Super Saver” and Countdown’s “Super Saver”.⁸⁵⁰ That is, member-only discounts were applied to a lower proportion of SKUs than other types of promotions. In the South Island, the opposite was true: Club Deals were more common than other types of promotions.
- 7.90 Member-only discounts can increase complexity of decision making. Member-only discount tickets present consumers with two prices – a shelf price and a member-only price – in addition to other information. Consumers must then use this information to assess which price they will pay depending on whether they are entitled to receive the discount. Even when this information is available and displayed prominently, these discounts may make it more time consuming for consumers to make product comparisons and selections.
- 7.91 Consumers may face further difficulties and ultimately mistake a member-only discount for a regular promotion where:⁸⁵¹
- 7.91.1 the member-only price is prominently displayed, compared to the shelf price which may be shown in smaller font; and/or
 - 7.91.2 the member-only price ticket is not easily distinguishable from other promotional tickets.

⁸⁴⁷ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [87].

⁸⁴⁸ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 43.

⁸⁴⁹ See paragraph E184 in Attachment E.

⁸⁵⁰ See Figure D3.

⁸⁵¹ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [85]-[86]; NZFGC “Submission on Market study into grocery sector draft report” (26 August 2021) at [5.16]; comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 6, lines 14-20.

Figure 7.3 Examples of member-only discounts in store



Source: Ipsos report.⁸⁵²

- 7.92 Some consumers may therefore mistakenly select a product that is subject to a member-only discount, assuming they will pay the discounted price even if they are not eligible to receive the discount because they are not members of the relevant loyalty programme or do not have their loyalty card with them to swipe at the point of sale.

Everyday low price

- 7.93 We have also seen that some consumers appear to have low awareness or understanding of the major grocery retailers' EDLP mechanisms. In particular, some consumers do not appear to understand that these mechanisms offer a longer-term low price.⁸⁵³ Instead, some consumers interpret these mechanisms as limited or short-term promotions, which may influence consumer perceptions of the value of the offer and consequent purchasing decisions.

It is unclear if one-off promotions are harming competition

- 7.94 One-off non-price promotions are an example of how the major grocery retailers compete. They are generally designed to drive short-term increased spend (over the promotion period) and encourage consumers to come back to their store more frequently.⁸⁵⁴

⁸⁵² Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 44.

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[

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⁸⁵⁴

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]; [

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- 7.95 The mechanics of these promotions can vary, along with the benefits offered to consumers. For example:
- 7.95.1 New World's (both North Island and South Island) week-long "Start Fresh" free Sistema lunch box promotion whereby consumers could receive a free Sistema lunch box when they spent \$150 in a single transaction on qualifying products.⁸⁵⁵
- 7.95.2 Countdown's "Containers" 14-week promotion provided consumers an opportunity to earn stamps by spending \$20 which were redeemable on containers of different sizes.⁸⁵⁶
- 7.96 One-off promotions may, however, desensitise consumers to price competition by raising consumer switching costs. This is more likely for promotions structured like the latter example above, where consumers earn a certain number of tokens to redeem a benefit. Like with loyalty programmes, discussed later in this chapter, a "points pressure mechanism" can encourage consumers to increase the frequency and/or spend to obtain the benefit. The points pressure mechanism is a type of bias that highlights consumer behaviour in reaction to goals whereby the closer someone is to reaching a goal, the faster consumers move to try to achieve it.⁸⁵⁷ Switching to another retailer could mean consumers are delayed in reaching their goal or will not earn enough tokens before the promotion ends.
- 7.97 The major grocery retailers indicate that one-off promotions do drive at least short-term sales growth and market share increases for the duration of the promotion.⁸⁵⁸ Some consumers report they would be more likely to shop at a major grocery retailer while it was running a one-off promotion, and some say they would continue shopping at the relevant retailer after the promotion had ended.⁸⁵⁹

⁸⁵⁵ []; [].

⁸⁵⁶ [].

⁸⁵⁷ This can be seen often in loyalty programmes where firms offer, for example, bonus points when a consumer is close to a threshold, as an incentive to increase spend. For example: Matilda Dorotic, Tammo Bijmolt and Peter Verhoef "Loyalty Programmes: Current Knowledge and Research Directions" (2011) *International Journal of Management Reviews*, Vol. 14, at 219, available at: https://www.researchgate.net/publication/229915137_Loyalty_Programmes_Current_Knowledge_and_Research_Directions/link/5a02c38c0f7e9b68874e170e/download.

⁸⁵⁸ For example: []; [].

⁸⁵⁹ For example: []; [].

- 7.98 Where the potential effects are transitory, one-off promotions may be unlikely to raise significant competition concerns. The scope for these effects on consumer switching costs may be increased the longer the promotion runs, the more frequently they are run and/or how valuable the potential reward is to consumers.
- 7.99 In addition, the frequent and prevalent use of one-off promotions, combined with the other promotional mechanisms identified earlier, may add to the complexity of consumer decision making, making it harder for consumers to develop accurate perceptions of value.

Price comparison websites may assist consumer decision making

- 7.100 Price comparison websites aggregate product information from different retailers, enabling consumers to digitally compare prices of alternative suppliers for the same or substitutable products. In the grocery sector, this can include the ability to create virtual shopping baskets that compare prices of a total shopping basket, rather than just individual products. Price comparison websites can promote competition by making it easier for consumers to make well-informed decisions when choosing where to shop or what to buy.
- 7.101 There is currently one price comparison website for retail grocery in New Zealand: FoodMe, but we understand that there are other services in development. FoodMe does not appear to be widely used by consumers. Similar services are offered in Australia, such as Frugl and GroceryGetter.
- 7.102 Whether price comparison websites promote competition is likely to depend on the specifics of the market. Price comparison websites can reduce search costs for consumers and provide a means for consumers to shop around more easily, which provides stronger incentives for firms to improve their offerings. In some markets, there is a risk that a price comparison website could facilitate coordination by increasing price transparency for firms. However, we consider that the additional risk of coordination associated with the use of price comparison websites in the retail grocery sector is likely to be low. This is in part because a high degree of price monitoring is already undertaken by firms and pricing is already publicly available, often online.
- 7.103 The wide range of products, the low ticket-value of most individual grocery items, and the requirements of different shopping missions, can make price comparison considerably more difficult than in markets with more homogenous and 'big-ticket' products, such as the comparison of retail electricity prices which is supported by an existing price comparison website in New Zealand.
- 7.104 Nevertheless, there is some international evidence in the retail grocery sector that price disclosure and the use of price comparison websites can reduce prices for consumers.⁸⁶⁰

⁸⁶⁰ For example, Ater, I., & Rigbi, O. "The Effects of Mandatory Disclosure of Supermarket Prices" (2017) <http://dx.doi.org/10.2139/ssrn.3046703>.

Unit pricing can lead to more informed decisions and drive competition

- 7.105 Ready access to unit pricing can help consumers compare prices across products of differing qualities to assist consumers assess their relative value, and more easily choose the product that is best for them.⁸⁶¹ This proposition appears to be broadly agreed among submitters.⁸⁶² When consumers are better able to compare offers, they can develop more accurate perceptions of value over time, and retailers are more likely to be incentivised to compete on price.
- 7.106 Research indicates that the display of unit pricing for products facilitates better value comparisons beyond price, decreasing the time consumers take to make decisions, and improving the accuracy of the results.⁸⁶³ It assists consumers by improving the information available to them, particularly within a store, and can increase price competition between products and between stores.⁸⁶⁴ Some research has shown that over time unit pricing will result in cost savings for consumers as the quality of price comparisons can improve.⁸⁶⁵

⁸⁶¹ Competition Markets Authority “Pricing Practices in the Groceries Market, Response to a super-complaint made by Which? On 21 April 2015” (16 July 2015) at 4, available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>.

⁸⁶² Tupe Solomon-Tanoa’i “Post conference submission on Market study into grocery sector” (26 November 2021) at 1; Ian Jarratt “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 2; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [8]; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [385]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [381]; National Council of Women NZ “Submission on Market study into grocery sector draft report” (23 August 2021) at [13]; Auckland Regional Public Health Service “Submission on Market study into grocery sector draft report” (2 September 2021) at 4.

⁸⁶³ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 47-48; Dr Svetlana Bogomolova and Ian Jarratt “Unit pricing in supermarkets: review of past evidence from academic and industry studies” (18 October 2016) prepared for Working Group of the International Standards Organisation Project Committee ISP/OC 294, at 10, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2853977.

⁸⁶⁴ For example, ACCC “Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries” (July 2008) at 450, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>. Unit pricing can also provide some assistance to consumers comparing prices between retailers.

⁸⁶⁵ For example, ACCC “Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries” (July 2008) at 449, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

- 7.107 Unit pricing is not currently mandatory in New Zealand in any retail market but is used to an extent by the major grocery retailers. For example, Foodstuffs SI displays unit pricing on all barcoded products to assist consumers with comparing product offerings, and Foodstuffs NI has increased its use of unit pricing for this reason.⁸⁶⁶ Woolworths NZ told us that its prices are transparent and accessible including through the display of unit pricing for most products.⁸⁶⁷
- 7.107.1 Foodstuffs NI and Foodstuffs SI advised that New World and PAK'nSAVE provide unit pricing for most products.⁸⁶⁸ Unit price is not always displayed for products on promotion.⁸⁶⁹ We understand from Foodstuffs NI that all products that normally display a unit price do so when on and off promotion, except for products on multi-buy offer.⁸⁷⁰ Unit price is not provided for, for example, tobacco products which are not displayed to consumers, and products that are not sold by a standard measurement of weight or volume. We understand this approach is consistent across all New World and PAK'nSAVE stores and online (where applicable).
- 7.107.2 Countdown displays unit pricing for most of its packaged grocery and perishable products including for products on promotion.⁸⁷¹ Countdown does not provide unit pricing for “pre-priced” items such as gift cards, tobacco, and products with no weight data. We understand this approach to unit pricing is consistent across all Countdown stores and online.
- 7.108 Each major grocery retailer currently determines the appropriate unit of measurement for their respective approach to unit pricing and it varies by product. For example, herbs and spices may display the price per 10 grams and flour per kilogram.

⁸⁶⁶ Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 23; Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 33-34.

⁸⁶⁷ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 71.

⁸⁶⁸ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 33; Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 23; []; [].

⁸⁶⁹ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [52]-[54].

⁸⁷⁰ [].

⁸⁷¹ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 71; []; [].

- 7.109 The major grocery retailers do not appear to collect information about how consumers use unit pricing in the context of purchasing decisions. However, many consumers have reported referring to unit pricing when assessing the value of grocery products. For example, over 30% of respondents to our consumer survey reported always checking unit pricing when it is available, and over a further 30% said they “usually” check the unit price.⁸⁷²
- 7.110 In addition, the WEEL research reported weak statistical evidence that display of unit price may help to mitigate the effects of the use of multiple promotional mechanisms on the optimality of consumer decision making (discussed earlier).⁸⁷³

Inconsistent use of unit pricing by the major grocery retailers may inhibit decision making

- 7.111 Although unit pricing is offered by the major grocery retailers for many products, we have heard concerns regarding the consistency and clarity of the display of unit price information.
- 7.112 There is less scope for consumers to realise the benefits of unit pricing, and increased potential for confusion, if unit pricing is poorly or inconsistently displayed.⁸⁷⁴ This was a theme in several submissions received in response to our preliminary issues paper and our draft report.
- 7.113 For example, Consumer NZ submitted:⁸⁷⁵

Product comparisons in store are complicated by several factors. Inconsistent unit pricing is one of these. While both supermarket chains have voluntarily introduced unit pricing, our surveys have found its display is variable.

[...] Where the unit price is displayed, its often shown in very small font, much smaller than the retail price. Unless shoppers make an effort to look for the information, they may not know it's there.

⁸⁷² See Figure E26; Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 47: many participants reported that they look at unit pricing when shopping.

⁸⁷³ The University of Waikato “Consumer Decision-Making Under Complexity” (May 2021) at iii.

⁸⁷⁴ Competition Markets Authority “Pricing Practices in the Groceries Market, Response to a super-complaint made by Which? On 21 April 2015” (16 July 2015) at 4, available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>; Dr Svetlana Bogomolova and Ian Jarratt “Unit pricing in supermarkets: review of past evidence from academic and industry studies” (18 October 2016) at 13-14, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2853977.

⁸⁷⁵ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [51]-[52]. Also see Consumer NZ “Submission on Market study into grocery sector draft report” (26 August 2021) at 6; National Council of Women NZ “Submission on Market study into grocery sector draft report” (23 August 2021) at [13]; Health Coalition Aotearoa “Submission on Market study into grocery sector draft report” (2 September 2021) at 3; NZFGC “Submission on Market study into grocery sector draft report” (26 August 2021) at [5.12].

- 7.114 Consumer NZ also identified differences in the units of measure used, and that unit pricing is not always shown for products on promotion.⁸⁷⁶ For example, Consumer NZ's 2020 online supermarket price survey identified that New World does not provide unit prices for Super Saver, Club Deal or multi-buy products online.⁸⁷⁷ These inconsistencies can further complicate product comparisons and assessments of value.
- 7.115 Another submission noted that it is not easy enough for consumers to compare value for money because grocery retailers are not required to provide:⁸⁷⁸
- 7.115.1 the unit price for grocery products sold in fixed measure pre-packages;
or
- 7.115.2 unit pricing that meets certain standards of accuracy and consistency in the units of measure used.
- 7.116 These submissions are consistent with the findings of the Ipsos report. Participants expressed that they find unit pricing useful, but that it needs to be more consistent and more simply communicated by the retailers.⁸⁷⁹ Participants noted differences in the units of measurement displayed across brands and reported frustration that some products did not display the unit price at all.⁸⁸⁰
- 7.117 Unlike in Australia, specific units of measurement are not prescribed by legislation or otherwise required to be used by retailers in New Zealand.⁸⁸¹
- 7.118 Inconsistencies in the approach to unit pricing may limit the benefits consumers can derive from it, and adversely affect consumers' ability to make meaningful comparisons between products.⁸⁸² The same may apply to comparisons between retailers and the development of an informed perception of value which helps consumers choose where they would like to shop.
- 7.119 Where unit pricing information is not consistently available or cannot easily be assessed and acted upon by consumers, they may be less able to make informed decisions and less likely to shop around. This may reduce the major grocery retailers' incentives to engage in price-based competition.

⁸⁷⁶ Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [52]-[54].

⁸⁷⁷ Consumer NZ "Supermarket price survey" (5 August 2020), available at: <https://www.consumer.org.nz/articles/supermarket-price-survey>.

⁸⁷⁸ Ian Jarratt "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 6.

⁸⁷⁹ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 10.

⁸⁸⁰ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 47-48.

⁸⁸¹ Ian Jarratt "Submission on Market study into grocery sector draft report" (26 August 2021) at 5.

⁸⁸² Competition Markets Authority "Pricing Practices in the Groceries Market, Response to a super-complaint made by Which? On 21 April 2015" (16 July 2015) at 4, available at: <https://www.gov.uk/cma-cases/groceries-pricing-super-complaint>.

Loyalty programmes may affect consumer decision making and reduce price competition

- 7.120 It is common for New Zealand grocery consumers to be members of one or more loyalty programmes. A 2020 review of loyalty programmes by Consumer NZ found that Countdown's Onecard programme had two million members; New World's Clubcard had 1.6 million.⁸⁸³ The majority of sales at both New World and Countdown are associated with the respective loyalty programmes.⁸⁸⁴
- 7.121 The primary purpose of loyalty programmes is to attract and retain consumers, and some features have the potential to adversely affect competition, including by reducing consumers' willingness to shop around. Some consider that the major grocery retailers' loyalty programmes could adversely affect consumers in other ways, for example, by making it harder to make well-informed decisions, reducing retail competition and leading to different prices for different groups of consumers.⁸⁸⁵
- 7.122 Through these programmes, retailers can gather consumer data, including on consumers' preferences and purchasing behaviour. This data can be used to improve product ranges, and to offer a more personalised consumer experience, which some consumers may value. This is consistent with the submissions by the major grocery retailers.⁸⁸⁶

⁸⁸³ Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [73] citing Consumer NZ "How much are loyalty schemes earning from your data?" (28 January 2020), available at: <https://www.consumer.org.nz/articles/how-much-are-loyalty-schemes-earning-from-your-data>. This appears to be consistent with information provided by the major grocery retailers, though additional consumers may hold an unregistered Onecard (and can access member-only discounts). For example: []; [].

⁸⁸⁴ For example, the latest figures provided by Woolworths from March 2021 recorded that [] of sales and [] of transactions occur with a Onecard []; Foodstuffs NZ reported that in April 2018, Clubcard scan rates were over [] of sales for the South Island and around [] for the North Island [].

⁸⁸⁵ For example: Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [72]-[87]; Consumer NZ "Submission on Market study into grocery sector draft report" (26 August 2021) at 10; NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 52; NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [5.14]-[5.15].

⁸⁸⁶ For example: Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 24-25; Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 72-74.

- 7.123 Loyalty programmes can also provide benefits to consumers such as loyalty discounts and lower prices. Some consumers may also use loyalty programme offers to shop around where they are members of multiple programmes within the same sector.⁸⁸⁷
- 7.124 We have found that consumers do not have a good understanding of the terms and conditions applying to the loyalty programmes that they subscribe to. Even when some information is made available to consumers, they may lack the necessary time, or other resources, to adequately understand and assess the details.⁸⁸⁸ The terms and conditions are complex and lengthy, and consumers may face “information overload”.⁸⁸⁹ When faced with complex or a high volume of information, consumers tend to pull out the certain details they consider most important at the time they read it.
- 7.125 For example, over 60% of respondents to our consumer survey reported that they either skimmed the key parts or did not read any of the terms of conditions of the loyalty programme they use most often.⁸⁹⁰ Less than one in 10 respondents reported reading all the terms and conditions.⁸⁹¹
- 7.126 Some consumers may also face literacy and accessibility challenges and therefore join the programmes to gain access to discounts without fully understanding the terms and conditions or how their data is used.⁸⁹²
- 7.127 Complex rewards structures can make it harder for consumers to understand how discounts and rewards are earned, and to compare them with those offered through other loyalty programmes and other promotional mechanisms. Like confusion relating to promotional mechanisms, this can reduce price transparency, make consumers less responsive to price-based competition, and reduce the major grocery retailers’ incentives to engage in price competition.

⁸⁸⁷ ACCC “Customer loyalty schemes – Final report” (December 2019) at 104-105, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁸⁸⁸ For example, some consumers have reported infrequently engaging in tasks which were potentially time or resource intensive, such as reading New Zealand privacy laws or reading a business’ privacy policy: [].

⁸⁸⁹ “Information overload” is a type of heuristic where consumers make a mental shortcut when faced with complex information and limited time or capacity to process it. For example, OECD “Improving online disclosures with behavioural insights: Towards better outcomes for consumers” (12 April 2018) at 20, available at: <https://www.oecd-ilibrary.org/docserver/39026ff4-en.pdf?expires=1624245521&id=id&accname=guest&checksum=6F0E09D5B6CC33E4F01B48607F1B7126>.

⁸⁹⁰ Figure E32.

⁸⁹¹ Figure E32.

⁸⁹² Christians Against Poverty “Post conference submission on Market study into grocery sector” (23 November 2021) at 3.

- 7.128 The major grocery retailers compete to obtain consumer data through loyalty programmes by offering incentives such as member-only discounts and rewards. As discussed below, although some information about these practices is disclosed, consumers are not always provided with clear and specific details. Consumers with certain data and privacy preferences may therefore not make decisions that accurately reflect their preferences if they do not clearly understand how their data collected through the loyalty programme is used. This may inhibit competition for consumers with strong privacy or data use preferences.
- 7.129 Loyalty programmes can also adversely impact competition if they deter consumers from sufficiently shopping around so as to create barriers to entry or expansion for competing grocery retailers. However, as discussed in Chapter 6, loyalty programmes do not appear to create a material constraint on entry or expansion. In this chapter, we discuss the evidence supporting that conclusion in more detail. We also describe how loyalty programmes may nevertheless reduce competition between grocery retailers. The ACCC considered that retailers use loyalty programmes to influence consumer behaviour by, for example, encouraging consumers to make repeat or additional purchases (and by default, spend less with their competitors) and introducing resistance to competing offers.⁸⁹³
- 7.130 In this section, we consider the nature of the loyalty programmes offered by the major grocery retailers, including the different types of benefits offered to consumers, their effect on consumer decision making, and therefore on competition. We focus on:
- 7.130.1 consumer understanding of the benefits offered through the relevant loyalty programmes and the impact of consumer understanding on informed decision making;
 - 7.130.2 consumer understanding of the extensive collection and use of consumer data through these programmes, and potential effects of these practices on competition;
 - 7.130.3 whether Onecard and Clubcard may harm competition by making it less likely or harder for consumers to switch to another retailer; and
 - 7.130.4 the potential for loyalty programmes to facilitate price discrimination.

⁸⁹³ ACCC “Customer loyalty schemes – Final report” (December 2019) at 17 and 90, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>; Omar Duque “The Costs of Loyalty: on Loyalty Rewards and Consumer Welfare” (2017) 8(2) *Economic Analysis of Law Review* 411 at 420-422, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3058504.

- 7.131 We are aware many other grocery retailers also operate their own loyalty programmes. Some of these programmes have similar attributes to those discussed in this chapter (for example, accumulated food rewards in the form of vouchers to be used in store).⁸⁹⁴
- 7.132 However, given the larger scale of the major grocery retailers and the uptake of their loyalty programmes, we have focused this part of our study on the potential impact on competition of Clubcard and Onecard. We consider that these loyalty programmes are more likely to influence competition. However, our findings may apply more widely.
- 7.133 Loyalty programmes are not offered by Woolworths NZ at either FreshChoice or SuperValue,⁸⁹⁵ or by Foodstuffs NI or Foodstuffs SI at Four Square, PAK'nSAVE, On the Spot, or Raeward Fresh.⁸⁹⁶

Consumers appear to have limited understanding of the rewards structures

- 7.134 Foodstuffs NI and Woolworths NZ both submitted in response to our preliminary issues paper that their programmes are pro-competitive because they result in discounts and lower prices for consumers.⁸⁹⁷ However, we have found that many consumers do not have a good understanding of how loyalty programme rewards are earned and redeemed.

⁸⁹⁴ For example, Farro Fresh offers "Friends of Farro", available at: <https://www.farro.co.nz/friends-of-farro> and Huckleberry offers "Huckleberry Loyalty", available at: <https://www.huckleberry.co.nz/pages/huckleberry-loyalty>.

⁸⁹⁵ Some individual franchisees have engaged external parties to offer a loyalty programme on a store-specific basis. FreshChoice Picton was also part of a trial for the Onecard programme in early 2021, [].

⁸⁹⁶ Foodstuffs SI launched "Sticky Club" in PAK'nSAVE across the South Island in September 2017 and included a fuel rewards programme. Sticky Club is now solely used for customers to sign up to SHOP'nGO services and has no rewards element, FMCG Business "PAK'nSAVE launches Sticky Club rewards programme" (31 August 2017) <https://www.fmcgbusiness.co.nz/paknsave-launches-sticky-club-rewards-programme/#:~:text=%E2%80%9CSticky%20Club%20is%20a%20special,other%20fuel%20deals%20in%2Dstore>.

⁸⁹⁷ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 72-74; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 35.

- 7.135 Even when some information is made available to consumers, loyalty programmes, particularly those with complex reward structures, can reduce price transparency and make it harder for consumers to make meaningful comparisons with competing price-based offers.⁸⁹⁸ This may result in consumers engaging in less frequent and less-informed price comparisons, limiting consumers' ability to signal their preferences to retailers. It may also reduce price competition between the major grocery retailers. We have previously discussed the importance to competition of consumers' ability to make informed purchasing decisions (see, for example, paragraphs 7.12 to 7.17 above).
- 7.136 It may be difficult to accurately assess or compare the value of the benefits offered by loyalty programmes where:⁸⁹⁹
- 7.136.1 members earn different volumes of points from various partners such as airlines and the value of the reward when those points are redeemed will vary depending on the rewards selected;
 - 7.136.2 members can earn both member-only discounts and accumulated rewards with the retailer or with a partner (for example, an airline) where competing retailers do not offer the same accumulated rewards; and
 - 7.136.3 non-monetary rewards are offered, for example, entry into competitions.
- 7.137 Onecard and Clubcard contain elements of each of these scenarios. These programmes offer points that accumulate over time and at certain spend thresholds earn the consumer a reward either with the respective retailer or one of the partner firms, such as Flybuys or fuel rewards (see Table 7.2). The rate of reward and the partner firms for each loyalty programme are different. Members of these programmes can also gain benefits other than discounts or vouchers such as entry into competitions and personalised offers.

⁸⁹⁸ ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 104, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>; Loyalty & Reward Co "Australian Loyalty Schemes: A Loyalty & Reward Co report for the ACCC" (June 2019) at 69, available at: <https://www.accc.gov.au/system/files/Australian%20Loyalty%20Schemes%20-%20A%20Loyalty%20and%20Reward%20Co%20report%20for%20the%20ACCC.PDF>.

⁸⁹⁹ Loyalty & Reward Co "Australian Loyalty Schemes: a Loyalty & Reward Co report for the ACCC" (June 2019) at 104, available at: <https://www.accc.gov.au/system/files/Australian%20Loyalty%20Schemes%20-%20A%20Loyalty%20and%20Reward%20Co%20report%20for%20the%20ACCC.PDF>; ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 96, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>; OECD "Policy Roundtables – Loyalty and Fidelity Discounts and Rebates" (2002) *DAFFE/COMP(2002)21* at 24 and 93, available at: <https://www.oecd.org/daf/competition/abuse/2493106.pdf>.

- 7.138 Like some one-off promotions, points-based loyalty programmes such as these may cause consumers to overestimate or underestimate the true value of the reward, which adds to the challenges of comparing prices. This is because points-based programmes exploit size heuristics, and other heuristics such as anchoring, to make a reward appear of greater value than it is.⁹⁰⁰ Heuristics are mental shortcuts that are used to evaluate situations or simplify information when consumers do not have the time and/or capacity to evaluate all available information.⁹⁰¹
- 7.139 Clubcard and Onecard both convey members' ability to earn and progress towards obtaining a reward through points earned, rather than the dollar spend required to earn a reward, or the dollar value of the reward. This may shift consumers' focus away from the monetary value of the reward, toward the number of points accumulated, making it harder for consumers to accurately assess the value of the rewards offered.⁹⁰²
- 7.140 For example, Onecard members earn 1 point for every \$1 spent on qualifying products when using their Onecard. Once a member has earned 2,000 points, they receive a \$15 e-voucher. After spending \$1,000, consumers may assess value by referring to the points they have accumulated (ie, 1,000), rather than the dollar value of the points they have earned (ie, \$7.50).
- 7.141 As we discuss below, some consumers cite the ability to accumulate rewards as being one of the reasons they signed up for a grocery loyalty programme.⁹⁰³ Other consumers report being "obsessed" with earning rewards.⁹⁰⁴ However, consumers' enthusiasm for loyalty programmes is not necessarily indicative of their understanding of what they are signing up to, or the rewards they will earn and may reflect an uninformed perception of value of the programme.

⁹⁰⁰ ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 96-97, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹⁰¹ ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 19, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹⁰² In other words, consumers may anchor their perceptions of the value of the reward on the high numeric points value. Anchoring perceptions around a large numeric value can inflate perceptions of value, and consumers may not be able to adjust their understanding easily or adequately, even when additional information is provided. See, for example, ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 19, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹⁰³ At Figure E31.

⁹⁰⁴ [].

- 7.142 The Ipsos report noted that participants generally found loyalty programmes confusing. Some participants were unaware of the extent of the discount or value of the points earned through grocery loyalty programmes.⁹⁰⁵ Although participants were aware that, at some point, they may receive a benefit (for example, a voucher), there was limited understanding of how the benefit was earned.⁹⁰⁶ Many also struggled to express a tangible benefit from participating in some of the programmes, or to compare benefits across programmes.⁹⁰⁷
- 7.143 Complex rewards structures, such as points-based mechanisms, and a limited understanding of how these programmes work, could shift consumers' focus away from retail prices and increase consumer sensitivity to rewards-based offers.⁹⁰⁸ Consumers that value these offers may therefore engage in less frequent price and quality comparisons, or find it more difficult to do so, including with competing retailers that do not offer the same rewards. This can lead to less-informed purchasing decisions which in turn affects competition.⁹⁰⁹
- 7.144 We have also observed that many consumers do not earn enough points to receive accumulated rewards, and, if they do, some are never redeemed.⁹¹⁰ Many consumers therefore do not receive the accumulated benefits offered by these programmes.
- 7.145 These findings are consistent with evidence provided by the major grocery retailers that indicate that consumer understanding of how loyalty programmes work, and how much they need to spend to get a reward, is generally low.⁹¹¹

⁹⁰⁵ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 43-44.

⁹⁰⁶ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 43-44.

⁹⁰⁷ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 43-44.

⁹⁰⁸ ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 96, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹⁰⁹ ACCC "Customer Loyalty Schemes – Final report" (December 2019) at 96, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹¹⁰ For example, some research indicates that [] of points earned in a [] period expire before they are converted to a reward, [] of members earn enough points in a [] period to receive a reward, and some [] of the rewards earned are never redeemed:
[]. [].

⁹¹¹ For example: [];
[]; []; []; [].

Some consumers appear to have limited understanding of data practices

- 7.146 The offering of a loyalty programme is a dimension of competition between the major grocery retailers. Some consumers' decisions about whether to participate in a loyalty programme may be influenced by their preferences regarding the collection and use of their personal information. However, we have identified that even when provided with some information, some consumers may not be aware of or understand how the major grocery retailers collect consumer data and how the data is used.⁹¹² This can make it harder for these consumers to make well-informed decisions about their participation because the costs in doing so are not clear.⁹¹³
- 7.147 Although consumers are not charged a fee to participate in these programmes, consumers pay by providing their data to the major grocery retailers. One of the key functions of loyalty programmes for retailers is to collect consumer data.⁹¹⁴ The major grocery retailers collect large amounts of data from members of their loyalty programmes including demographic information, transactions and purchase behaviour, and other information provided by members such as contact details.⁹¹⁵

⁹¹² See Figure E33; Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 44.

⁹¹³ Consumer NZ submitted in support of this proposition: Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [82]; NZFGC also raised concerns about the terms and conditions of loyalty programmes and their disclosure, particularly around data: NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [221]; comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 25 (lines 25-30).

⁹¹⁴ For example: Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 24; Consumer NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [72]; Consumer NZ "Submission on Market study into grocery sector draft report" (26 August 2021) at 8.

⁹¹⁵ []; []. This is consistent with the submissions received from the major grocery retailers. For example, Woolworths NZ noted that any data collected supports "customer-led and fact-based decisions in relation to ranging, store layout, and other decisions to the significant benefit of customers and our business..." Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 74.

- 7.148 The privacy and data practices of these loyalty programmes are dimensions of quality. If consumers are not aware of or do not understand these practices, the major grocery retailers will not be incentivised to compete on these quality dimensions. We also heard concerns from Consumer NZ that some consumers may feel that they need to join the major grocery retailers' loyalty programmes and share their personal information and data in order to obtain groceries at a "reasonable price".⁹¹⁶
- 7.149 The information gathered through loyalty programmes is used to inform business decisions, for example, in relation to product ranges to and to provide a personalised experience for consumers. For example, consumer data collected through the loyalty programmes may be used to group or profile consumers and inform in-store or personalised promotional strategies.⁹¹⁷ Some consumers may value receiving more targeted, relevant, and personalised marketing or benefits such as personalised promotional offers.
- 7.150 This data, or insights derived from it, may also be provided to other parties, such as suppliers (discussed below). Each major grocery retailer appears to be working to expand their access to and use of consumer data.⁹¹⁸
- 7.151 The major grocery retailers compete to gain this data by encouraging consumers to sign up to their loyalty programmes and then to swipe their membership card. This competition can be seen, for example, in the use of incentives to swipe a loyalty card such as offering member-only discounts and other rewards. Consumers appear to have a diverse range of preferences in relation to how businesses use their data. Consumers with certain data and privacy preferences may be more receptive to these incentives than if they understood how their data is used.

⁹¹⁶ For example: Consumer NZ "Submission on Market study into grocery sector draft report" (26 August 2021) at 8; comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 6 (lines 9-13) and 25 (lines 3-24 and 31-36). We note that Countdown customers do not have to register their Onecard or provide information such as their name or contact details to gain access to member-only discounts at Countdown stores. Transaction information will still be provided. Customers do need to register their Onecard to receive personalised emails, offers, and accumulate rewards points. New World customers are required to register their Clubcard and therefore provide certain information to gain access to all of the member benefits advertised by Foodstuffs NI and Foodstuffs SI.

⁹¹⁷ For example: []; [];

⁹¹⁸ For example: []; [];

- 7.152 Many New Zealanders report that they feel strongly about these practices.⁹¹⁹ Some consumers report that they do not want to sign up to loyalty programmes as they do not want to give away their personal information.⁹²⁰ Approximately 18% of respondents to our consumer survey who were not members of a loyalty programme report they did not sign up because of concerns about data collection.⁹²¹
- 7.153 Others say they would not mind their behaviour being tracked if it means they receive personalised deals.⁹²² Similarly, the Ipsos report found that some participants saw data collection as an opportunity to improve the personalisation of the overall shopping experience.⁹²³
- 7.154 We have, however, identified two practices engaged in by the major grocery retailers that raise issues that may be important to some consumers, but which consumers may not be aware of: the linking of loyalty memberships to payment cards, and the provision of consumer data to third parties.
- 7.155 While there is some disclosure relating to these practices, consumers are not necessarily provided with clear and specific details about how their data is used and therefore the true cost of joining the programme may not be known or understood. Nearly 35% of respondents to our consumer survey reported having no understanding of how their data is used by loyalty programmes, and over 25% reporting knowing a “little” about it is used.⁹²⁴
- 7.156 This means some consumers may not be aware of what they are giving up or how they are paying to participate in these programmes. Consumers with certain data collection and privacy preferences may therefore not be able to easily make informed decisions that accurately reflect their preferences.⁹²⁵

⁹¹⁹ For example, in a representative survey commissioned by the Privacy Commission in 2020, respondents were most concerned about businesses sharing their personal information without their permission. Two thirds of respondents felt there should be more regulation regarding what companies can do with their personal information. See Privacy Commission “Privacy concerns and sharing data” (April 2020) at 11 and 24, available at: <https://privacy.org.nz/assets/DOCUMENTS/Privacy-concerns-and-sharing-data-OPC-reportApr-20.pdf>.

⁹²⁰ [].

⁹²¹ Figure E35.

⁹²² []. Similarly, case studies in other sectors suggest competition between retailers on the terms of their privacy policies does not appear to drive consumer usage of services. For example: Alex Marthews and Catherine Tucker “Privacy policy and competition” (December 2019) *Economic Studies at Brookings*, at 5, available at: <https://www.brookings.edu/wp-content/uploads/2019/12/ES-12.04.19-Marthews-Tucker.pdf>.

⁹²³ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 44.

⁹²⁴ Figure E33.

⁹²⁵ Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [82].

7.157 Our view is that these issues are not likely to be a main driver affecting competition in the retail grocery market at the current time. However, these are important issues for consumers that also have the potential to affect consumer decision making and competition if consumers with privacy and data preferences are not able to make informed decisions about their participation in these programmes. Competition for these consumers will be inhibited.

Some retailers may link payment cards to loyalty cards and track both

7.158 New World's privacy policy states that Foodstuffs NI and Foodstuffs SI may, from time to time, collect payment card information that can be combined with other personal information held by them.⁹²⁶

7.159 This means that if a Clubcard member swipes their Clubcard and their payment card (for example, a credit or EFTPOS card) in the same transaction, all future New World, PAK'nSAVE and Four Square (in-store or online) purchases with that payment card can be linked to the consumer's Clubcard data, regardless of whether the Clubcard is swiped during the future transactions.⁹²⁷ This allows consumer purchasing behaviour of Clubcard members to be tracked even if they do not scan their Clubcard.⁹²⁸

7.160 The same applies to consumers who have registered to shop online. Transactions using the same payment card online and subsequently online or in store at New World, PAK'nSAVE or Four Square can be linked to allow purchase behaviour to be tracked.

7.161 Valuable consumer data can therefore be collected and used without those consumers receiving any of the benefits associated with Clubcard (for example, member-only discounts or Flybuys) for that transaction. We anticipate that it is likely that most consumers who read the policy would have difficulty understanding the current wording or be unaware that this can be done.⁹²⁹

7.162 In its submission on our draft report, Foodstuffs NI said that it intends to make this practice clearer to customers by communicating that, by signing up for a Clubcard membership, members are authorising Foodstuffs NI to link their payment cards with their loyalty account.⁹³⁰

⁹²⁶ New World "Privacy Policy" (14 June 2021), available at: <https://www.newworld.co.nz/privacy-policy>. We note that the policy applies to data collected outside Clubcard. For example, personal information that is collected when consumers use New World's online store or sign up to receive marketing material. We understand this term was added to the privacy policy on 1 December 2020.

⁹²⁷ []; [].

⁹²⁸ Foodstuffs NI has this capability and Foodstuffs SI is developing it, [].

⁹²⁹ Only 9% of respondents to our consumer survey said they read the loyalty programme's terms and conditions in full, see Figure E32.

⁹³⁰ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [393.3].

- 7.163 However, the ACCC observed that, irrespective of disclosure, consumers are unlikely to know that their data is collected and used by supermarkets even where they have chosen not to scan their loyalty card.⁹³¹ Further, when consumers no longer want to participate, they are unlikely to actively cancel their membership (due to the time and effort of doing so), yet grocery retailers will continue to collect information via payment cards. Retailers engaging in this practice would continue to collect consumer data, while the consumer no longer gains the benefits of the programme.
- 7.164 Even when a consumer does cancel their Clubcard membership, we understand that Foodstuffs NI continues to collect payment card information for six months after cancellation (provided the consumer uses the same payment card that was linked to their Clubcard membership).⁹³² The data is anonymised and used for statistical or analytical purposes.

The major grocery retailers disclose consumer data and insights to third parties

- 7.165 The major grocery retailers also sell consumer insights derived from loyalty programme data to third parties. These third parties include suppliers and partners, such as Flybuys or AA Smartfuel, and research firms. We understand that personal information about consumers (ie, information which might identify them) is not provided.
- 7.166 These practices are referred to in the respective privacy policies of New World and Countdown.
- 7.166.1 New World’s privacy policy states that personal information, including that collected via Clubcard, may be disclosed to “any relevant third party that offers good or services that [Foodstuffs] thinks may be of interest to [the consumer] (for example, fuel providers)” and “a third party outside of New World who is contracted to us (or Foodstuffs) to provide a particular service to you on our behalf” or to New World or Foodstuffs.⁹³³
- 7.166.2 Countdown’s privacy policy states that “generally [it will] never disclose” personal information to its suppliers, except to enable them to contact a consumer if they have won a prize.⁹³⁴ However, anonymous and aggregated information is shared with “contractors, affiliates, business partners and third parties”.

⁹³¹ ACCC “Customer Loyalty Schemes – Final report” (December 2019) at 66, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

⁹³² [].

⁹³³ New World “Privacy Policy” (14 June 2021) <https://www.newworld.co.nz/privacy-policy>.

⁹³⁴ Countdown “Privacy policy” (15 July 2019) <https://www.countdown.co.nz/about-us/our-policies/privacy-statement>.

7.167 These privacy policies lack clarity about who might be provided with consumer data and on what basis. This makes it hard for consumers to understand how their data will be used which can impact consumers' ability to accurately assess the value of the loyalty programmes to them. As noted at paragraph 7.148, this can reduce incentives for loyalty programme operators to compete on these dimensions.

Loyalty programmes may raise perceived switching costs for some consumers

7.168 Consumers have a range of preferences that contribute to store choice. This can include price, convenience and promotional and loyalty offerings.⁹³⁵ Some consumers say they will always go to a particular store or use a certain brand because of loyalty offers.⁹³⁶

7.169 Most respondents to our consumer survey said they participate in more than one loyalty programme:

7.169.1 33% of respondents are members of two grocery loyalty programmes;

7.169.2 a further 21% are members of three; and

7.169.3 a further 15% are members of four programmes.⁹³⁷

7.170 This is consistent with evidence provided by the major grocery retailers.⁹³⁸

⁹³⁵ Paragraphs E118 to E121 note convenience and low prices as the most common drivers of main store choice for survey respondents. However, a small proportion of respondents also cite loyalty programmes or good specials as the key reason for their choice of main store.

⁹³⁶ For example, [].

⁹³⁷ Figure E30.

⁹³⁸ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 72-74; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 35-36 and []. Also, for example, []; [].

- 7.171 However, we received submissions that loyalty programmes make it less likely or harder for consumers to switch to another major grocery retailer (ie, increase switching costs), resulting in these consumers being effectively “locked in” to a retail banner.⁹³⁹ Consumer lock-in may reduce the effectiveness of price competition and raise barriers to entry to the extent that it discourages or makes it harder for consumers to make price comparisons between retailers.⁹⁴⁰
- 7.172 As explained in Chapter 6, we have found that loyalty programmes are not a material constraint on entry or expansion. We have consistently seen that consumers have a diverse range of preferences and can and do participate in multiple programmes. In addition, consumers appear to value loyalty programmes most highly for the member-only discounts, and the rate of reward offered by Clubcard and Onecard is relatively low, so long-term effects are unlikely to significantly affect competition.
- 7.173 Despite our conclusions in Chapter 6 regarding barriers to entry, it is possible that some consumers who particularly value the accumulation of points may experience some lock-in effects.⁹⁴¹ We discuss this in more detail below. Consumers that value these rewards may be less incentivised to make price comparisons (since they are encouraged to funnel spend towards one retailer) and become resistant to competing offers.

⁹³⁹ NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [208]. Also see ACCC “Customer loyalty schemes – Final report” (December 2019) at 91, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>; Lars Meyer-Waarden and Christophe Benavent “Grocery Retail Loyalty Program Effects: Self Selection or Purchase Behaviour Change?” (2007) *Journal of the Academy of Marketing Science*, available at: https://www.researchgate.net/publication/227148922_Grocery_retail_loyalty_program_effects_Self-selection_or_purchase_behavior_change; OECD Policy Roundtables “Loyalty and Fidelity Discounts and Rebates” (2002) *DAFFE/COMP(2002)21* at 89, available at: <https://www.oecd.org/daf/competition/abuse/2493106.pdf>.

⁹⁴⁰ Loyalty programmes can deter entry where potential competitors conclude it will not be possible to capture viable market share because consumers are “locked in” to incumbents or without access to the data incumbents have gathered through their loyalty programmes. For further discussion on entry and expansion and issues relating to access to this data, see Chapter 6.

⁹⁴¹ For example: Omar Duque “The Costs of Loyalty: on Loyalty Rewards and Consumer Welfare” (2017) *8(2) Economic Analysis of Law Review* 411 at 414, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3058504; ACCC “Customer loyalty schemes – Final report” (December 2019) at 93, available at: <https://www.accc.gov.au/system/files/Customer%20Loyalty%20Schemes%20-%20Final%20Report%20-%20December%202019.PDF>.

Consumers that value accumulated rewards may be less inclined to shop around

- 7.174 Where rewards are based on thresholds of accumulated points, a points pressure mechanism can encourage consumers to increase the frequency and/or amount of spend to obtain the reward.⁹⁴² Research suggests that the closer a consumer is to obtaining a reward, the more likely they are to remain loyal to and make additional purchases to reach it.⁹⁴³ Switching to another retailer could mean they will be delayed in reaching their goal. Consumers may also risk losing the points they have earned if points must be redeemed before a certain expiry date.⁹⁴⁴
- 7.175 There is a diverse range of consumer preferences relating to accumulated rewards offered by loyalty programmes, such as fuel savings or food vouchers. Some consumers say these rewards are unachievable or are not worth the spend required.⁹⁴⁵ Other research indicates that some consumers consider they are “obsessed” with earning rewards points and some report using loyalty programmes to save for expensive items such as flights (through earning Airpoints).⁹⁴⁶
- 7.176 41% of respondents to our consumer survey said collecting points to redeem vouchers and rewards was one of the reasons they joined loyalty programme they use most often.⁹⁴⁷ Some participants in the Ipsos research reported monitoring their points balances closely.⁹⁴⁸
- 7.177 These consumers who value accumulated rewards are more likely to perceive higher switching costs and consider they are “locked in” to the retailer with which they accumulate points.

⁹⁴² For example, Matilda Dorotic, Tammo Bijmolt and Peter Verhoef “Loyalty Programmes: Current Knowledge and Research Directions” (2011) *International Journal of Management Reviews*, Vol. 14, at 217, available at: https://www.researchgate.net/publication/229915137_Loyalty_Programmes_Current_Knowledge_and_Research_Directions/link/5a02c38c0f7e9b68874e170e/download.

⁹⁴³ Matilda Dorotic, Tammo Bijmolt and Peter Verhoef “Loyalty Programmes: Current Knowledge and Research Directions” (2011) *International Journal of Management Reviews*, Vol. 14, at 219 and 225, available at: https://www.researchgate.net/publication/229915137_Loyalty_Programmes_Current_Knowledge_and_Research_Directions/link/5a02c38c0f7e9b68874e170e/download. This is also known as a “suction effect” on consumer behaviour, where consumers funnel purchases toward a single seller.

⁹⁴⁴ Airpoints Dollars currently expire after four years.

⁹⁴⁵ []; []; []; []. Similar sentiments were expressed by respondents to our consumer survey: see paragraph E185.

⁹⁴⁶ [] and [] respectively [].

⁹⁴⁷ At Figure E31.

⁹⁴⁸ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 44.

- 7.178 There is a minimum spend threshold to earn accumulated food or travel rewards via Onecard and Clubcard, as set out in Table 7.2 below.

Table 7.2 Rewards earned through Onecard and Clubcard

Programme	NZD spend	Points earned	Conversion	Rate of reward
Countdown's Onecard ⁹⁴⁹	\$1	1	2,000 points = \$15 e-voucher	0.75% savings
New World's Clubcard	\$25 (on qualifying products)	0.185 Airpoints or 1 Flybuys point	28 Flybuys points = \$5 New World Dollars	0.71% savings

Source: New World FAQs and Countdown Onecard Benefits.⁹⁵⁰

- 7.179 Alternatively, members can earn accumulated fuel discounts, depending on their total spend:
- 7.179.1 Onecard members can choose AA Smartfuel rewards to save 3 cents per litre if they spend \$100 at Countdown in a week.
- 7.179.2 Clubcard members who choose to earn Flybuys when they shop at New World earn 6 cents off per litre (up to 50 litres) at Z and Caltex fuel stations for every four Flybuys earned.
- 7.180 The minimum spend required to earn accumulated food rewards through Onecard and Clubcard can be relatively high, compared with the rate of reward (less than 1% savings as shown in Table 7.2 above). We therefore consider it unlikely that accumulated food rewards would significantly raise costs for consumers to switch retailers in the longer term. However, there may be short-term effects for consumers that value these rewards when they are closer to the expiry date of already accumulated points. New World Dollars expire after 24 months, and Onecard points and e-vouchers expire after one year.

⁹⁴⁹ Onecard members also get 6 cents off per litre at BP and participating G.A.S outlets when they spend \$40 or more on fuel in a single transaction.

⁹⁵⁰ New World "FAQ About New World Dollars" <https://www.clubcard.co.nz/newworld/en/fag/newworlddollars>; Countdown "Onecard benefits", available at: <https://www.countdown.co.nz/onecard/onecard-benefits/onecard-food-rewards>.

- 7.181 Consumers accruing Airpoints or Flybuys through Clubcard may be more reluctant to shop at an alternative grocery retailer where equivalent spend may not similarly earn these rewards.⁹⁵¹ These points can contribute to purchases that are generally high in value and infrequent in nature, such as flights with Air New Zealand.
- 7.182 We do not consider that this element of Clubcard is likely to significantly weaken competition. Airpoints and Flybuys can be earned in many ways. These other opportunities to earn these rewards should mitigate any potential reluctance to switch grocery retailers. It is unclear whether these effects may differ for different groups or consumers and/or whether the effects of these programmes will change over time with technological developments.

Consumers that prefer member-only discounts are unlikely to face perceived higher switching costs

- 7.183 Consumers that value member-only discounts over accumulated benefits are more likely to consider they are free to switch their spend to another retailer and therefore less likely than other groups of consumers to experience perceived lock-in effects.
- 7.184 Our research and research conducted by the major grocery retailers indicates that more consumers tend to participate in grocery loyalty programmes to gain access to these member-only discounts, rather than accumulated rewards:
- 7.184.1 Over 50% of respondents to our consumer survey who participated in a loyalty programme said that the reason they joined Clubcard and/or Onecard was to gain access to the Club Deals or Club Prices respectively.⁹⁵²
- 7.184.2 Research shows that many consumers across the country are members of loyalty programmes primarily to receive member-only discounts.⁹⁵³
- 7.185 Our view is that member-only discounts are unlikely to cause consumers to face perceived higher switching costs.

⁹⁵¹ These effects may be particularly strong for loss-averse consumers. Loss aversion refers to the tendency to prefer avoiding losses to acquiring equivalent gains based on a point of reference. For example, if a person starts with \$100 and loses that \$100, the decrease in utility is greater than the increase in utility if they had \$0 and found another \$100.

⁹⁵² In addition: []; Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 44.

⁹⁵³ The Register “New Zealand loyalty program members want rewards quickly” (21 October 2019), available at: <https://theregister.co.nz/2019/10/21/new-zealand-loyalty-program-members-want-rewards-quickly/>;

[]].

Loyalty programmes may facilitate a form of price discrimination

- 7.186 Some submitters suggested that both Clubcard and Onecard result in price discrimination against consumers who do not sign up, because only consumers who do so can benefit from certain discounted prices.⁹⁵⁴ Members of these programmes receive access to discounts and other promotions in exchange for providing their data to the major grocery retailers. Consumers that do not hold a loyalty card are charged a higher price for the same product.
- 7.187 Consumers may choose not to sign up to a loyalty programme because the programme does not align with their privacy and data preferences. Other consumers on lower incomes or with literacy or accessibility challenges may be less likely to belong to loyalty programmes.⁹⁵⁵ These groups therefore have reduced access to certain discounts and promotions.
- 7.188 Price discrimination is not necessarily a competition concern. Some consumers may benefit from increasingly personalised pricing and offers by receiving recommendations and discounts they value. In addition, it is possible that in some circumstances, retailers may have the opportunity to serve some consumers with a lower willingness to pay, increasing output.
- 7.189 Price discrimination may adversely affect competition where retailers can identify likely marginal consumers (ie, those likely to switch to another retailer) who swipe their loyalty card and target them with specific discounts, while raising or maintaining prices for other consumers who do not participate in the programme or are less likely to switch in response to a price change. However, we have not seen information indicating that shelf prices are increasing in this way.

⁹⁵⁴ For example: Consumer NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [75]; “Submission on Market study into grocery sector draft report” (26 August 2021) at 8; Christians Against Poverty “Post conference submission on Market study into grocery sector” (23 November 2021) at 3; NZFGC “Submission on Market study into grocery sector draft report (26 August 2021) at [5.14]; comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 6 (lines 1-13) and at 25 (lines 31-36); comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 30 (lines 1-15); comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 31 (lines 32-39). Price discrimination involves charging different prices to different consumers for the same good or service based on the maximum price a consumer is willing to pay for that good or service (ie, their “willingness to pay”).

⁹⁵⁵ Health Coalition Aotearoa “Submission on Market study into grocery sector draft report” (2 September 2021) at 3; Christians Against Poverty “Post conference submission on Market study into grocery sector” (23 November 2021) at 3.

- 7.190 Onecard and Clubcard currently facilitate two forms of discounting off the shelf price: member-only discounts and personalised offers. We do not consider member-only discounts are likely to cause competition concerns based on price discrimination in the grocery retailer sector. This is mainly because most shoppers participate in the loyalty programme offered by their grocery retailer/s of choice and therefore benefit from member-only discounts, and most sales are associated with loyalty cards.⁹⁵⁶
- 7.191 The major grocery retailers have also told us that they intend to decrease short-term promotional pricing and increase their use of EDLP pricing strategies.⁹⁵⁷ This may reduce the scope for price discrimination through these discounts.

Personalised offers can make price discrimination more effective

- 7.192 Personalised offers by the major grocery retailers may become more targeted and individualised and may be offered instead of generic promotional pricing.⁹⁵⁸ Consumers can receive benefits in the form of lower prices and personalised promotional offers, as well as a more relevant shopping experience. However, it is possible the price gap between members (who pay a discounted price in exchange for providing their data) and non-members (who pay the shelf price), may increase.⁹⁵⁹
- 7.193 For example, without price discrimination, all consumers would be charged the same price (say, \$4). With price discrimination, individual members of the loyalty programme would be charged \$3 and other shoppers would be charged \$5 for the same product. This results in the “surplus” being transferred from the latter group to the former in the form of a lower price. Whether the overall effect of this practice is good for consumers depends in part on whether the \$3 price would cover the marginal cost of supply.⁹⁶⁰

⁹⁵⁶ As noted earlier, over one-half of transactions and over two-thirds of sales at both New World and Countdown are associated with a loyalty card, for example: []; []; [].

⁹⁵⁷ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 381; Foodstuffs SI “Submission on Market study into grocery sector draft report”(10 September 2021) at 378; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [9.1].

⁹⁵⁸ The same may apply to suppliers that gain access to the relevant consumer data.

⁹⁵⁹ Personalised pricing of this nature generally transfers the surplus of transactions (ie, any value gained above the purchase price) from consumers who are willing to pay more for a product to consumers who are willing to pay in different ways, including by sharing personal information, by charging them a lower price. For example: OECD “Discussion on Personalised Pricing in the Digital Era” (27 April 2020) *DAF/COMP/M(2018)2/ANN8/FINAL*, available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M\(2018\)2/ANN10/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M(2018)2/ANN10/FINAL&docLanguage=En).

⁹⁶⁰ In this example, price discrimination enables more transactions to take place (as it allows the “\$3” group of consumers to be served), which can result in an increase in aggregate consumer benefits.

- 7.194 This practice may be detrimental to consumers where it occurs in less competitive markets.⁹⁶¹ This is because it can enable retailers to extract this “surplus” from consumers by charging each consumer a price which is higher, but not to the extent that they do not buy it.⁹⁶²
- 7.195 As data is increasingly collected from consumers on individual preferences, the scope for retailers to extract all surplus from more consumers is increased. However, we have not seen any information to indicate this practice is currently or likely to be a competition concern.

Other issues within the retail grocery sector raised by consumers

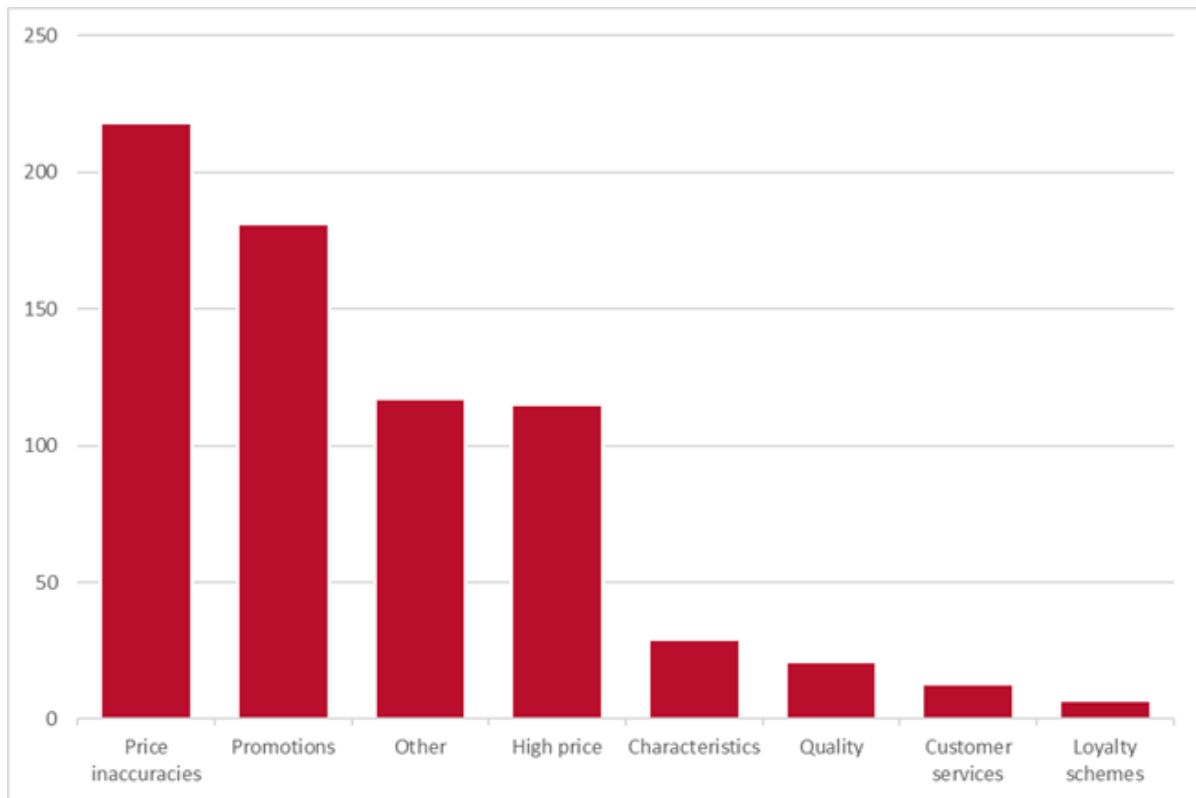
- 7.196 Since the start of our study, consumers and consumer groups have raised an increased number of complaints relating to potentially misleading promotional pricing practices, pricing inaccuracies, unfair standard form contract terms and conditions of loyalty programmes, and privacy principles relating to data collection.
- 7.197 Increased complaint levels coincided with the launch of our market study, but also with our FTA prosecution of Kennedy’s Foodcentre (2003) Limited trading as PAK’nSAVE Mangere for discrepancies between promotional pricing displayed or advertised and the price charged at the till.⁹⁶³

⁹⁶¹ OECD “Discussion on Personalised Pricing in the Digital Era” (27 April 2020) *DAF/COMP/M(2018)2/ANN8/FINAL* at 3, available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M\(2018\)2/ANN10/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M(2018)2/ANN10/FINAL&docLanguage=En).

⁹⁶² OECD “Discussion on Personalised Pricing in the Digital Era” (27 April 2020) *DAF/COMP/M(2018)2/ANN8/FINAL* at 3, available at: [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M\(2018\)2/ANN10/FINAL&docLanguage=En](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/M(2018)2/ANN10/FINAL&docLanguage=En).

⁹⁶³ Commerce Commission “PAK’nSAVE Mangere fined \$78,000 for price discrepancies” (28 October 2021), available at: [https://comcom.govt.nz/news-and-media/media-releases/2020/paknsave-mangere-fined-\\$78,000-for-price-discrepancies](https://comcom.govt.nz/news-and-media/media-releases/2020/paknsave-mangere-fined-$78,000-for-price-discrepancies).

Figure 7.4 Supermarket complaints received by the Commission by primary issue November 2020 to January 2022



Source: Commission analysis based on complaints data, n=701.⁹⁶⁴

- 7.198 To the extent that these issues directly relate to whether competition in the grocery sector is working effectively, we have considered them in this chapter. In addition, we have analysed pricing practices over time to the extent they relate to competition. We have not drawn conclusions about whether information provided to us discloses a breach of the FTA or a potential matter of interest to the Office of the Privacy Commissioner under the Privacy Act 2020.
- 7.199 However, independent of this study, we have considered what further action may be required in relation to the major grocery retailers' pricing practices, utilising our Fair Trading compliance and enforcement functions and powers, including to engage further with the major grocery retailers about these concerns.⁹⁶⁵

⁹⁶⁴ [].

⁹⁶⁵ Commerce Commission "Enforcement Response Guidelines" (October 2013), available at: https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

7.200 We set out below the nature of the complaints and information shared with us. We emphasise that a complaint does not necessarily mean that any law has been breached, rather it relates to alleged conduct by the subject of the complaint and, as noted above, can provide an indication of the level of confidence that consumers have in the retail grocery sector. This level of confidence can itself affect competition in the sector.

Potentially misleading promotional pricing practices

- 7.201 We regularly receive complaints from the public relating to our role in enforcing competition and consumer law.⁹⁶⁶ We received 701 complaints about grocery retailers for the fifteen-month period from 1 November 2020 to 31 January 2022. This made up 7.9% of all FTA related complaints we received over the same period.⁹⁶⁷
- 7.202 Of the complaints received, 181 related to supermarket promotions. These complaints make allegations about promotional representations (including EDLP mechanisms such as “great price” or “everyday low”) causing confusion, or that promotions such as multi-buy offers provide little or no saving. Some consumers have also complained that the use of a “special” price ticket is misleading as some products are almost always represented at a promotional price, so the offer could not be considered “special”. Similar points were discussed by some respondents to our consumer survey, and in a complaint we received from Consumer NZ in September 2020.⁹⁶⁸
- 7.203 In addition, our pricing analysis identified that, for the calendar year 2019, a small proportion of products at each of the major grocery retailers appeared to be on promotion for a significant part of the year. This is shown in Figure 7.5 which shows between 2.6% and 12.4% of products offered by the major grocery retailers were on promotion for at least three quarters of the year.⁹⁶⁹

⁹⁶⁶ A complaint does not necessarily mean that any law has been breached, rather it relates to alleged conduct by the trader.

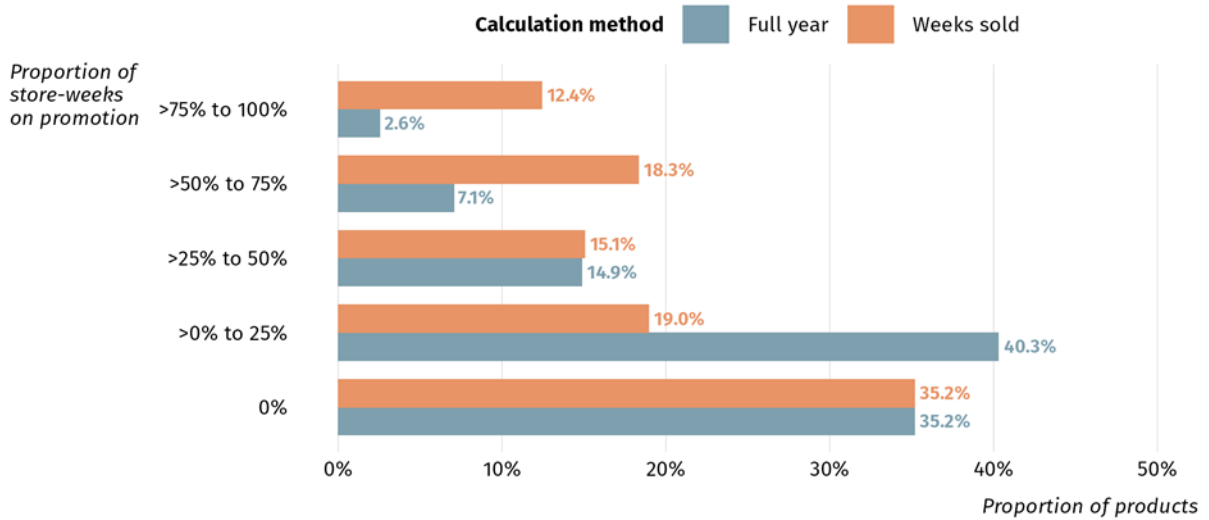
⁹⁶⁷ [].

⁹⁶⁸ See paragraph E172 in Attachment E; Consumer NZ alleged some grocery stores’ price promotions were likely to breach the FTA, based on price tracking data for 22 products offered at Countdown, New World and PAK’nSAVE stores collected between April and June 2020. For a summary of the complaint, see: Belinda Castles “Supermarket Price Survey” (5 August 2020) Consumer NZ <https://www.consumer.org.nz/articles/supermarket-price-survey>. For further information on survey results and complaints received by Consumer NZ, see comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 5 (lines 15-20).

⁹⁶⁹ This figure shows all SKUs sold by the major grocery retailers in 2019 grouped by the proportion of the year they were on promotion for. For example, the two bars at “>75% to 100%” show the proportion of SKUs which were on promotion for >75% to 100% of 2019. Two bars are shown for each group as, given the limitations in the data, two methods were used to calculate these proportions, noted as the ‘full year’ and ‘weeks sold’ methods. The true proportions are likely to lie somewhere between the bounds of each of these two bars.

7.204 This analysis of promotions includes specials which display a reference price (such as “Super Savers” and “Specials”), as well as other promotions such as member-only discounts, multi-buys and other representations as to value such as PAK’nSAVE’s “Extra Low” mechanism. However, this analysis does not include EDLP mechanisms (ie, Countdown’s “Great Price”, New World’s “Everyday Value” and PAK’nSAVE’s “Everyday Low”).

Figure 7.5 Frequency of all types of promotions across all retail banners in 2019



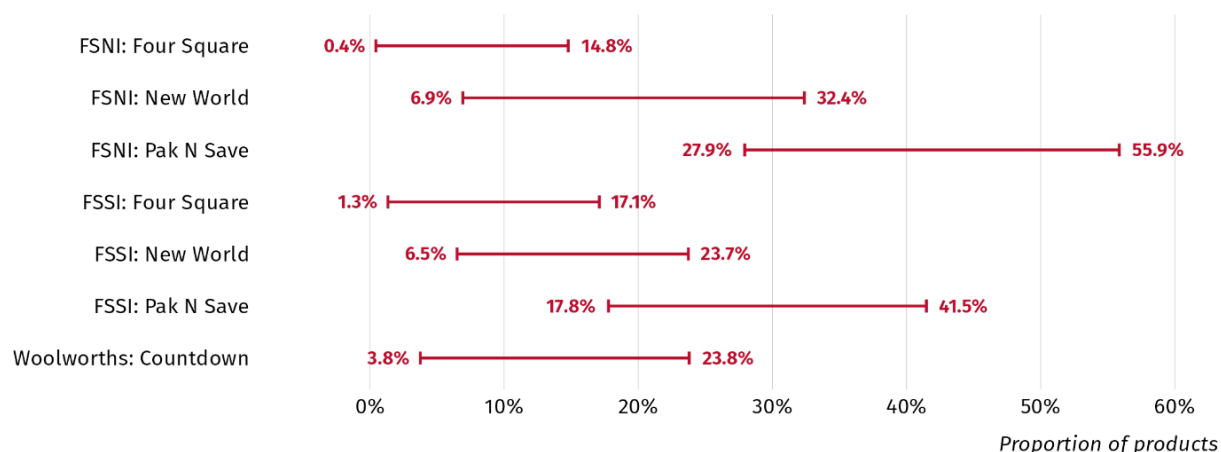
Source: Commission analysis of pricing and promotional data.⁹⁷⁰

7.205 The proportion of products which were on promotion for more than half the year appeared to be particularly high at PAK’nSAVE stores in the North Island.⁹⁷¹ Figure 7.6 shows that at least a quarter of products at PAK’nSAVE stores in the North Island were on promotion for more than half of 2019. This proportion was also high for PAK’nSAVE stores in the South Island, where at least 17.8% of products were on promotion for more than half of 2019.

⁹⁷⁰ [].

⁹⁷¹ This analysis includes “Extra Low” promotions, which are not advertised using a reference price. We have also observed that prices of products on “Extra Low” may still fluctuate while they are on promotion.

Figure 7.6 Proportion of products that were on promotions in more than 50% of store-weeks in 2019⁹⁷²



Source: Commission analysis of pricing and promotional data.⁹⁷³

- 7.206 If the reference price used in discount pricing promotions does not offer a genuine saving, for example, if the claimed “usual” or “was” price is inaccurate, including because products are rarely sold at the reference price, the pricing practice may be misleading in breach of the FTA.⁹⁷⁴
- 7.207 The major grocery retailers have committed to increasing their emphasis on EDLP and decrease their use of short-term promotional strategies. As a result, we do not currently intend to investigate whether any particular pricing and promotional mechanisms or price display practices presently used by the major grocery retailers may mislead consumers in breach of the FTA. Nevertheless, the Commission can consider pricing and promotional practices at any time in the future if it considers it appropriate.

Pricing inaccuracies

- 7.208 A number of complaints received relate to price inaccuracies. These complaints describe instances where consumers paid a higher price at the till than they were led to believe would be payable due to in-store or advertising representations. We received 218 such complaints between 1 November 2020 and 31 January 2022. As noted at paragraph E172.3, we also received approximately 200 responses to our consumer survey which discussed similar concerns.

⁹⁷² As with Figure 7.5, the ranges in these graphs reflect the upper and lower bounds of the two calculation methods used, due to limitations in the dataset. The true proportions likely lie within these ranges. These methods are described at paragraph D27.

⁹⁷³ [].

⁹⁷⁴ For further information on potentially misleading referencing pricing, see Commerce Commission “Pricing Guidance” <https://comcom.govt.nz/consumers/dealing-with-typical-situations/buying-goods-and-services/pricing>.

7.209 A business that displays a price which is not the price charged to the consumer at the point of sale may be misleading consumers about the price of the products they buy in breach of the FTA. In 2020, the Commission concluded its successful prosecution of PAK'nSAVE Mangere in relation to conduct of this nature.⁹⁷⁵ We intend to engage with the major grocery retailers in relation to these complaints and to encourage them to consider their systems and processes and seek improvements to their compliance in this area. We will continue to consider the use of other of our enforcement tools in appropriate cases if required.

Other complaints we have received about grocery retailers

7.210 In addition to the complaints about promotions discussed above, we also received grocery complaints regarding the following themes:⁹⁷⁶

7.210.1 **High prices:** These complaints mention prices of products which they believe to be unreasonably high, or that prices of product(s) had recently been increased. Complainants allege that some products are significantly more expensive in New Zealand than they are overseas or that they are sold at “too high” a profit. We received 115 such complaints between 1 November 2020 and 31 January 2022.⁹⁷⁷ We note that the Commission does not regulate the level of prices, although it does investigate and take enforcement action in relation to misrepresentations relating to the prices consumers pay in breach of the FTA, as discussed above.

7.210.2 Supermarket complaints increased through the COVID-19 pandemic lockdowns in 2020, and again in 2021, including complaints about alleged “price gouging” and low stock levels. During the initial lockdown, MBIE established the ‘Price Watch’ website to enable consumers to report any price increases they had noticed.

7.210.3 **Characteristics or quality:** These complaints concern the features of supermarket products or complaints about products not being of acceptable quality. We received 50 such complaints between 1 November 2020 and 31 January 2022. Complaints of this nature can give rise to breach of the Consumer Guarantees Act 1993 (CGA) and can be actioned directly by consumers. The Commission does not pursue potential breaches of the CGA on behalf of consumers.

⁹⁷⁵ Commerce Commission “PAK'nSAVE Mangere fined \$78,000 for price discrepancies” (28 October 2021), available at: [https://comcom.govt.nz/news-and-media/media-releases/2020/paknsave-mangere-fined-\\$78,000-for-price-discrepancies](https://comcom.govt.nz/news-and-media/media-releases/2020/paknsave-mangere-fined-$78,000-for-price-discrepancies).

⁹⁷⁶ Complaints to the Commission for the period 1 November 2020 – 31 January 2022, [].

⁹⁷⁷ Complaints regarding high prices are discussed further at Chapter 3.

Specific consideration of additional FTA guidance

- 7.211 Woolworths NZ has submitted that the guidance issued by the Commission to assist businesses to comply with the FTA when engaging in price promotions is too high level to be useful in practice.⁹⁷⁸ Woolworths NZ requested “clear, consistent, and specific retail guidelines” to give direction on, amongst other things, the placement and readability of information on shelf labels, and the period for which a price needs to be the “normal” price before it can be used as a reference price for a promotion.
- 7.212 This issue was also discussed at our conference.⁹⁷⁹ Some stakeholders considered that further guidance or regulation on the use of price promotions may be necessary.⁹⁸⁰ However, others expressed caution, observing that overly prescriptive guidance in this area could limit innovation and the extent to which retailers compete through promotions.⁹⁸¹
- 7.213 While compliance with the requirements of the FTA supports competition across the economy, we consider that the question of appropriate guidance relating to compliance with the FTA largely falls outside the scope of this study. The FTA contains principles-based protections against misleading consumers, including about the price of goods. Its interpretation is supported by case law which continues to evolve in New Zealand and overseas. Nevertheless, as part of its general functions in relation to making available guidance relating to businesses’ rights and obligations under the FTA,⁹⁸² the Commission will continue to consider the scope of guidance that may assist businesses engaged in price promotions in relation to grocery products, and across the retail sector.

⁹⁷⁸ Woolworths NZ “Submission on the retail grocery market study draft report” (10 September 2021) at [9.3].

⁹⁷⁹ Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 19 (lines 19-37) and 20 (lines 1-42).

⁹⁸⁰ For example, see Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 21 (lines 26-39) and 22 (lines 1-3 and 17-27).

⁹⁸¹ Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 23 (lines 3-18 and 21-35) and 27 (lines 33-35).

⁹⁸² FTA, section 6.

Chapter 8 Acquisition of groceries by retailers

Summary of findings

- Major grocery retailers are a key route to market for many suppliers. Most groceries in New Zealand are sold through the major grocery retailers' retail stores, so a supplier having its products stocked by a major grocery retailer is an important way to drive sales.
- Many suppliers have limited alternative options available to sell their products other than to the major grocery retailers. With only two major grocery retailers in each island, which between them have a high share of the retail grocery market, in many instances there is only limited competition for the purchase of suppliers' products. We observe that, as a consequence, competition is not working well for many suppliers to the major grocery retailers.
- Many suppliers have limited ability to negotiate with the major grocery retailers. Some suppliers – particularly large suppliers of well-known brands – will be in a relatively strong bargaining position compared to other suppliers. However, suppliers are typically significantly more dependent on retailers than the retailers are on suppliers. This leads to a bargaining power imbalance in many cases.
- We have heard examples which suggest that in some cases major grocery retailers are using their strong negotiating position to:
 - transfer costs and risks to suppliers, despite retailers being better placed to manage them;
 - reduce transparency and certainty over terms of supply; and
 - limit suppliers' ability or incentive to provide favourable supply terms to other grocery retailers.
- Suppliers' incentives to innovate and invest are likely to be adversely affected by this conduct in ways that ultimately harm consumers. For example, this could lead to reduced production or capacity, lower product quality and fewer new product offerings being available for New Zealand consumers. Other grocery retailers may face reduced access to supply of groceries, affecting their ability to enter or expand. There is a risk of prices rising in the future if some suppliers exit the market, reducing competition between the remaining suppliers.
- Consumers may benefit from private label products through lower prices and greater choice. However, retailers of private label products can face conflicting incentives given they are both customers and competitors of branded suppliers.
- While private label products could increase consumer choice and lower prices in the short term, there is a risk that growth of private labels could crowd out supplier-branded products. This could lead to a loss of consumer choice and higher prices over the longer term.
- The risk of private label products adversely affecting outcomes for consumers is greater when retail competition is relatively weak. For example, competition could be harmed by retailers giving their private label products preferential shelf space or using suppliers' intellectual property.

Introduction

- 8.1 In this chapter we discuss how competition is working for the acquisition of groceries by retailers from suppliers and growers. We then discuss the grocery procurement practices of the major grocery retailers. We draw conclusions about the potential impact these procurement practices may have on competition.
- 8.2 The major grocery retailers have, both individually and combined, a high share of the retail grocery market and are a key route to market for many suppliers. For many suppliers, there are few, if any, other parties competing to buy their products and the ability for most suppliers to transfer significant volumes to alternative sales channels is limited. In these circumstances, there is limited competitive constraint imposed on the demands which can be made by the major grocery retailers. Retailers on the other hand can generally choose between a range of suppliers for most product categories.
- 8.3 We received differing comments on the relative bargaining power of the major grocery retailers and suppliers in response to our preliminary issues paper and draft report. Submissions from the NZFGC and Horticulture NZ raised concerns about retailer conduct towards suppliers, highlighting suppliers' lack of bargaining power.⁹⁸³ Major grocery retailers, on the other hand, submitted that they value their relationships with suppliers, and that many of their suppliers have significant bargaining power.⁹⁸⁴
- 8.4 For the reasons described in paragraph 8.2 above, competition is not working well for many suppliers to the major grocery retailers and consequently, the major grocery retailers are generally in a much stronger negotiating position than their suppliers.
- 8.5 Imbalances in bargaining power between retailers and suppliers are likely to affect the terms on which retailers acquire groceries. Suppliers may accept weaker terms than if negotiating positions were more evenly balanced. This can reduce suppliers' incentives to invest and innovate, ultimately affecting the range, quality and pricing of products available to consumers.

⁹⁸³ NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [9]; NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.15]-[6.16]; Horticulture NZ "Submission on retail grocery market study preliminary issues paper" (9 February 2021) at 2; Vegetables NZ and Horticulture NZ "Submission on Market study into grocery sector draft report" (26 August 2021) at [12].

⁹⁸⁴ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 40-46; Foodstuffs NI "Submission on retail grocery market study preliminary issues paper" at 31-32; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [333]-[341]; Foodstuffs SI "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 21-22; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [330]-[311].

- 8.6 We have considered the perceptions of retailers and suppliers regarding their interactions with each other when forming our views. While we have some direct information about interactions between retailers and suppliers, many interactions occur verbally rather than in writing. It can also be challenging to gather direct evidence of how interactions between retailers and suppliers affect outcomes for consumers.
- 8.7 We also acknowledge that this chapter primarily discusses supplier perspectives conveyed to us by suppliers on condition of anonymity and through intermediaries such as the NZFGC. Many suppliers expressed concerns about the protection of commercially sensitive information and fear of retribution for contributing to our study, for example, in relation to ranging their products.⁹⁸⁵ Similar concerns were raised with us in 2014 when we investigated the conduct of Progressive Enterprises.
- 8.8 For all of these reasons, we have focused our discussion on some key themes regarding interactions between retailers and suppliers, rather than focussing on specific examples of conduct by particular retailers. Our objective in this chapter is to share an overview of the experiences of supply relationships that suppliers reported to us, and identify the prevalence of some reported experiences.⁹⁸⁶ We then consider the potential impact that experiences of that nature may have on competition.
- 8.9 On balance we are satisfied we have seen sufficient evidence to enable us to form the views we have expressed in this chapter.⁹⁸⁷ However, confidentiality constraints have limited our ability to set out details of all the evidence we have received, and in some instances we have needed to rely on our own perceptions, based upon the evidence we have received, of the nature of the interactions which have occurred between suppliers and retailers.
- 8.10 This chapter has four sections:
- 8.10.1 our approach to analysing the acquisition of groceries by retailers;
 - 8.10.2 do grocery retailers have buyer power in the acquisition of groceries?

⁹⁸⁵ Suppliers' fear of retribution has been mentioned in media articles. For example: The Detail "Sneaky, shady, shifty - supermarkets are under scrutiny" (30 November 2020) RNZ <https://www.rnz.co.nz/programmes/the-detail/story/2018774704/sneaky-shady-shifty-supermarkets-are-under-scrutiny>; Kate MacNamara "Supermarket giant faces scrutiny amid rising tension with suppliers" (5 December 2020) NZ Herald <https://www.nzherald.co.nz/business/shaky-aisles-supermarket-giant-faces-scrutiny-amid-rising-tension-with-suppliers/SRCDD63DL6N43FROEAP45TXVAA/>.

⁹⁸⁶ We acknowledge that suppliers interact with retailers at different levels (eg, from in-store staff to CEO), and that retailer conduct may vary across these levels.

⁹⁸⁷ Foodstuffs NI and Foodstuffs SI noted the limitations of the information available to us (as acknowledged in paragraphs 8.6 to 8.8 above) and stated that the work undertaken in preparing our draft report was not sufficient to support some of our conclusions, Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [330]-[332]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [300]-[302].

- 8.10.3 are retailers exercising buyer power and what is the effect?
- 8.10.4 what effect are private label products having on competition between retailers and suppliers?

Our approach to analysing the acquisition of groceries by retailers

- 8.11 This section describes the key concepts and information sources used when analysing the acquisition of groceries by retailers. Past studies and investigations into interactions between grocery retailers and suppliers are also briefly summarised. It notes that:
 - 8.11.1 suppliers seek access to grocery retailers' limited shelf space;
 - 8.11.2 bargaining power and buyer power are relevant concepts when considering suppliers' relationships with retailers;
 - 8.11.3 the impact of bargaining power imbalances on outcomes for consumers depends on the circumstances;
 - 8.11.4 buyer power is a common issue considered in overseas grocery market studies;
 - 8.11.5 we previously investigated interactions between a major grocery retailer and its suppliers in 2014; and
 - 8.11.6 we undertook a survey to build our understanding of the issues facing suppliers.

Suppliers seek access to grocery retailers' limited shelf space

- 8.12 Suppliers generally want to sell their products to as many customers as possible, so seek to have their products displayed in retail grocery stores. Given that most groceries are sold through retail stores, a supplier having its products 'ranged' by a major grocery retailer is an important way to drive sales.⁹⁸⁸
- 8.13 However, shelf space in retail grocery stores is limited.⁹⁸⁹ Each store has a certain floor area, which in turn limits the available shelf space for displaying grocery products.

⁹⁸⁸ Our understanding is that most online grocery orders are filled by a local 'bricks-and-mortar' retail store. Therefore, although this section refers to 'shelf space', the discussion is also relevant to most online grocery sales. There are some exceptions to this such as The Honest Grocer and Supie.

⁹⁸⁹ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 40.

8.14 Grocery retailers decide the range of products displayed in their stores to best utilise this limited shelf space, to maximise their profits. Considerations when deciding which products to stock may include:⁹⁹⁰

8.14.1 meeting customers' needs;

8.14.2 sales growth;

8.14.3 product substitutability;

8.14.4 availability of supply;

8.14.5 operational ease;⁹⁹¹ and

8.14.6 ensuring the retailer's profit margin expectations are met.

8.15 Product ranging decisions can be made centrally at a retailers' head office, or in some cases by individual stores.⁹⁹² For example, Foodstuffs' supplier website 'Foodstuffs exchange' states:⁹⁹³

Ranging decisions are made both at our support centres and in our stores. Our core range for each is recommended by the Category team in each region. They are responsible for reviewing the product ranges and ensuring that we are stocking products that our customers want. Local stores can also make ranging decisions which may reflect their local producers, the niche that they wish to occupy, and customer requests.

8.16 There are several key steps in the process of suppliers having their products displayed in retail grocery stores. This process is summarised in Figure 8.1 below, which is based on the supply process between major grocery retailers and suppliers in Australia. While there may be some variations for some retailers and suppliers in certain situations, this is generally consistent with what we have heard in the New Zealand context.⁹⁹⁴

⁹⁹⁰ []; []; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at Appendix D [4.3]-[4.4].

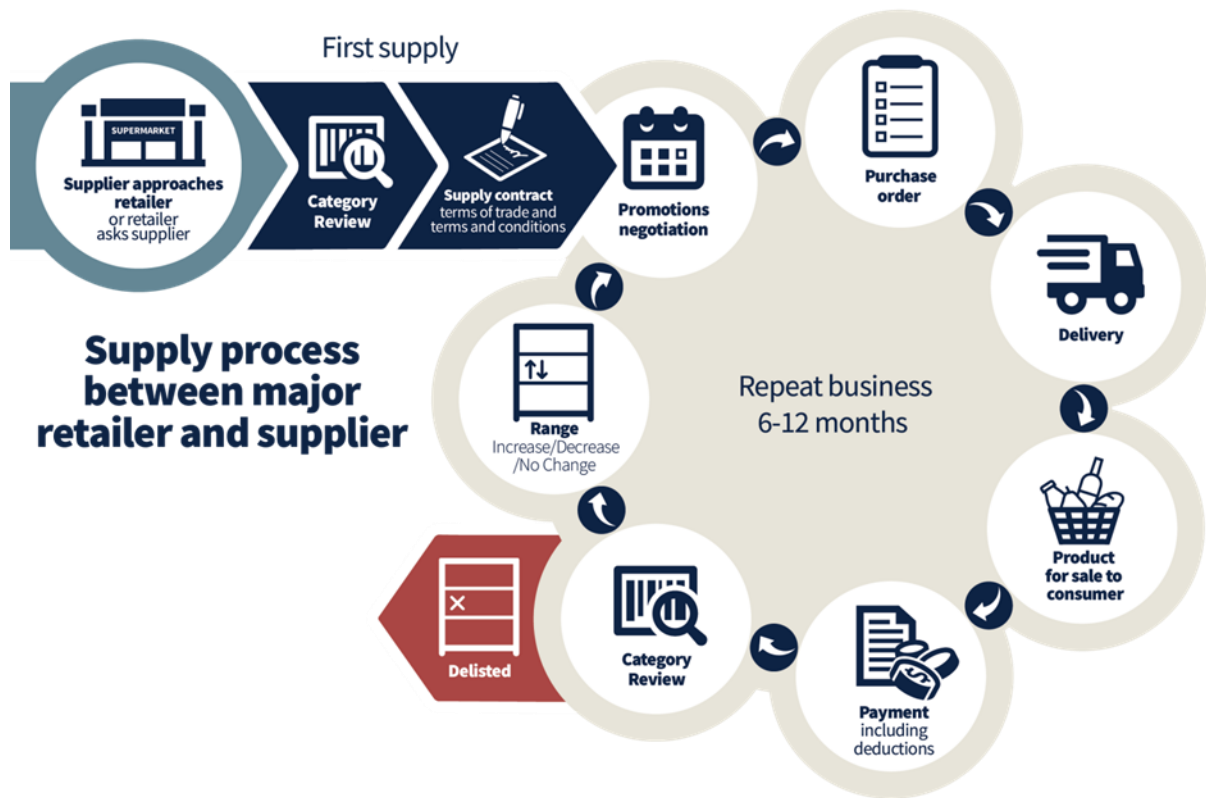
⁹⁹¹ For example, ensuring enough space is allocated to each product to simplify the process of stacking the shelves (ie, enabling an entire case of each product to fit on the shelf).

⁹⁹² Foodstuffs NI noted that it is carrying out range reviews in particular categories where there is a large range of products in each category. This may reduce the ranging decisions available to individual stores, Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [130.2].

⁹⁹³ Foodstuffs Exchange "Product ranging" <https://www.foodstuffs-exchange.co.nz/become-a-supplier/product-ranging/#>.

⁹⁹⁴ For example: Foodstuffs' supplier website, Foodstuffs exchange <https://suppliers.foodstuffs.co.nz/>. []; [].

Figure 8.1 Typical supply process between major grocery retailer and supplier



Source: Independent review of the Food and Grocery Code of Conduct by Professor Graeme Samuel⁹⁹⁵

- 8.17 A supplier may approach a retailer’s relevant Category Manager, or vice versa, to initiate discussions.⁹⁹⁶ If agreement is reached, the supplier will typically enter into a supply contract with the retailer, reflecting the retailer’s standard terms of trade.⁹⁹⁷
- 8.18 The supply contract specifies the terms on which suppliers provide products to grocery retailers. For example, it may include details regarding:

8.18.1 payment or settlement terms;

⁹⁹⁵ Professor Graeme Samuel “Independent Review of the Food and Grocery Code of Conduct: Final Report” (September 2018) at Figure 2.2, available at <https://treasury.gov.au/sites/default/files/2019-03/Independent-review-of-the-Food-and-Grocery-Code-of-Conduct-Final-Report.pdf>.

⁹⁹⁶ A category manager is a member of a retailer’s buying team that engages with suppliers in a particular product category to negotiate trading terms and conditions.

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- 8.18.2 whether products are to be delivered to a distribution centre or direct to store; and
- 8.18.3 any discounts or rebates the supplier is to deduct off its 'list price'.
- 8.19 The prices suppliers charge grocery retailers start at a list price, which several discounts and rebates are typically deducted off. For example, we understand that a common approach for the structure of pricing that suppliers agree with the major grocery retailers is:⁹⁹⁸
- List price
- Less fixed trading/purchasing terms (eg, warehouse allowance, business volume rebates)*
- Less supplier promotional funding (ie, trade and marketing spend)*
- 8.20 Promotional funding appears to be a significant factor affecting the prices at which the major grocery retailers acquire products from suppliers in the New Zealand market. Promotional funding can be offered by suppliers to contribute to the funding of retail promotions, specials and marketing campaigns.⁹⁹⁹ We understand that discounts or rebates associated with supplier promotional funding can lead to a material reduction in the effective price retailers pay their suppliers for goods.¹⁰⁰⁰
- 8.21 Retailers assess supplier performance regularly as part of the category review process.¹⁰⁰¹ In a category review, a retailer will consider the mix of products it stocks in the product category. Changes may be made to shelf-space allocation based on the performance of existing products. Some products may be delisted to make way for new or more profitable products.

⁹⁹⁸ Foodstuffs NI "Post conference submission on market study into the grocery sector" (3 December 2021) at [242].

⁹⁹⁹ Promotional funding (or trade and marketing spend) is an umbrella term used to describe a range of similar practices such as discretionary rebates, marketing rebates, supplier funding scan-back, scan deals, co-op trade-spend, case deals, preferred deals, [].

¹⁰⁰⁰ For example, promotional funding lowers the effective cost Woolworths NZ pays for goods by an average of [] of the list price, Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [29.4]; [].

¹⁰⁰¹ Foodstuffs NI stated "Shelf space is a finite resource in our stores, FSNI follows a constant range review process to ensure we are offering a range that meets our customers' needs": Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at Appendix D [4.1]-[4.2]. []; [].

Bargaining power and buyer power are relevant when considering suppliers' relationships with retailers

- 8.22 Retailers' relationships with suppliers can generally be considered within two main frameworks.¹⁰⁰²
- 8.22.1 **Market framework.** This is where there are many suppliers, and suppliers charge all retailers a single market price for the product.
- 8.22.2 **Bargaining framework.** This is where retailers have relatively fewer suppliers in a product category, with prices and other terms being negotiated bilaterally between retailers and suppliers.
- 8.23 Most retailer-supplier relationships within the grocery sector fit within a bargaining framework. Grocery retailers and their suppliers typically enter into bilateral supply agreements, which detail the specific terms on which products will be supplied. Bargaining power and buyer power are key concepts within this bargaining framework.
- 8.24 Bargaining power refers to the ability of parties in a negotiation to exert influence over each other. The extent of any bargaining power imbalances between grocery retailers and their suppliers will depend on the relative negotiating positions when entering bilateral negotiations.
- 8.25 Outside options available to suppliers and retailers are a key factor in determining their relative bargaining positions. An outside option is the best option that either the seller or buyer can achieve if they walk away from the negotiations.¹⁰⁰³
- 8.26 Buyer power occurs where retailers have a stronger bargaining position than suppliers, allowing them to extract better terms (such as lower prices) than would be expected in a competitive market. This could occur where a retailer has better outside options than a supplier. In economic terms Noll (2005) describes buyer power as:¹⁰⁰⁴

... the circumstance in which the demand side of a market is sufficiently concentrated that buyers can exercise market power over sellers. A buyer has market power if the buyer can force sellers to reduce price below the level that would emerge in a competitive market.

¹⁰⁰² Paul W. Dobson and Ratula Chakraborty "Buyer Power in the U.K. Groceries Market" *The Antitrust Bulletin: Vol. 53, No. 2/Summer 2008* at 337, [].

¹⁰⁰³ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at 312, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

¹⁰⁰⁴ Roger G. Noll "'Buyer power' and economic policy" *SIEPR Discussion Paper No. 04-08* (March 2005) at 589, available at: https://www.researchgate.net/publication/254130874_Buyer_Power_and_Economic_Policy.

- 8.27 While Noll's definition focuses on the ability of a buyer to reduce prices below those in a competitive market, prices are just one dimension of competition in a market. A buyer's ability to exercise market power over sellers in other ways is also relevant. For example, this could include influencing the quality of goods or the allocation of risk.
- 8.28 The relative bargaining power held by grocery retailers and their suppliers is likely to be a key driver of the terms on which retailers acquire grocery products. Retailer buyer power could mean that suppliers accept different terms than they would if negotiating positions were more even.

The impact of bargaining power imbalances depends on the circumstances

- 8.29 Buyer power can be a driver of efficiency and good outcomes for consumers. If there is an imbalance in bargaining power, grocery retailers may be able to obtain better purchasing terms (for example, lower prices) than if suppliers had alternative means of selling their goods in New Zealand.
- 8.30 Consumers would benefit if these better wholesale purchasing terms lead to lower retail prices and improved quality or variety. This relies on retailers flowing better wholesale terms through to their retail offer, often referred to as 'pass-through' of cost savings. The extent to which consumers benefit depends on the strength of competition between grocery retailers.
- 8.31 There is also the potential for consumers to benefit if powerful buyers develop long-term relationships with suppliers and invest jointly with them.¹⁰⁰⁵
- 8.32 However, even with strong retail competition, it is possible that too much buyer power in the hands of retailers could lead to worse outcomes for consumers.
- 8.32.1 Buyer power might suppress investment by suppliers in process and product innovation, if lower prices paid by retailers or the transfer of excessive risks reduce suppliers' expected returns from this investment. This could lead to reduced choice and quality for consumers.¹⁰⁰⁶
- 8.32.2 A retailer may seek to use its strong bargaining position to enter into restrictive supply arrangements, which limit a supplier's ability to sell its products via other retailers. This could reduce retail competition, ultimately leading to higher prices, less choice and lower product quality for consumers.

¹⁰⁰⁵ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at 319, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

¹⁰⁰⁶ Paul W. Dobson and Ratula Chakraborty "Buyer Power in the U.K. Groceries Market" *The Antitrust Bulletin*: Vol. 53, No. 2/Summer 2008 at 344-345, [].

- 8.33 The more effective competition is at the retail level, the less likely it is that retailers having significant buyer power will ultimately harm consumers. A more competitive retail market will increase the likelihood of any benefits retailers obtain from buyer power being passed through to consumers. Conversely, if retail competition is relatively weak, buyer power might result in higher profitability for grocery retailers and worse outcomes for suppliers and consumers.
- 8.34 In addition, the more competition there is at the retail level of the grocery market, the less likely it is that retailers will have significant buyer power. This is because more retailers operating in a market provides additional options for a supplier to sell its products to, improving its negotiating position.¹⁰⁰⁷

Buyer power is a common issue considered in overseas grocery market studies

- 8.35 Retailer buyer power has previously been considered in overseas grocery market studies. This issue has been highlighted in studies undertaken in the UK, Australia, South Africa, Spain and Portugal.
- 8.36 The UK Competition Commission was concerned about the transfer of excessive risk and unexpected costs by grocery retailers to their suppliers through various supply chain practices. It noted that if unchecked, this will have an adverse effect on investment and innovation in the supply chain, and ultimately on consumers.¹⁰⁰⁸
- 8.37 The ACCC noted in its 2008 grocery market inquiry that competition was not sufficiently strong at the retail level to ensure that consumers always benefitted from buyer power in the form of lower retail prices. However, it found that there was little evidence to substantiate anecdotal allegations of buyer power being exercised in an anticompetitive or unconscionable manner.¹⁰⁰⁹

¹⁰⁰⁷ This focuses on the balance of bargaining power between retailers and suppliers. Greater retail competition could also be expected to lead to lower retail prices, and therefore downwards pressure on wholesale prices.

¹⁰⁰⁸ UK Competition Commission "The supply of groceries in the UK market investigation" (30 April 2008) at [3], available at: https://webarchive.nationalarchives.gov.uk/20140402235418/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2008/fulltext/538.pdf.

¹⁰⁰⁹ ACCC "Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries" (July 2008) at 325, available at: <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>.

- 8.38 In the ACCC’s subsequent perishable agriculture goods inquiry, it identified a range of potentially harmful practices associated with bargaining power imbalances and market failures. This included contract terms that inefficiently allocate risk and supermarkets requiring cost offsets. The ACCC noted that while hard bargaining between retailers and suppliers is an inherent aspect of commercial dealings, it has concerns where behaviours move beyond this to create potentially harmful impacts on markets.¹⁰¹⁰
- 8.39 The South African Competition Commission noted that national retail chains have used their buyer power to demand rebates to cover the costs of certain retail store-level activities, such as merchandising, store openings and refurbishment, advertising and promotion, access to shelf space and category management. These rebates were not available to wholesalers and independent buying groups servicing independent retailers, placing them at a material competitive disadvantage.¹⁰¹¹
- 8.40 The Spanish and Portuguese Competition Authorities also highlighted several areas of concerns regarding buyer power.
- 8.40.1 The Spanish Competition Authority referred to: 1) unpredictable commercial payments, 2) not putting contract terms and conditions in writing, 3) requiring suppliers to provide excessive information regarding new products, 4) MFN clauses, and 5) retailers demanding information on suppliers’ interactions with other retailers.¹⁰¹²
- 8.40.2 The Portuguese Competition Authority referred to: 1) the unilateral imposition of terms and conditions, 2) discounts and related mechanisms, 3) penalties and 4) payment terms.¹⁰¹³

¹⁰¹⁰ ACCC “Perishable agricultural goods inquiry” (November 2020) at x and xiii, available at: <https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>.

¹⁰¹¹ South African Competition Commission “The grocery retail market inquiry” (25 November 2019) at [66], available at: <http://www.compcom.co.za/wp-content/uploads/2019/12/GRMI-Non-Confidential-Report.pdf>.

¹⁰¹² Comisión Nacional de la Competencia “Report on the relations between manufacturers and retailers in the food sector” (October 2011) at 133-134, available at: https://www.cnmc.es/sites/default/files/1186012_7.pdf.

¹⁰¹³ Portuguese Competition Authority “Final Report on Commercial Relations Between the Large Retail Groups and their Suppliers (Abridged English Version)” (October 2010) at 6, available at: http://www.concorrenca.pt/SiteCollectionDocuments/Estudos_e_Publicacoes/Outros/AdC_Relatorio_Final_Distribuicao_Fornecedores_Outubro_2010_en.pdf.

- 8.41 Buyer power is likely to be greater in markets with fewer retailers, as suppliers have fewer options for selling their products. Given that suppliers generally have fewer large retailers to sell to in New Zealand than the countries referred to above, it is possible that New Zealand’s major grocery retailers possess greater buyer power than in these overseas studies.¹⁰¹⁴

We investigated interactions between a grocery retailer and its suppliers in 2014

- 8.42 We previously considered interactions between Progressive Enterprises (now Woolworths NZ) and its suppliers in a 2014 investigation. However, this was not in the context of a market study. Rather, this investigation considered whether Progressive Enterprises breached either the FTA or the FTA or the Commerce Act through some of its business practices.
- 8.43 We investigated five matters, concluding in each case that the conduct was unlikely to be unlawful. The five matters we investigated were whether Progressive Enterprises:¹⁰¹⁵
- 8.43.1 sought payments and/or improved performance from some suppliers to compensate Progressive Enterprises for lack of profits in the previous year under improper threat of commercial sanction;
 - 8.43.2 dealt with suppliers in a misleading or deceptive manner by making deductions from supplier invoices or seeking payments to which Progressive Enterprises was not entitled under its contracts with suppliers, or otherwise misrepresenting its entitlement to do so;
 - 8.43.3 sought or received information about the future pricing and promotional intentions of its competitors, or otherwise engaged in conduct that might reduce competition with other retailers;
 - 8.43.4 used improper threats of commercial sanction or took advantage of a substantial degree of market power by refusing to accept wholesale price increases; or
 - 8.43.5 favoured its transportation subsidiary over other transportation providers to gain a competitive advantage.

¹⁰¹⁴ As noted in paragraph 8.50, most estimates of the combined shares of supply for New Zealand’s major grocery retailers are between 80% and 90%. In comparison, the combined market shares of the two largest retailers reported in the overseas studies were: 42% in the 2008 UK Competition Commission study, 54% in the 2008 ACCC study, 65% in the 2020 ACCC perishable agricultural goods study, 46% in the 2011 Spanish study, and 45% in the 2010 Portuguese study. The 2019 South African study noted that the top 5 largest retailers had a combined market share of 64%.

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¹⁰¹⁵ Commerce Commission “Progressive Enterprises Limited: investigation closure report” (20 November 2014) at [10], available at: https://comcom.govt.nz/_data/assets/pdf_file/0033/94767/Progressive-Enterprises-Limited-Investigation-closure-report-20-November-2014.pdf.

- 8.44 While our view was that Progressive Enterprises' conduct was not likely to be unlawful, we identified two areas where we reminded parties to take particular care.¹⁰¹⁶
- 8.44.1 The first was that parties should avoid ambiguity in communications and written terms of trade (especially standard form documents). Precision and clarity of meaning, purpose, and intention avoids ambiguity that can have the potential to mislead.
- 8.44.2 The second was exchanging information about future competitor behaviour, or discussing supplier interactions with a competitor. These types of exchanges create an environment in which anticompetitive agreements or conduct can easily emerge.

We undertook a survey to build our understanding of the issues facing suppliers

- 8.45 As part of our study, we undertook a survey of suppliers (our supplier survey) to seek their views on the New Zealand grocery market. We particularly sought views on suppliers' trading relationships with grocery retailers.
- 8.46 The survey enabled us to seek the views of a wide range of suppliers and identify common themes. We received 126 responses to our supplier survey.¹⁰¹⁷ These respondents:
- 8.46.1 supply across a wide range of grocery retailers, wholesalers and product categories; and
- 8.46.2 vary significantly in size, as measured by the number of products (SKUs) they supply and sales revenues in New Zealand.
- 8.47 Other key sources of information we have relied on when assessing the acquisition of groceries by major grocery retailers are listed below.
- 8.47.1 We held meetings with over 25 suppliers and supplier associations.¹⁰¹⁸ Meetings were held with a range of organisations we contacted to seek views, and organisations which proactively contacted us. We also held meetings with some respondents to our supplier survey to seek further details regarding comments made.

¹⁰¹⁶ Commerce Commission "Progressive Enterprises Limited: investigation closure report" (20 November 2014) at [29], available at: https://comcom.govt.nz/_data/assets/pdf_file/0033/94767/Progressive-Enterprises-Limited-Investigation-closure-report-20-November-2014.pdf.

¹⁰¹⁷ See Attachment F for further details regarding our supplier survey.

¹⁰¹⁸ [].

- 8.47.2 Information provided by retailers regarding their grocery procurement practices in response to our information requests. This includes strategy documents and copies of supply agreements between major grocery retailers and their suppliers.
- 8.47.3 Information about interactions between retailers and suppliers provided to us by industry participants.¹⁰¹⁹
- 8.47.4 Submissions on our preliminary issues paper, including surveys undertaken by the NZFGC and Horticulture NZ.
- 8.47.5 Submissions on our draft report, including discussion at our consultation conference and subsequent cross-submissions.

8.48 Further information on our supplier survey is contained in Attachment F.

Do grocery retailers have buyer power in the acquisition of groceries?

8.49 This section considers the relative bargaining power between New Zealand grocery retailers and their suppliers, particularly whether retailers have market power in the acquisition of groceries. It notes that:

- 8.49.1 major grocery retailers are a key route to market for many suppliers;
- 8.49.2 some suppliers have stronger relative bargaining power than others;
- 8.49.3 suppliers generally have limited ability to negotiate with the major grocery retailers; and
- 8.49.4 there appears to be little recourse for suppliers who encounter difficulties with retailers.

Major grocery retailers are a key route to market for many suppliers

8.50 Suppliers are often dependent on major grocery retailers as their main route for selling their products to consumers. The majority of grocery products purchased by New Zealand consumers are sold by the major grocery retailers. As discussed in Chapter 5, most estimates of the combined shares of supply for the major grocery retailers are between 70% and 90% for 2015 to 2019.

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- 8.51 Many suppliers we heard from indicated that they are dependent on the major grocery retailers for sales of their products.
- 8.51.1 Submissions on our draft report have highlighted the significant role that Māori play in food production, noting however, that their involvement in the governance and management of the grocery sector is low.¹⁰²⁰
- 8.51.2 Although our supplier survey is not representative, suppliers' dependence on the major grocery retailers was highlighted in the responses we received.¹⁰²¹ This is consistent with what we heard in meetings we held with suppliers.¹⁰²²
- 8.52 Alternative sales channels are available for some suppliers. The alternative sales channels may include:
- 8.52.1 specialist grocery stores;
- 8.52.2 convenience stores;
- 8.52.3 meal kit providers;
- 8.52.4 foodservice wholesalers;
- 8.52.5 exports to overseas markets; and
- 8.52.6 direct to customer sales.
- 8.53 These alternative channels are likely to be more viable for some suppliers than others. For example, suppliers of snack foods and soft drinks may be able to sell significant volumes of their products through convenience stores.¹⁰²³

¹⁰²⁰ National Māori Authority "Post conference submission on Market study into grocery sector" (30 November 2021) at 4; Ngati Porou Holding Company Ltd "Post conference submission on Market study into grocery sector" (23 November 2021) at 5.

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For example: [];

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Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 14.

- 8.54 However, the ability for most suppliers to transfer significant volumes to alternative sales channels or to diversify their customer base is limited by the structure of the retail grocery sector. Other grocery retailers typically have modest volumes because they target specific customers rather than competing directly with the major grocery retailers. They are also generally perceived by consumers to have limited geographic coverage and be more expensive than the major grocery retailers for some products.
- 8.55 Given that the majority of grocery products are sold by the major grocery retailers, alternative channels are unlikely to generate sufficient sales for most suppliers to operate profitably. In addition, there may be timing challenges if a supplier sought to significantly grow its sales through alternative channels.¹⁰²⁴
- 8.56 In our supplier survey and in meetings with some suppliers, we asked suppliers what they would do if the major grocery retailers they supply were no longer able or willing to stock their products. While some suppliers indicated that they would look to develop alternative sales channels, the majority indicated that their business would be unsustainable, and they would be likely to exit the New Zealand market.¹⁰²⁵

Some suppliers have stronger relative bargaining power than others

- 8.57 The major grocery retailers submitted that many suppliers have countervailing power when dealing with retailers.¹⁰²⁶

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Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 33; Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 21; Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 42-43; Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [18].

- 8.58 We agree that this is true for some suppliers, and more generally consider there are a range of factors which can potentially affect a supplier’s bargaining position. These include:¹⁰²⁷
- 8.58.1 **Ability to export:** Suppliers who export a significant proportion of their products are less dependent on New Zealand grocery retailers, which may improve their negotiating position. Red meat is an example, where a large proportion of production from New Zealand suppliers is sold into overseas markets.¹⁰²⁸
- 8.58.2 **Availability of other domestic sales channels:** Suppliers of products with a significant proportion of sales through other domestic channels may also be in a stronger position when negotiating with grocery retailers. Examples of these alternative channels may include foodservice wholesalers, convenience stores, or direct to customer sales (for example, via a supplier’s own website).
- 8.58.3 **Strength of a supplier’s brand:** Suppliers of products carrying well-known brands, which consumers consider to be ‘must have’, may have a stronger negotiating position. Retailers’ outside options may be weaker, given the limited ability to substitute these brands with other products.
- 8.58.4 **Number of suppliers in a product category:** Retailers will be more dependent on certain suppliers in product categories where there are limited alternative suppliers available.¹⁰²⁹
- 8.58.5 **Product perishability:** Suppliers of some perishable products appear to be particularly vulnerable when dealing with grocery retailers. Suppliers of highly perishable products have limited ability to delay or withhold supply while seeking to negotiate better supply terms.¹⁰³⁰

¹⁰²⁷ These are possible examples of factors which may affect retailers’ and suppliers’ relative bargaining positions. In practice, the balance of bargaining power will depend on the specific circumstances regarding the product or supplier in question.

¹⁰²⁸ 88% of beef and veal and almost 95% of lamb and mutton is exported. Beef + Lamb NZ “Economic and social contribution of the New Zealand red meat industry - Overview” (June 2020) at 2, available at: <https://www.mia.co.nz/assets/MIA-Publications/Economic-and-Social-Contribution-of-the-NZ-Red-Meat-Industry-Overview.pdf>;

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¹⁰²⁹ Foodstuffs NI and Foodstuffs SI provided a list of product categories where there is high supplier concentration. Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [338]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [311].

¹⁰³⁰ ACCC “Perishable agricultural goods inquiry” (November 2020) at 55, available at: <https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>.

- 8.59 The vulnerability of suppliers of perishable products was highlighted in some submissions. Horticulture NZ referred to the power differential between supermarkets and growers suggesting that retailers earn higher margins on fresh vegetables than other product categories.¹⁰³¹ T&G Fresh submitted that:¹⁰³²

When fresh produce is grown, it must be sold quickly because of its perishability. Unlike other industries, in fresh produce you can't pause production because demand is low or pricing isn't so good. You are at the mercy of mother nature, the market, and prices change daily due to supply and consumer demand.

- 8.60 Our view is that, for most suppliers, particularly smaller suppliers, there appears to be an imbalance of bargaining power in favour of the major grocery retailers. We understand that small suppliers play an important role in New Zealand's evolving food sector, introducing a high proportion of new products to shelves, and developing and trialling product innovations.¹⁰³³
- 8.61 Some suppliers – particularly large suppliers of well-known brands – will be in a relatively strong bargaining position compared to other suppliers, and may account for a high proportion of sales in their product categories.¹⁰³⁴ However, even large suppliers with strong brands are dependent on supermarkets to access New Zealand consumers.¹⁰³⁵ In addition, category by category product ranging negotiations between retailers and suppliers may dampen the bargaining power of a large supplier providing products across many different categories.¹⁰³⁶

¹⁰³¹ Horticulture NZ "Submission on retail grocery market study preliminary issues paper" (9 February 2021) at 2.

¹⁰³² T&G Fresh "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 2.

¹⁰³³ Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 44 (lines 19-23) and 19 (lines 5-9); [redacted].

¹⁰³⁴ Woolworths NZ noted [redacted], Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 42-43; [redacted]; Foodstuffs NI and Foodstuffs SI noted that 25% of total sales were attributable to 9 (FSNI) or 11 (FSSI) of NZs biggest suppliers: Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [337.1], Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [311].

¹⁰³⁵ Consumers International "The relationship between supermarkets and suppliers: What are the implications for consumers?" (July 2012) at 3, [redacted].

¹⁰³⁶ [redacted].

- 8.62 We heard that Māori provide for a reasonable portion of New Zealand’s groceries through their strong ownership in the primary sector. However, we also heard the state of competition for the acquisition does not result in fair and equitable outcomes for Māori suppliers. Māori contributors also expressed a desire for the major grocery retailers’ policies to support and provide specific opportunities to Māori producers and suppliers, and adhere to the principles of Te Tiriti.¹⁰³⁷

Suppliers generally have limited ability to negotiate with the major grocery retailers

- 8.63 Major grocery retailers have lots of suppliers, but the majority are small. For example, Woolworths NZ noted that it partners with over 1,400 suppliers, with more than 900 being small suppliers with retail sales in Countdown of less than \$1m per annum.¹⁰³⁸
- 8.64 Foodstuffs NI and Foodstuffs SI combined have trading relationships with over 3,500 product suppliers.¹⁰³⁹ Many of these are small suppliers. In the 13 weeks ending 8 August 2021:
- 8.64.1 90% of Foodstuffs NI’s sales came from 228 suppliers (with an additional 1,644 suppliers making up the last 10% of sales);¹⁰⁴⁰ and
- 8.64.2 90% of Foodstuffs SI’s sales came from 198 suppliers (with an additional 1,632 suppliers making up the last 10% of sales).¹⁰⁴¹
- 8.65 In many cases suppliers are likely to be more dependent on the major grocery retailers than the retailers are on particular suppliers. As noted above, the strength of relative bargaining positions depends on the value of each party’s outside options.
- 8.65.1 For suppliers with few outside options other than to supply to major grocery retailers, the cost of walking away from negotiations with a supermarket is high – significant lost sales.
- 8.65.2 In contrast, the cost to a major grocery retailer of walking away from negotiations with most suppliers is relatively low unless there are no other suppliers of those products to deal with.¹⁰⁴²

¹⁰³⁷ National Māori Authority “Post conference submission on Market study into grocery sector” (30 November 2021) at 4-6.

¹⁰³⁸ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 1 and 41.

¹⁰³⁹ Foodstuffs NI “Becoming a Supplier” <https://supplierhelp.foodstuffs.co.nz/en/article/becoming-a-supplier>.

¹⁰⁴⁰ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [337.2]-[337.3].

¹⁰⁴¹ Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [311].

¹⁰⁴² As discussed in paragraphs 8.57 to 8.60 above, some suppliers have stronger outside options than others.

8.66 As discussed in paragraphs 8.57 to 8.62 above, some suppliers will have stronger relative bargaining power than others. For example, a major grocery retailer may be less able to walk away from negotiations with suppliers of branded products which consumers consider to be must have. However, as discussed in paragraph 8.101 below, we consider that the major grocery retailers are generally in a much stronger negotiating position than most of their suppliers, and there are examples of the major grocery retailers using their strong negotiating positions in ways that are likely to adversely affect suppliers' incentives to innovate and invest.

8.67 Dobson and Chakraborty (2008) describe retailers' and suppliers' relative dependence on each other as follows:¹⁰⁴³

...in terms of relative bargaining power, the leading retailers may find it straightforward and inexpensive to switch suppliers (especially for commodity/private-label goods, but more generally where shelf space can be reallocated across product categories without losing significant custom), and thus switching costs in these circumstances may be expected to be relatively low as long as alternative suppliers exist with sufficient capacity. In contrast, were a supplier to lose its contract with one of the major retailers, it would normally be quite difficult in the short term to replace that lost volume with other retailers (given that these retailers would be unlikely to take on additional supplies significantly over and above their existing contracts), meaning that its own switching costs could be relatively high.

8.68 Nevo and Van den Bergh (2017) refer to large retailers as a potential bottleneck which can hinder suppliers' access to consumers.¹⁰⁴⁴

In modern retailing markets, large retailers may occupy a 'bottleneck' position that allows them to control the interaction of brands. In upstream markets, where manufacturers sell to retailers, the latter may use their superior bargaining position to extract favourable contract terms from the former. In downstream markets, where retailers sell to end-consumers, vertically integrated supermarkets may prioritize their private labels to the detriment of branded goods. In extreme cases, powerful retailers may refuse access to the 'bottleneck', thus hindering the access of brand manufacturers to end-consumers.

8.69 Suppliers' lack of ability to negotiate with retailers was a key theme in responses to our supplier survey.¹⁰⁴⁵ Examples of comments we received are listed below.

8.69.1 "We have two choices 1) sell to them under their terms 2) don't sell to them at all".¹⁰⁴⁶

8.69.2 "No ability to negotiate. We are price takers."¹⁰⁴⁷

¹⁰⁴³ Paul W. Dobson and Ratula Chakraborty "Buyer Power in the U.K. Groceries Market" *The Antitrust Bulletin: Vol. 53, No. 2/Summer 2008* at 341-342.

¹⁰⁴⁴ Nevo, Hila and Van den Bergh, Roger "Private Labels: Challenges for Competition Law and Economics" *World Competition* 40, no. 2 (2017) at 272, [].

¹⁰⁴⁵ [].

¹⁰⁴⁶ [].

¹⁰⁴⁷ [].

- 8.69.3 “It’s pretty much sign this document, or don’t supply”.¹⁰⁴⁸
- 8.69.4 “Negotiations are one sided, as the retailers have all the power to either delete or keep our products on shelf. It is a very competitive market and the supplier who gives them the most, gains the most, even if product quality suffers.”¹⁰⁴⁹
- 8.70 Small suppliers may be more likely to be disadvantaged in terms of the resources and sophistication they can bring to negotiations with retailers. They may be more likely to settle for less favourable terms than suppliers with more resources.
- 8.71 Suppliers who lack the ability to negotiate may effectively be offered ‘take it or leave it’ contracts or contract terms that enable retailers to extract almost all of the value of the trading relationship.¹⁰⁵⁰ Suppliers have little option other than to accept these terms or walk away.
- 8.72 The National Māori Authority considered the current structure of the grocery market is not working well for Māori suppliers and producers of groceries. It emphasised that the major grocery retailers’ use of buyer power in negotiations with suppliers extends to all producers, not just Māori.¹⁰⁵¹
- 8.73 Māori contributors told us that, in some cases, they have withdrawn their products from supply to the major grocery retailers due to narrow margins, increasing costs and expectations of promotional funding.

There appears to be little recourse for suppliers who encounter difficulties with retailers

- 8.74 Suppliers who encounter difficulties when trading with the major grocery retailers appear to have limited ability to resolve disputes. While the major grocery retailers have charters containing principles for how they interact with suppliers, suppliers have told us that these do not appear to be effective.¹⁰⁵²
- 8.75 The major grocery retailers highlighted the supplier charters they have implemented in submissions on our preliminary issues paper.¹⁰⁵³ For example:

¹⁰⁴⁸ [].

¹⁰⁴⁹ [].

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[].

¹⁰⁵¹ National Māori Authority “Post conference submission on Market study into grocery sector” (30 November 2021) at 6.

¹⁰⁵²

[].

¹⁰⁵³ Foodstuffs NZ “Supplier Relationship Charter”, available at: https://suppliers.foodstuffs.co.nz/assets/documents/Supplier_relationship_charter.pdf; Woolworths NZ “Woolworths New Zealand Supplier Charter”, available at: <https://www.countdown.co.nz/media/9959/wnnz-supplier-charter-180618.pdf>.

- 8.75.1 Woolworths NZ said that its supplier charter cements its “commitment to working with our suppliers fairly, honestly, and transparently”;¹⁰⁵⁴
- 8.75.2 Foodstuffs NI stated that it “values its supplier relationships, invests time and endeavours to always act consistently with the Supplier Relationship Charter”;¹⁰⁵⁵ and
- 8.75.3 Foodstuffs SI stated that it “values its supplier relationships and acts consistently with the Supplier Relationship Charter”.¹⁰⁵⁶
- 8.76 The NZFGC, on the other hand, submitted that the major grocery retailers’ supplier charters are “largely symbolic”:¹⁰⁵⁷

The supplier community does not view the charters as living documents providing robust frameworks to deal with business relationships.

...

The charters are not seen to be honoured or carried out in practice. Suppliers do not feel able to use them or have faith that even if they do it will result in a fair outcome. For example, in the case of Foodstuffs suppliers are expected to contact the CEOs or the Foodstuffs lawyer. This is a daunting prospect for particularly small suppliers who will never have had the opportunity to meet them before and then be expected to make contact about a complaint.

- 8.77 We understand that relatively few complaints are made under these charters.¹⁰⁵⁸ While this could be because suppliers encounter few issues when dealing with retailers, this seems unlikely given the wide range of concerns about retailer conduct that we have heard from suppliers during our study.

¹⁰⁵⁴ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 41-42.

¹⁰⁵⁵ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 32.

¹⁰⁵⁶ Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 22.

¹⁰⁵⁷ NZFGC “Comments on submissions on preliminary issues paper” (12 April 2021) at [6.5]-[6.6].

¹⁰⁵⁸

[
];
 [];
 []. Foodstuffs NI
 acknowledged suppliers do not want to raise issues with Foodstuffs NI directly, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 27 (lines 1-6).

- 8.78 Some suppliers may be reluctant to raise complaints or enforce their rights due to fear of retribution, where complaints are required to be made directly to the retailer itself.¹⁰⁵⁹ This is likely to reflect the lack of alternative options available to many suppliers – losing a major grocery retailer as customer could have a material impact on the viability of their businesses.
- 8.78.1 Under the Foodstuffs charter, complaints are to be raised with the relevant Category Manager, Business Category Manager, or usual contact in the first instance. Complaints can be escalated to the General Manager of Merchandise, then the relevant CEO, if unresolved.¹⁰⁶⁰
- 8.78.2 Under the Woolworths NZ charter, the supplier is first required to try to resolve a dispute with the category team at Woolworths NZ. Unresolved disputes can then be sent to the Managing Director.¹⁰⁶¹
- 8.78.3 Hexis Quadrant referred to a consistent theme of suppliers being genuinely concerned for the repercussions from raising issues.¹⁰⁶²

Are retailers exercising buyer power and what is the effect?

- 8.79 This section considers whether New Zealand’s grocery retailers are exercising buyer power, and if so, the effect this has on outcomes for consumers. It notes that:
- 8.79.1 we have heard examples of positive feedback from suppliers on retailers;
- 8.79.2 retailer behaviour varies by retail banner, store, and over time;
- 8.79.3 suppliers are concerned about the threat of having their products delisted by retailers;
- 8.79.4 we have categorised potentially harmful conduct by retailers into three main themes:
- 8.79.4.1 transfer of costs and risks from retailers to suppliers;
- 8.79.4.2 lack of transparency and certainty over terms of supply;
- 8.79.4.3 retailers limiting suppliers’ ability or incentive to provide favourable supply terms to other retailers; and

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¹⁰⁶⁰ Foodstuffs NZ “Supplier Relationship Charter” at 3, available at:

https://suppliers.foodstuffs.co.nz/assets/documents/Supplier_relationship_charter.pdf.

¹⁰⁶¹ Woolworths NZ “Woolworths New Zealand Supplier Charter” at [5.3]-[5.4], available at:

<https://www.countdown.co.nz/media/9959/wnz-supplier-charter-180618.pdf>.

¹⁰⁶² Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 28 (lines 6-14).

- 8.79.5 there may be a slightly stronger tendency for pass-through of cost increases to consumers (compared to cost decreases).

We have heard examples of positive feedback from suppliers about retailers

- 8.80 We heard many examples from suppliers of the major grocery retailers positively affecting their businesses, and we acknowledge that many suppliers have good relationships with the retailers they supply.¹⁰⁶³ Examples of the themes we heard include retailers:¹⁰⁶⁴
- 8.80.1 providing greater product exposure by supporting promotions and displays;
 - 8.80.2 ranging new products and supporting innovative ideas;
 - 8.80.3 helping to grow supplier businesses through common strategies and joint business plans; and
 - 8.80.4 using insights from shopper data to identify customer demand and sales patterns.¹⁰⁶⁵
- 8.81 The major grocery retailers have noted that they value their supplier relationships, referring to the time they invest in them.¹⁰⁶⁶ Woolworths NZ referred to their positive relationships with small suppliers, and Foodstuffs SI noted that small suppliers are a growing part of their business.¹⁰⁶⁷
- 8.82 Another theme is that suppliers generally speak positively of their trading relationships with smaller grocery retailers such as Farro Fresh, Moore Wilson’s and Commonsense Organics.¹⁰⁶⁸ A supplier told us that this is because there is less power imbalance between suppliers and these smaller grocery retailers.¹⁰⁶⁹

¹⁰⁶³ For example: Pernod Ricard Winemakers “Submission on Market study into grocery sector draft report” (25 August 2021), and Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 21 (lines 3-26).

¹⁰⁶⁴ [].

¹⁰⁶⁵ For example, a supplier noted that purchasing these data could enable it to help understand consumer behaviour such as switching, []. Another supplier noted it had not purchased any of these insights as it is “really expensive”, [].

¹⁰⁶⁶ Foodstuffs NI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 32; Foodstuffs SI “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 22; Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 40-46.

¹⁰⁶⁷ Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 10 (lines 5-9) and 44 (lines 19-23).

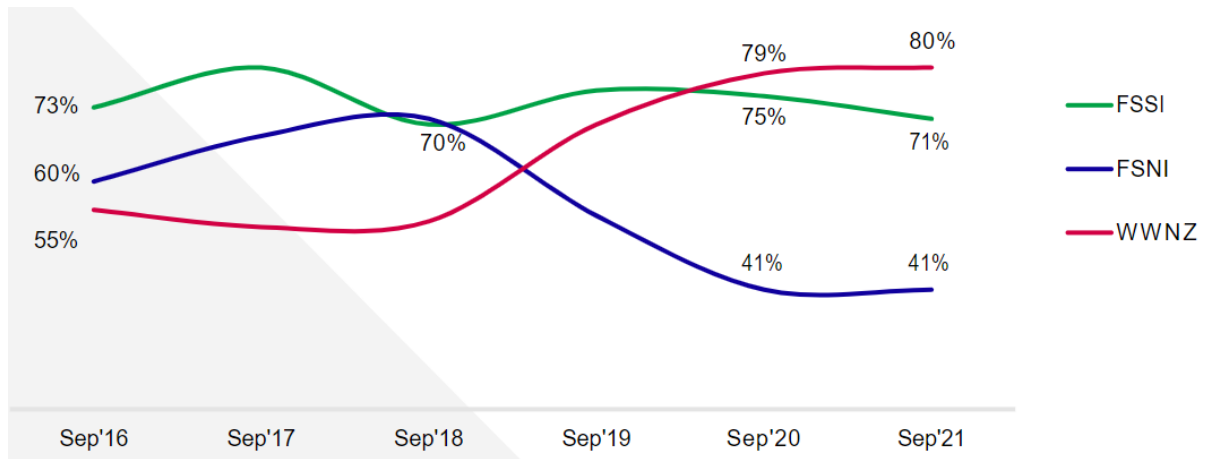
¹⁰⁶⁸ [].

¹⁰⁶⁹ [].

Retailer behaviour varies by retail banner, store, and over time

- 8.83 The majority of feedback we received from suppliers has focused on potentially harmful conduct undertaken by the major grocery retailers.¹⁰⁷⁰ The range of complaints we received varies by different retail banners and sometimes individual stores.
- 8.84 Retailer behaviour also changes over time. Certain companies may be the focus of supplier complaints at any given time.
- 8.85 The 2021 Nielsen Retail Barometer survey, which measures supplier sentiment, highlights changes in suppliers’ trading relationships with the major grocery retailers over time. The percentage of survey respondents who rated their overall trading relationship with each retailer as ‘good’ or ‘excellent’ is shown in Figure 8.2 below.¹⁰⁷¹

Figure 8.2 Overall trading relationship by retailer – Good and excellent



Source: Nielsen Retail Barometer 2021.¹⁰⁷²

¹⁰⁷⁰ We sought views on both positive and negative experiences suppliers have had with the retailers and wholesalers they supply. As noted in paragraphs 8.80 to 8.82, we also heard examples of positive experiences; [].

¹⁰⁷¹ This survey includes a 5-point scale of poor, below average, average, good and excellent.

¹⁰⁷² [].

- 8.86 Of the respondents to the NZFGC’s members survey, nine in 10 relate commercial dealing ‘challenges’ with Foodstuffs NI.¹⁰⁷³ Foodstuffs NI is currently implementing a new centralised buying model, which has raised concerns for many suppliers.¹⁰⁷⁴ These changes may have been prominent in the minds of respondents. However, we also acknowledge that some suppliers have positive relationships with Foodstuffs NI.¹⁰⁷⁵
- 8.87 Previously concerns had been raised about Countdown’s business practices when dealing with some suppliers. These concerns were considered in our 2014 Progressive Enterprises investigation.¹⁰⁷⁶

Suppliers are concerned about the threat of having their products delisted by retailers

- 8.88 Given many suppliers’ dependence on the major grocery retailers for sales of their products, the possibility of having products delisted appears to be a major risk to their businesses. The threat of delisting a supplier’s products is a possible way a retailer could use its bargaining power to encourage a supplier to agree to its terms.
- 8.89 Retailers delisting products is not a problem in itself. It is reasonable for a retailer to seek to delist poorly performing products or suppliers, where this is based on genuine commercial reasons.¹⁰⁷⁷ However, threats of delisting are potentially an issue where they are used to encourage suppliers to agree to terms which could reduce competition, either between retailers or suppliers.
- 8.90 Threats of delisting suppliers’ products appear to be very common. The NZFGC’s survey of its members found that 82% of respondents have been threatened with deletion for not agreeing to a retailer’s terms or margins.¹⁰⁷⁸

¹⁰⁷³ Blackmarket Research “Project: NZFGC, Hexis Quadrant: NZFGC members survey” (February 2021) at slide 15. 159 NZFGC members responded to the survey.

¹⁰⁷⁴ []; [].

Foodstuffs NI has acknowledged the concerns expressed by suppliers and current sentiment, particularly arising from its centralised buying model. See Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [334.1].

¹⁰⁷⁵ For example, 77% of exhibitors who completed an online survey after the 2021 Foodstuffs Expo reported a positive relationship with Foodstuffs NI, [].

¹⁰⁷⁶ Commerce Commission “Progressive Enterprises Limited: investigation closure report” (20 November 2014), available at: https://comcom.govt.nz/_data/assets/pdf_file/0033/94767/Progressive-Enterprises-Limited-Investigation-closure-report-20-November-2014.pdf. See paragraphs 8.42 to 8.44 above for further discussion.

¹⁰⁷⁷ For example, this could include failure to meet agreed quality or quantity requirements, failure to meet agreed commercial sales or profitability targets, or persistent failure to agreed delivery requirements.

¹⁰⁷⁸ Blackmarket Research “Project: NZFGC, Hexis Quadrant: NZFGC members survey” (February 2021), at slides 23 and 35. We were not consulted in the design of this survey, given it was undertaken on behalf of the NZFGC.

- 8.91 We have heard examples of suppliers allegedly being threatened with delisting of their products by the major grocery retailers, or facing other consequences, where:¹⁰⁷⁹
- 8.91.1 a supplier is refusing to agree to changes to a supply contract proposed by a retailer;
 - 8.91.2 a supplier's products are not meeting the retailer's margin expectations; or
 - 8.91.3 a supplier attempts to increase its prices.
- 8.92 We have been told that threats of delisting are often not expressed explicitly, but suppliers can perceive certain comments as implied threats. Some examples of language that suppliers have reported retailers using include:
- 8.92.1 "you are risking your position in the category";¹⁰⁸⁰
 - 8.92.2 "you have a long tail of products that look vulnerable";¹⁰⁸¹ or
 - 8.92.3 please contact us so we can "guide you through the full implications".¹⁰⁸²

We have categorised potentially harmful conduct by retailers into three main themes

- 8.93 In this study we have grouped feedback received from suppliers into themes, rather than focussing on specific examples of conduct by particular retailers. The underlying balance of bargaining power between grocery retailers and suppliers, and how this ultimately affects consumers, is of greatest interest to us in this study. As one interviewee commented, significant changes in a retailer's behaviour towards its suppliers are "just a leadership change away".¹⁰⁸³
- 8.94 We expect that retailers will negotiate hard to get the best deals they can from their suppliers. This is normal commercial practice for a business seeking to maximise its profits. It can also benefit consumers where better wholesale purchasing terms are passed through to retail prices.
- 8.95 However, we have heard examples which suggest that in some cases the major grocery retailers are using their strong negotiating position (including threats of delisting) to:¹⁰⁸⁴
- 8.95.1 transfer retail costs and risks onto suppliers;

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These themes, including the potential impact on outcomes for consumers, are described in more detail in paragraphs 8.102 to 8.152 below.

- 8.95.2 reduce transparency and certainty over terms of supply; and
- 8.95.3 limit suppliers' ability or incentive to provide favourable supply terms to other retailers.
- 8.96 Suppliers' incentives to innovate and invest are likely to be adversely affected by this conduct. Suppliers have highlighted the downwards pressure on their margins through their negotiations with the major grocery retailers, due to their relatively weak bargaining positions. For example, Horticulture NZ submitted:¹⁰⁸⁵
- The supermarket duopoly means growers have limited market opportunity for selling. This, as has been shown by our study, results in growers being unable to maintain their margins in the face of increasing costs.
- 8.97 Consumers are ultimately likely to be harmed by this conduct, for example, through lower-quality products and less choice. We have heard examples of:
- 8.97.1 reduced product quality, due to suppliers sourcing cheaper inputs when facing lower margins;¹⁰⁸⁶
- 8.97.2 smaller pack sizes for products, due to suppliers seeking to reduce the cost per unit in response to margin pressure;¹⁰⁸⁷
- 8.97.3 less choice for consumers due to lower investment by suppliers in research and development for new products;¹⁰⁸⁸
- 8.97.4 factory closures leading to removal of products which were specific to the New Zealand market;¹⁰⁸⁹ and
- 8.97.5 products which were very popular among consumers in a product category being delisted because the supplier did not lower prices to meet a retailer's margin expectations.¹⁰⁹⁰
- 8.98 Some of the examples we have heard about during our study may appear relatively minor in isolation. However, our view is that when considered together, they suggest the major grocery retailers are exercising buyer power in ways that are likely to ultimately harm consumers.

¹⁰⁸⁵ Horticulture NZ "Submission on retail grocery market study preliminary issues paper" (9 February 2021) at 2. Horticulture NZ also submitted that "the study should enquire into the margin that growers are receiving to ascertain whether anticompetitive pressures from the existing system are forcing unprofitable trading situations". Our profitability analysis (as discussed in Chapter 3 and Attachment B) focuses on grocery retailers. It is difficult to assess supplier profitability given the large number of suppliers and the wide range of products in the grocery sector.

¹⁰⁸⁶ [].

¹⁰⁸⁷ [].

¹⁰⁸⁸ [].

¹⁰⁸⁹ [].

¹⁰⁹⁰ [].

- 8.99 Many of the examples discussed below are similar to issues raised by the NZFGC in its submission on our preliminary issues paper and draft report.¹⁰⁹¹ In response to this submission, Foodstuffs NI noted that it was “surprised by the allegations in the submissions, particularly given ... the range of forums designed to allow suppliers (including through the NZFGC on an anonymous basis) to raise the issues the submissions allege occur on a systemic basis”.¹⁰⁹² Additionally, Woolworths NZ have noted the issues raised by the NZFGC have not been raised with Woolworths NZ, and appear to be unsubstantiated.¹⁰⁹³
- 8.100 It is possible that the discrepancy between the positions of the NZFGC and major grocery retailers reflects suppliers’ reluctance to raise issues for fear of retribution (as discussed in paragraph 8.78 above).¹⁰⁹⁴
- 8.101 Foodstuffs NI and Foodstuffs SI submitted that due to limitations of the information available to us, the evidence we have relied on is not sufficient to draw the conclusion in paragraph 8.98 above.¹⁰⁹⁵ However, suppliers have only been willing to approach us on a confidential basis, which prevents sharing of specific details with the major grocery retailers. While we acknowledge that some suppliers will be in stronger bargaining positions to others, we consider the information we have gathered during our study strongly suggests that:¹⁰⁹⁶
- 8.101.1 the major grocery retailers are generally in a much stronger negotiating position than most of their suppliers;
 - 8.101.2 there are examples of the major grocery retailers using their strong negotiating positions in ways that are likely to adversely affect suppliers’ incentives to innovate and invest; and
 - 8.101.3 where suppliers are unable to provide competitive supply, or unable to innovate, this will ultimately impact on consumers and may limit competition.

¹⁰⁹¹ NZFGC “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at [174]; NZFGC “Submission on Market study into grocery sector draft report” (26 August 2021) at [6.15]-[6.16].

¹⁰⁹² Foodstuffs NI “Comments on submissions on preliminary issues paper” (12 April 2021) at 8.

¹⁰⁹³ Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [17.1].

¹⁰⁹⁴ Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 28 (lines 6-14).

¹⁰⁹⁵ Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [157]-[159]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [134]-[136].

¹⁰⁹⁶ As discussed in paragraphs 8.45 to 8.48 above, sources of information we have relied on include our supplier survey, meetings with suppliers and supplier associations, information provided by retailers regarding their grocery procurement practices in response to our information requests, information about interactions between retailers and suppliers provided to us by industry participants, submissions on our preliminary issues paper and draft report, discussion at our consultation conference and subsequent cross-submissions.

Transfer of costs and risks from retailers to suppliers

- 8.102 Appropriate risk allocation between parties is an important feature of well-functioning markets. It is normal for businesses to be exposed to risk. However, in a workably competitive market, risks tend to be allocated to the party best placed to manage them.¹⁰⁹⁷
- 8.103 Suppliers bearing costs and risks that they are not best placed to manage may adversely affect their ability to invest and innovate. This could lead to reduced capacity, reduced product quality and fewer new product offerings by suppliers.¹⁰⁹⁸ Ultimately consumers are likely to face reduced choice and lower-quality products.
- 8.104 Examples we have heard of the major grocery retailers appearing to inefficiently transfer costs and risks onto suppliers include:
- 8.104.1 suppliers bearing a disproportionate share of the costs and risks of retail promotional discounts (including overordering by retailers), given the benefits are shared between suppliers and retailers;
 - 8.104.2 retailers expecting suppliers to pay for merchandising;
 - 8.104.3 retailers seeking payments from suppliers for damaged, unsaleable, or lost stock that occurred while the retailers were in possession of the products; and
 - 8.104.4 standard invoice settlement terms which include extended payment terms for retailers.

Suppliers bear the costs and risks of retail promotional discounts, including overordering by retailers

- 8.105 Retailers and suppliers can both benefit from retail pricing promotions, because discounted prices can be expected to increase sales volumes for products on promotion.

¹⁰⁹⁷ Commerce Commission “Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper” (22 December 2010) at [2.6.4] (bullet point 6).

¹⁰⁹⁸ UK Competition Commission “The supply of groceries in the UK market investigation” (30 April 2008) at [9.5], available at: https://webarchive.nationalarchives.gov.uk/20140402235418/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2008/fulltext/538.pdf.

8.106 Suppliers often contribute to the funding of retail pricing promotions. Suppliers have told us that when a retail pricing promotion is run, they can be expected to maintain the retailer’s margin on the product.¹⁰⁹⁹ However, we have also heard examples where promotional discounts are partially funded by the retailer.¹¹⁰⁰

8.107 We have been told that promotional funding is offered by suppliers because it enables suppliers to differentiate their brands and compete for market share. Supplier-controlled promotional funding is a global dynamic and more pronounced with large multinational suppliers.¹¹⁰¹

8.108 Supplier funding of promotions can operate in different ways. For example:

8.108.1 There can be a buy-in period in advance of a promotion, where the retailer purchases stock at a reduced price from the supplier. The retailer then drops its retail price during the promotional period.

8.108.2 Promotions can be run based on scanned volumes, where the supplier compensates the retailer for the cost of the promotion based on the actual volume of sales scanned through the checkout during the promotional period.

8.109 We have heard from suppliers that it is common for certain retailers to stockpile products purchased from a supplier at a reduced price during the buy-in period.¹¹⁰² This is referred to as ‘investment buying’ or ‘forward buying’. The retailer then earns extra margin on sales of these products after the promotional period ends, but the benefits to the supplier of increased sales volumes generated by the promotion are no longer available.

¹⁰⁹⁹ For example: [];
[].

¹¹⁰⁰ []; [].

¹¹⁰¹ [];
[];
[].

¹¹⁰² [].

- 8.110 Investment buying may enable retailers to offer lower prices outside of promotional periods. Foodstuffs NI and Foodstuffs SI noted that forward buying is used with the consent of the supplier, and that it enables their member stores to offer value to customers over a longer period than the specific promotional period.¹¹⁰³
- 8.111 Investment buying leads to significant fluctuations in volume, potentially creating supply chain inefficiencies for both suppliers and retailers.¹¹⁰⁴ A supplier needs to carefully manage its production facilities to ensure it is able to meet demand during peaks in order volumes.¹¹⁰⁵ Retailers need to store products they investment buy, reducing the space available for other products.
- 8.112 Investment buying also potentially leads to a lack of transparency over prices paid to suppliers. We have heard of a retailer attempting to quantify the financial benefit they receive from investment buying, and then claiming an additional discount where they are not able to stock up.¹¹⁰⁶

¹¹⁰³ Foodstuffs NI submitted: “FSNI stores may forward buy products at the promotion cost price to enable stores to offer value to customers over a period longer than the specific promotion. Forward buying by a store is with the consent of the supplier and where the supplier is concerned a supplier may look to restrict the amount a store can purchase via an allocation of stock or a retrospective product cost price discount based on volume of retail sales (i.e., scan)”, Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at Appendix D [6.2]; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [346]-[350]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [315].

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[

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¹¹⁰⁵ The supplier may also need to finance a lean period with reduced volumes until the next promotion.

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[].

- 8.117.3 a supplier’s merchandisers dealing with a relatively narrow range of products (compared to a retailer who is able to merchandise across their full range).
- 8.118 However, other suppliers have indicated that they prefer to have their own merchandisers go into retailers’ stores, because it gives them greater control over how their products are stocked and displayed. In some cases, we have been told that this is due to a lack of trust in the retailer to do the merchandising well.¹¹¹²
- 8.119 Regardless of whether the retailer or supplier undertakes the merchandising, we understand that the supplier is often expected to meet the cost.¹¹¹³ Given that both parties benefit from merchandising, they could be expected to share the costs.
- 8.119.1 Where a supplier employs or contracts its own merchandisers, the supplier will pay them directly.
- 8.119.2 Where the retailer undertakes the merchandising, the supplier may be expected to finance this (for example, through a discount or rebate).¹¹¹⁴
- 8.119.3 We are also aware of examples of retailers charging suppliers fees for not providing merchandising support.¹¹¹⁵
- 8.120 Foodstuffs NI has noted it sees benefits to increasing the transparency of terms of how merchandising activities and costs are allocated. It also sees efficiency gains from stores undertaking a greater level of merchandising on terms that are agreed with suppliers.¹¹¹⁶

¹¹¹² []; []. In a workably competitive market, we would expect retailers to have strong incentives to undertake merchandising well, because otherwise they would risk losing significant sales to other retailers.

¹¹¹³ Foodstuffs NI has stated: “In many instances suppliers and stores agree the level of Merchandising to be provided in store and where a supplier is not willing or able to meet the agreed level (this can be for various reasons) some suppliers agree to pay the stores to arrange for people to complete the Merchandising of shelves. Suppliers can choose not to enter into such agreements.” Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at Appendix D [1.4].

¹¹¹⁴ []; []; [].

¹¹¹⁵ []; [].

¹¹¹⁶ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [351]. [].

- 8.121 Merchandising fees charged by retailers may be high relative to the costs involved. A supplier told us that it is more affordable to undertake merchandising itself, than pay the merchandising fees expected by a retailer.¹¹¹⁷

Retailers seeking payments from suppliers for damaged, unsaleable, or lost stock

- 8.122 Products are sometimes damaged, unsaleable or lost in retail grocery stores. This is referred to as shrinkage and wastage.

8.122.1 Shrinkage refers to a loss of grocery products due to theft, other loss or accounting error.

8.122.2 Wastage refers to grocery products that are unfit for sale, for example, due to damage.

- 8.123 Suppliers are often expected to meet at least part of the cost of shrinkage and wastage that occurs after the retailer has taken possession of the products.¹¹¹⁸ This can occur through either:

8.123.1 a fixed percentage deduction off their invoices to retailers, which can be referred to as a 'minor damage allowance' (MDA), damaged product allowance (DPA) or 'ullage' term;¹¹¹⁹ and/or

8.123.2 compensating retailers for ad hoc credit requests.

- 8.124 Suppliers have told us that in many cases credit requests which they consider unreasonable have been made by grocery retailers. In some cases this has occurred even when the supplier has already agreed to a MDA, DPA or ullage term.¹¹²⁰ We have heard examples of retailers making credit requests for:

8.124.1 products damaged in retailers' stores, without evidence;¹¹²¹

¹¹¹⁷ [].

¹¹¹⁸ Foodstuffs NI stated that: "Shrinkage, waste and damage are funded by either the store or the supplier depending on the circumstances", Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at Appendix D [1.5]-[1.6].

¹¹¹⁹ Foodstuffs NI stated: "MDA is designed to improve efficiencies for both suppliers and stores when dealing with minor damages and credits", Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at Appendix D [2.6];

[]; [];

[].

¹¹²⁰ []; [];

[].

¹¹²¹ []; [].

- 8.124.2 stock that could not be located as part of a stock count;¹¹²² and
- 8.124.3 perishable stock that they were unable to sell.¹¹²³
- 8.125 We are aware of allegations of suppliers being threatened with having products delisted if they refuse to compensate for credit requests they consider unreasonable.¹¹²⁴
- 8.126 These examples suggest that, at least in some cases, retailers are using their strong bargaining position to transfer risks to suppliers. A supplier has little or no ability to manage the risk of shrinkage or wastage that occurs once the retailer has taken possession of products. Further, the strong bargaining positioning of the major grocery retailers means suppliers may have few alternatives to accepting the retailers' terms regarding damaged products or providing compensation for credit requests.
- 8.127 Foodstuffs NI and Foodstuffs SI submitted that the MDA and DPA are efficient approaches to managing the costs of damaged products and minor faults. Foodstuffs NI have stated that unreasonable credit requests (and associated threats of deletion) would not be acceptable.¹¹²⁵

Standard invoice settlement terms which include extended payment terms for retailers

- 8.128 Suppliers have told us that invoice settlement terms significantly favour large retailers. We understand that standard practice in the New Zealand grocery industry is a 2.5% settlement discount, which is deducted by the retailer for payments made by the last trading day of the month following the date of the invoice.¹¹²⁶
- 8.129 Some suppliers have raised concerns that they effectively provide retailers with cheap funding due to the long standard settlement terms.¹¹²⁷ A supplier can wait up to 60 days to have an invoice paid, and the retailer will still receive the settlement discount.¹¹²⁸

¹¹²² [].

¹¹²³ [].

¹¹²⁴ [];
[].

¹¹²⁵ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [352]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [316].

¹¹²⁶ Foodstuffs SI "Supplier terms of trade" (28 August 2020) at 1, available at: <https://suppliers.foodstuffs.co.nz/assets/documents/FSSI-Charge-Through-Terms-of-Trade-August-2020.pdf>.

¹¹²⁷ [].

¹¹²⁸ [];
[].

8.130 Extended payment terms push extra cost onto suppliers, which may be much smaller businesses who are less able to manage this. As MBIE noted in a recent discussion paper on business-to-business payment practices:¹¹²⁹

Good cash flow is crucial to a successful business. When customers take too long to pay it makes it harder for business to pay their own bills, increases businesses stress and forces them to waste valuable time and money chasing debts. It can keep businesses from growing; in the worst cases it can cause businesses to fail.

8.131 We understand that suppliers have the option of accepting a greater settlement discount to be paid more promptly.¹¹³⁰ Different settlement terms may also apply to different product categories.¹¹³¹ In addition, Woolworths NZ has noted that it has implemented shorter payment terms for small suppliers, offering them the ability to choose 14-day payment on standard settlement terms.¹¹³²

Reduced transparency and certainty over terms of supply

8.132 In well-functioning markets, market participants are able to make informed decisions. Suppliers or consumers not having enough information to make informed decisions can lead to inefficient outcomes.¹¹³³ This is because they may make production or consumption decisions which are not in their best interests.¹¹³⁴

8.133 We are aware of examples which suggest that in some cases major grocery retailers are reducing transparency over price and non-price terms of supply, placing undue uncertainty on suppliers. Examples include retailers:

- 8.133.1 not providing notice or clear justification for delisting products;
- 8.133.2 taking a long time to respond to supplier requests for price increases;
- 8.133.3 setting off amounts against supplier's invoices without prior consent; and

¹¹²⁹ MBIE "Discussion paper: Improving business-to-business payment practices in New Zealand" (February 2020) at 6, available at: <https://www.mbie.govt.nz/dmsdocument/11212-discussion-paper-improving-business-to-business-payment-practices>.

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¹¹³¹ Foodstuffs NI stated that "Different standards will apply across different categories with a number of categories being settled on 7-day terms eg, fresh suppliers are typically paid on shorter terms. In addition, the business has supported a number of small and local suppliers over the COVID-19 pandemic lockdowns and continues to do so", Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at Appendix D [3.3].

¹¹³² This applies to New Zealand suppliers which Woolworths NZ purchases less than \$250,000 of goods from each year and whose annual turnover is less than \$1m per annum, Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 42.

¹¹³³ In particular, there could be a loss of allocative and productive efficiency.

¹¹³⁴ ACCC "Perishable agricultural goods inquiry" (November 2020) at 9, available at: <https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>.

- 8.133.4 not committing to provide suppliers with promotional displays.
- 8.134 The uncertainty arising from this lack of transparency regarding terms of supply makes it difficult for suppliers to run their businesses. This is likely to affect suppliers' ability to make efficient investment decisions, affecting the quality and range of grocery products available for consumers.
- 8.135 Foodstuffs NI and Foodstuffs SI submitted that they have no interest in reducing transparency over price and non-price terms of supply. Foodstuffs NI and Foodstuffs SI see the lack of formal contracts and documentation as more of an indication of how practices have evolved in the sector from a cultural perspective rather than a deliberate strategy.¹¹³⁵

Retailers not providing notice or clear justification for delisting products

- 8.136 We have consistently heard of major grocery retailers delisting products with no (or very short) notice, or without clear justification.¹¹³⁶ We have also heard of retailers accepting new products with agreed performance criteria, then delisting the products months later citing different performance criteria.¹¹³⁷
- 8.137 A supplier indicated that in some cases it is unsure of the thresholds required to have their products ranged by retailers, even after asking. It noted that there are "clear rules on paper" regarding whether ranging should be accepted, but it has seen many examples where ranging is refused without commercial justification.¹¹³⁸
- 8.138 Unexpected product deletions and ranging decisions, which do not reflect genuine commercial reasons, could:¹¹³⁹
- 8.138.1 prevent efficient utilisation of supplier manufacturing facilities, which could reduce suppliers' competitiveness (and, in some cases, could cause suppliers to exit the market);
- 8.138.2 inhibit entry and expansion by suppliers; and

¹¹³⁵ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [353]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [317].

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¹¹³⁷ [
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¹¹³⁹ [As noted in footnote 1077, genuine commercial reasons could include failure to meet agreed quality or quantity requirements, failure to meet agreed commercial sales or profitability targets, or persistent failure to agreed delivery requirements.

8.138.3 reduce consumer choice, by limiting the range of products available on the shelves of retail grocery stores.

8.139 Foodstuffs NI and Foodstuffs SI have noted that ranging decisions and assessments are being made constantly, and are based on a number of considerations including product performance, innovations, and developments in product categories. They noted that finite shelf space and the significant pipeline of new products sometimes leads to products being deleted even where products are not performing poorly.¹¹⁴⁰

Retailers taking a long time to respond to supplier requests for price increases

8.140 Suppliers have raised concerns about the process for increasing the prices they charge retailers. We have heard examples of:

8.140.1 price increases being rejected by retailers, despite suppliers facing significant cost increases;¹¹⁴¹ and

8.140.2 significant delays in retailers responding to requests for price increases, with the process sometimes taking months.¹¹⁴²

8.141 Lengthy delays in responding to requests for price increases cause unnecessary uncertainty and cost for suppliers.

8.142 Suppliers being unable to raise prices to reflect legitimate cost increases, which do not reflect supplier inefficiency, could potentially affect product quality.¹¹⁴³ For example, suppliers may seek to use lower-quality inputs or reduce pack sizes.¹¹⁴⁴ Otherwise, the viability of a supplier's business may be at risk.

8.143 For Foodstuffs NI, the number of price increases appears to be a very low percentage of total products. Foodstuffs NI noted the monthly average number of articles with a supplier price increase was 336 across January to September 2021 (excluding fresh).¹¹⁴⁵ Foodstuffs NI noted that this is a 20% increase on the monthly average for the same period over the previous three years.¹¹⁴⁶

¹¹⁴⁰ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [354], Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [318].

¹¹⁴¹ [].

¹¹⁴² [];
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¹¹⁴³ Retailers resisting price increases caused by supplier inefficiency could benefit consumers and enhance competition at the supplier level.

¹¹⁴⁴ [];
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¹¹⁴⁵ In total, Foodstuffs NI stocks over 80,000 products (including fresh). Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [331.2] and [354].

¹¹⁴⁶ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [331.2].

Retailers setting off amounts against supplier’s invoices without prior consent

- 8.144 We have heard concerns about grocery retailers setting off amounts against supplier invoices without prior consent.¹¹⁴⁷ Set-off is where a retailer deducts any amounts it is owed by a supplier when paying a supplier’s invoice. This can occur where a retailer takes rebates which are not already deducted from the supplier’s invoice.
- 8.145 Concerns have been raised about retailers automatically deducting rebates off their payments to suppliers.¹¹⁴⁸ The supplier then needs to request a credit note from the retailer to check that the correct deductions have been made, which can take some time. If the supplier disagrees with the deduction the retailer has made, it then needs to try to get its money back.¹¹⁴⁹
- 8.146 We have been told that this approach to set-offs in the New Zealand grocery sector is relatively unusual compared to other industries (where set-offs are less common). This is likely to reflect the balance of power between grocery retailers and their suppliers.¹¹⁵⁰

Retailers not committing to provide suppliers with promotional displays

- 8.147 Concerns have been raised about suppliers paying for access to in-store displays, without any guarantee of receiving them. In particular, this can occur where suppliers pay for promotional displays through a fixed percentage of their retail sales.
- 8.148 We understand that suppliers paying for displays based on a fixed percentage of retail sales often do not receive any commitment for a certain number of displays.¹¹⁵¹ Some suppliers have told us they are receiving significantly fewer displays under this model, despite paying a similar amount to what they did for guaranteed displays in the past.¹¹⁵²

¹¹⁴⁷ [].

¹¹⁴⁸ [].

¹¹⁴⁹ [].

¹¹⁵⁰ [].

¹¹⁵¹ []; Foodstuffs NI noted that “Approximately 60% of displays are arranged through FSNI with the balance of displays recommended to stores enabling efficiency gains through less visits to stores, less time negotiating each display, significant reduction in administration time. These benefits flow to both the supplier and FSNI, Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at Appendix D [2.1].

¹¹⁵² []; [].

8.149 Suppliers have told us they fear they will have their products delisted, or face other consequences, if they do not agree to this model.¹¹⁵³

Retailers limiting suppliers’ ability or incentive to provide favourable supply terms to other retailers

8.150 We have heard examples of retailers appearing to seek to limit the ability of their suppliers to deal with other retailers. Several examples are discussed in Chapter 6, including:¹¹⁵⁴

8.150.1 retailers applying pressure for suppliers to not supply competing retail stores due to low retail pricing;

8.150.2 best price guarantee clauses in supply agreements potentially reducing competition between retailers; and

8.150.3 exclusive supply arrangements limiting other retailers’ access to certain brands of products.¹¹⁵⁵

8.151 These examples may reflect the strong bargaining position of retailers. Our understanding is that in some cases suppliers have agreed to terms which limit their ability to supply other retailers because they feel they have no choice.¹¹⁵⁶ This is due to the dependence on the volumes sold through certain retailers.¹¹⁵⁷

8.152 As discussed in Chapter 6, retailers seeking to limit suppliers’ ability to deal with other retailers in these ways potentially raises barriers to entry and expansion in the retail market. This is of particular concern given the New Zealand retail grocery market is highly concentrated.¹¹⁵⁸

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1154 See paragraphs 6.183 to 6.201 for further discussion of these examples.

1155 Including through the use of “exclusive packs”, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 13 (lines 6-14).

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See Chapter 5 for further discussion of the level of concentration in New Zealand’s retail grocery market.

There may be a slightly stronger tendency for pass-through of cost increases to consumers

- 8.153 For retailer buyer power to benefit consumers, better purchasing terms obtained by retailers would need to flow through to lower prices or other benefits (for example, increased range or product quality) for consumers of grocery products.
- 8.154 Our analysis of price-cost relationships described in Attachment D indicates that there may be a slightly stronger tendency for the major grocery retailers to pass through cost increases to consumers, compared to cost decreases. However, a very wide range of pass-through rates for individual combinations of products and stores within each retail banner was also found.¹¹⁵⁹

What effect are private label products having on competition between retailers and suppliers?

- 8.155 This section discusses the effect that private label products are having on competition in the New Zealand grocery market. It notes that:
- 8.155.1 private label products are provided by suppliers for sale under a retailer's own brand;
 - 8.155.2 private label sales in New Zealand are growing, but are relatively low compared to overseas markets;
 - 8.155.3 consumers can benefit from private labels, through lower prices and greater choice;
 - 8.155.4 private labels can also negatively affect the already weak bargaining position of grocery suppliers; and
 - 8.155.5 the overall long-term impact of private labels on outcomes for New Zealand consumers is unclear, but some aspects could harm competition.

Private label products are provided by suppliers for sale under a retailer's own brand

- 8.156 Private label grocery products (also known as home brands, own brands, store brands or generics) are products manufactured or provided by a company for sale under a retailer's brand. Private label products are generally produced by existing suppliers, who win the private label contract through a tender process.

¹¹⁵⁹ Attachment D acknowledges comments received from HoustonKemp, on behalf of Foodstuffs NI, regarding limitations of the pass-through analysis, Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition" (10 September 2021) at [137]-[148].

- 8.157 The major grocery retailers offer their own private label products in their stores. For example, Foodstuffs' private label brands include the Pams, Pams Superfoods, Pams Finest and Value ranges, and Woolworths NZ's private label brands include its Essentials, Countdown and Macro branded products. Woolworths NZ has noted that it offers more than 3,000 private label products across more than 250 sub-categories.¹¹⁶⁰
- 8.158 A supplier of private label products may also produce products under its own brand (supplier-branded products) in competition with private labels. Therefore, retailers selling private label products are both customers and competitors of branded suppliers. This can potentially lead to competition concerns where grocery retailers selling private label products possess market power.

Private label sales in New Zealand are growing, but are relatively low compared to overseas markets

- 8.159 The proportion of sales of private label products in New Zealand appears to be growing, but slowly.¹¹⁶¹
- 8.160 The penetration of private label products by sales revenue is relatively low in New Zealand compared to other jurisdictions. Boston Consulting Group and IRI data referred to by Woolworths NZ in its submission on our preliminary issues paper suggests private label penetration in New Zealand is 15% for edible goods and 10% for non-edible goods.¹¹⁶² This is lower than the other countries shown in Figure 8.3 below.¹¹⁶³
- 8.161 However, many other countries have large grocery retailers who carry a very high proportion of private label products (for example, Aldi).¹¹⁶⁴ This is likely to influence overall private label penetration in those countries.

¹¹⁶⁰ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 64.

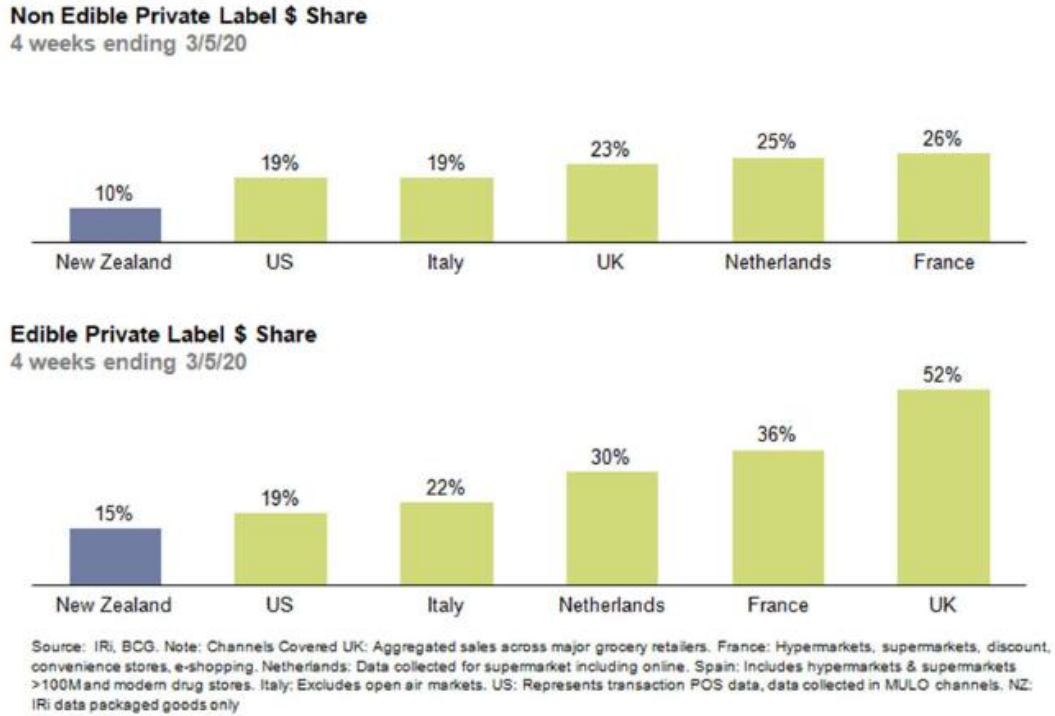
¹¹⁶¹ [];
[]].

¹¹⁶² Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 66.

¹¹⁶³ IRI reports that private-label brands in Australia have a 16.4% share. IRI "Market Moves 2020 Food & Grocery" (2021) at 40, available at: <https://www.iriworldwide.com/IRI/media/IRI-Clients/International/au/2020-MM-F-G-Presentation.pdf>.

¹¹⁶⁴ For example, in the US, a typical Aldi offers about 1,500 SKUs, with approximately 90% of these being private label products. See Forbes "Aldi, Right Moves - The German Grocer Sending Shock Waves Throughout Walmart and Kroger" (25 October 2019), available at: <https://www.forbes.com/sites/sanfordstein/2019/10/25/aldi-right-movesthe-german-grocer-sending-shock-waves-throughout-walmart-and-kroger/?sh=562af70c1bf7>.

Figure 8.3 Penetration of private label products by jurisdiction



Source: Woolworths NZ submission on our preliminary issues paper.¹¹⁶⁵

8.162 Penetration of private label products varies by product category. Some products, such as milk and baking needs (eg, flour) appear to have a relatively high proportion of private label sales.¹¹⁶⁶

Consumers can benefit from private labels, through lower prices and greater choice

8.163 Consumers may benefit from private label products through lower prices and greater choice. Ipsos found that many consumers welcome private labels “as an addition to their shop because they were more accessible for those on a set-budget and provided additional choice”.¹¹⁶⁷

8.164 Traditionally private labels were low priced, lower quality, alternatives to supplier-branded products. For example, analysis based on European markets published in 2012 found that prices of private label products were on average 30% less than equivalent national brands.¹¹⁶⁸

¹¹⁶⁵ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 66.

¹¹⁶⁶ []; [];

¹¹⁶⁷ Ipsos “Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report” (July 2021) at 12.

¹¹⁶⁸ SymphonyIRIGroup “Private Label in Europe 2012: Is there a limit to growth?” (October 2012), [].

- 8.165 However, private labels are increasingly also providing higher quality products for consumers than they did in the past.¹¹⁶⁹ Doyle and Murgatroyd (2011) note that while private labels initially expanded the market by introducing “value” or low-end alternatives, more recently they have engaged in head-on competition with supplier-branded products.¹¹⁷⁰ For example, in the New Zealand context:
- 8.165.1 Foodstuffs has its ‘Pams Finest’ range of products which are described as “gourmet and artisan”, “containing only the finest natural ingredients and no artificial colours or flavours”.¹¹⁷¹ Foodstuffs NI and Foodstuffs SI have noted that increased customer acceptance of its private label brand has enabled it to move to items that are less commoditised, such as the Pam Finest range;¹¹⁷² and
- 8.165.2 Woolworths NZ has its ‘Macro’ range of products, which it noted have “introduced new organic and wholesome product offerings across a range of categories”.¹¹⁷³
- 8.166 Retailers selling private label products could be considered a form of vertical integration, which could generate benefits by reducing transaction costs and aligning incentives. To the extent that suppliers have market power in a product category, private labels could reduce double marginalisation by reducing the extent to which the supplier and retailer both separately add mark-ups to their respective costs.¹¹⁷⁴
- 8.167 Private label products can also promote competition, facilitating entry or expansion by suppliers due to the large volumes these products can generate. For example, an existing supplier adding private label products to its manufacturing portfolio can potentially generate manufacturing efficiencies through the additional volumes produced in its factories.

¹¹⁶⁹ Nevo, Hila and Van den Bergh, Roger “Private Labels: Challenges for Competition Law and Economics” (2017) *World Competition* 40, no. 2 at 274, [].

¹¹⁷⁰ Chris Doyle and Richard Murgatroyd “The role of private labels in antitrust” (July 2011) *Journal of Competition Law & Economics*, 7(3) at 632, [].

¹¹⁷¹ “Pams Finest” <https://www.pams.co.nz/discover/pams-finest>.

¹¹⁷² Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [174.2]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [148.2].

¹¹⁷³ Woolworths NZ “Submission on retail grocery market study preliminary issues paper” (4 February 2021) at 65.

¹¹⁷⁴ Nevo, Hila and Van den Bergh, Roger “Private Labels: Challenges for Competition Law and Economics” (2017) *World Competition* 40, no. 2 at 282, []; Marc Sachon and Victor Martinez de Albeniz “Private label introduction: Does it benefit the supply chain?” *IESE Business School Working Paper WP-832* (November 2009) at 2, []; and Philippe Bontems, Sylvette Monier-Dilhan and Vincent Requillart “Strategic effects of private labels” *European Review of Agricultural Economics* Vol 26(2) (1999) at 147, [].

- 8.168 Submissions from the major grocery retailers referred to private label products having a positive impact on competition. Woolworths NZ noted that private label products:¹¹⁷⁵
- 8.168.1 are priced very competitively, providing great value and increased choice for New Zealand consumers;
 - 8.168.2 provide a value benchmark that suppliers need to be cognisant of when pricing their own products and, therefore, enhance price competition;
 - 8.168.3 enhance competition on innovation, quality, and variety between suppliers; and
 - 8.168.4 create growth opportunities for new suppliers to enter or expand by producing private label products on its behalf.
- 8.169 Foodstuffs NI and Foodstuffs SI stated that the development and supply of private label products enhances competition at the supplier level, is an important way retailers can respond to the market power of major global suppliers (particularly in product categories where there is high supplier concentration), is an important source of innovation, gives retailers greater influence over the supply chain, and enhances local manufacturing capacity.¹¹⁷⁶

Private labels can also negatively affect the already weak bargaining position of grocery suppliers

- 8.170 Private label products also have the potential to negatively affect the already weak bargaining position of grocery suppliers. Given that retailers selling private label products are both customers and competitors of suppliers, the retailers may have incentives to ensure their private labels receive preferential treatment to supplier-branded products.
- 8.171 The National Māori Authority has raised concerns about the purchasing power of the major grocery retailers that arises from importing cheaper goods to support their home brand goods.¹¹⁷⁷

¹¹⁷⁵ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 64-65; Woolworths NZ lists many recent examples of innovations and investments from suppliers of its private label products, Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [21.19.1]-[21.19.31].

¹¹⁷⁶ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [173]; Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [363]-[364]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [328]-[329].

¹¹⁷⁷ National Māori Authority "Post conference submission on Market study into grocery sector" (30 November 2021) at 6.

8.172 Nevo and Van den Bergh (2017) note that vertically-integrated retailers selling private label products weakens suppliers' bargaining positions, for two reasons:¹¹⁷⁸

8.172.1 At the supplier level, private labels give retailers additional outside options. In the food retailing industry, the bargaining power of retailers is positively correlated to a larger market share of their own-brand products.

8.172.2 Private labels turn retailers into competitors of supplier-branded products in the retail market. If the retail market is concentrated, large retailers may become a 'bottleneck' for supplier-branded products whose position has already been weakened in the upstream market.

8.173 Nevo and Van den Bergh (2017) note that there a range of ways retailers may seek to use their strong bargaining position against suppliers:¹¹⁷⁹

Major supermarkets may exploit the asymmetric dependency of brand manufacturers in several ways. A powerful retailer may utilize a broad range of practices to this end, from restrictive contractual obligations (e.g. access fee payments in exchange for entering a supermarket's product listing) to simply blocking access to its store. If branded products are de-listed, product variety will decline and price competition may dampen.

8.174 Similarly, Doyle and Murgatroyd (2011) refer to the potential for retailers to encourage consumers to purchase private labels over supplier-branded products:¹¹⁸⁰

Since retailers control the final sale of all products to consumers, branded and private label alike, they have the ability to "distort" their offerings so as to encourage consumers to purchase one product over another, for example by giving their private labels increased or preferential shelf-space, increased in-store promotion, raising the retail price of branded products, or ultimately by destocking brands altogether. Furthermore, in the case of private labels they may also have the incentive to do this because of the potentially higher margins available on such products, as the retailer earns both the upstream and downstream margins on their sale. Such distortions may serve to reduce inter-brand competition, with consumers facing a reduced range of products or higher prices, and manufacturers potentially having reduced incentives to invest in product quality and innovation.

¹¹⁷⁸ Nevo, Hila and Van den Bergh, Roger "Private Labels: Challenges for Competition Law and Economics" (2017) *World Competition* 40, no. 2 at 280, [].

¹¹⁷⁹ Nevo, Hila and Van den Bergh, Roger "Private Labels: Challenges for Competition Law and Economics" (2017) *World Competition* 40, no. 2 at 280, [].

¹¹⁸⁰ Chris Doyle and Richard Murgatroyd "The role of private labels in antitrust" (July 2011) *Journal of Competition Law & Economics*, 7(3) (July 2011) at 641, [].

- 8.175 Castalia, on behalf of the NZFGC, submitted that private labels are likely to accentuate and entrench the strong imbalance of bargaining power held by retailers in highly concentrated retail markets. Castalia's report found that the effects of private labels depend on the level of retail concentration in the market, and that given New Zealand is a highly concentrated retail market, private labels are highly likely to have a net negative long-term effect on consumer outcomes.¹¹⁸¹
- 8.175.1 NERA, on behalf of Woolworths NZ, noted limitations of Castalia's analysis, in particular that it presents no empirical evidence to support the claim that private labels are net detrimental for consumers in New Zealand.¹¹⁸²
- 8.175.2 HoustonKemp, on behalf of Foodstuffs NI and Foodstuffs SI, argued that Castalia's analysis does not appropriately consider the degree of supplier concentration at the product category level when assessing imbalances in bargaining power.¹¹⁸³ HoustonKemp also noted other assumptions in Castalia's analysis that it considers have been either overstated or have no empirical foundation.¹¹⁸⁴
- 8.176 We have heard several concerns about the impact of private label products in the New Zealand market during our study. These include:
- 8.176.1 retailers promoting their private labels in preference to supplier brands;
- 8.176.2 retailers using suppliers' intellectual property for their private label products; and
- 8.176.3 retailers leveraging information obtained through private label tenders when negotiating with suppliers.

¹¹⁸¹ NZFGC "Submission on Market study into grocery sector draft report: Attachment - Castalia - Private Labels, Buyer Power and Remedies in the NZ Grocery Sector" (26 August 2021) at 3-4.

¹¹⁸² Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-conference report" (24 November 2021) at [59]-[62].

¹¹⁸³ Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Private label products in retail grocery markets" (3 December 2021) at [27]-[29].

¹¹⁸⁴ Such as the high combined market share of the major grocery retailers, that retail competition is not effective, and that supplier price reductions are a result of private labels would not be passed through to consumers, Foodstuffs NI "Post conference submission on Market study into grocery sector: Attachment 4 - HoustonKemp - Private label products in retail grocery markets" (3 December 2021) at [9].

Retailers promoting their private labels in preference to supplier brands

- 8.177 A retailer selling private labels may have the ability and incentive to increase sales of its own branded products, by reducing competition from supplier-branded products. For example, this could occur if a retailer seeks to reduce sales of supplier-branded products by limiting consumers' access to them.¹¹⁸⁵ This risk is greater where the retailer has market power at the retail level, limiting suppliers' ability to switch to sell their products via other retailers.
- 8.178 Suppliers have raised concerns about private label products receiving preferential treatment compared to supplier-branded products. For example, we have heard examples of private label products receiving:
- 8.178.1 a disproportionate amount of shelf space relative to their market share in the product category,¹¹⁸⁶ and
 - 8.178.2 prime shelf locations and end of aisle displays ahead of supplier-branded products.¹¹⁸⁷
- 8.179 The major grocery retailers have stated that their private label teams are a separate part of their businesses, and that private label products compete for shelf space in the same way that branded products do.¹¹⁸⁸
- 8.180 Consumers have also raised concerns about retailers placing greater emphasis on private label products by reducing the range of supplier-branded products they stock (range consolidation). Ipsos stated:¹¹⁸⁹
- A few participants felt that store brands could be pushing out other suppliers, and if only the home brand is available, then it is about pricing out competitors. They worried that in the future they might lack choice and indicated that they did not want to be pushed to purchase only the store-brand product.

¹¹⁸⁵ This is referred to as 'customer foreclosure'. The incentive for customer foreclosure arises due to the nature of the vertical relationships between retailers and suppliers, where private labels turn retailers into competitors of supplier branded products in the retail market.

¹¹⁸⁶ []; [];

[].

¹¹⁸⁷ [].

¹¹⁸⁸ Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 33 (lines 2-7) and 40 (lines 5-11); Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [21.22]-[21.29]; Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [176]-[178]; Foodstuffs SI "Post conference submission on Market study into grocery sector" (3 December 2021) at [150]-[152].

¹¹⁸⁹ Ipsos "Consumer behaviour and preferences in the New Zealand retail grocery sector – Consumer study report" (July 2021) at 51.

- 8.181 Range consolidation can potentially lead to a significant reduction in the number of supplier-branded products competing with retailer's private labels.¹¹⁹⁰
- 8.182 Retailers placing greater emphasis on private label products, while significantly reducing the number of supplier-branded products, is likely to reduce consumer choice. This could reduce competition at the supplier level of the market, ultimately leading to higher prices and lower-quality products for consumers in the longer term.
- 8.183 There is also the potential for retailers to increase (or refuse to decrease) retail prices for supplier-branded products to encourage consumers to purchase their private label products. Alternatively, a retailer may keep prices for supplier-branded products volatile, to indicate sustainability and predictability of the private label choice.¹¹⁹¹ We have heard an example of a retailer refusing a proposed retail price reduction for a supplier's products because of the potential impact on sales of their private label products.¹¹⁹²
- 8.184 The NZFGC and Consumer NZ have submitted that private label products can create a price floor, as a retailer may not want competing branded products to be priced below their private label products. The NZFGC referred to comments made by its members (suppliers) that offers for better products at potentially lower prices have been rejected by retailers as these would be to the detriment the retailer's private label.¹¹⁹³

¹¹⁹⁰ For example:
[

];
[]].

¹¹⁹¹ Nevo, Hila and Van den Bergh, Roger "Private Labels: Challenges for Competition Law and Economics" (2017) *World Competition* 40, no. 2 at 275, []].

¹¹⁹² []]. As noted in paragraphs 8.105 to 8.108 above, suppliers typically fund retail pricing promotions.

¹¹⁹³ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.49]; Consumer NZ "Post conference submission on Market study into grocery sector" (18 November 2021) at 3.

- 8.185 Foodstuffs NI submitted that it does not establish or enforce price floors in this manner, rather it endeavours to negotiate best in market wholesale pricing to enable its retail stores to offer best in market retail pricing to its customers.¹¹⁹⁴ Woolworths NZ also provided examples of branded products being retailed at prices below that of its comparable private label product.¹¹⁹⁵

Retailers using suppliers' intellectual property for their private label products

- 8.186 Supplier-branded products tend to drive innovation and investment and some private labels seek to replicate successful products.¹¹⁹⁶ This raises concerns for suppliers about the use by retailers of their intellectual property for private label products.¹¹⁹⁷
- 8.187 Suppliers can seek to recover the cost of new product development through future sales of products carrying their brands. However, this relies on consumers being aware of, and attributing value to, suppliers' brands.
- 8.188 Some suppliers of fresh produce have told us that they have been required to provide their products as private labels, despite wanting to supply under their own brand.¹¹⁹⁸ Horticulture NZ submitted:¹¹⁹⁹

We have specific cases where growers have developed their own retail brands. Supermarkets have then forced these growers to relinquish their brands and pack into house branded packs. This maintains the ability of the supermarkets to "switch out" packers and rides over both grower IP development and competitive outcomes.

- 8.189 In its submission, the NZFGC also referred to examples of successful innovations in fresh produce leading to a major grocery retailer requesting these products become private labels.¹²⁰⁰ The NZFGC noted this is a powerful disincentive to invest in activities such as branding and packaging.¹²⁰¹

¹¹⁹⁴ Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at 110.

¹¹⁹⁵ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [21.23]-[21.23.8].

¹¹⁹⁶ [];
[

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¹¹⁹⁷ [].

¹¹⁹⁸ []; [].

¹¹⁹⁹ Horticulture NZ "Submission on retail grocery market study preliminary issues paper" (9 February 2021) at 4; [];
[].

¹²⁰⁰ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.44].

¹²⁰¹ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.43].

- 8.190 Requiring products to be provided as private labels, rather than under a suppliers' own brand, potentially reduces consumer awareness of supplier-branded products. We have heard this reduces suppliers' incentives to innovate and invest, which could ultimately lead to reduced choice and quality for consumers.¹²⁰² It also has the potential to reduce competition between products.
- 8.191 The NZFGC has also claimed that retailers have replicated branded products under their own private label using information acquired from suppliers of branded products. For example, it noted occurrences where retailers have obtained ingredients quantity and sourcing information from suppliers and used it to provide their own private label products.¹²⁰³
- 8.192 Foodstuffs NI acknowledged it asks for transparency in relation to ingredients and raw materials sources to ensure it meets food safety, corporate social responsibility, and ethical sourcing commitments and offers to sign non-disclosure agreements for concerned suppliers.¹²⁰⁴
- 8.193 Woolworths NZ has rejected suggestions of appropriation of intellectual property and noted that it is not aware of any claims against it in relation to intellectual property.¹²⁰⁵ Foodstuffs NI told us that Foodstuffs Own Brands is not aware of practices or examples relating to appropriating suppliers' intellectual property. However, retailers may acquire and use suppliers' information in the ways described above without infringing intellectual property rights.

Retailers leveraging information obtained through private label tenders when negotiating with suppliers

- 8.194 Retailers can potentially use information gained through hard fought tender processes for private label products to seek lower prices for supplier-branded products. Woolworths NZ has noted that private label products "provide a value benchmark that suppliers need to be cognisant of when pricing their own products and, therefore, enhance price competition".¹²⁰⁶
- 8.195 We agree with Woolworths NZ that private label products can enhance price competition between suppliers. For example, this could occur where retailers:
- 8.195.1 gather pricing information from private label tenders received from suppliers for a particular product; and

¹²⁰² [].

¹²⁰³ NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [6.42]-[6.43].

¹²⁰⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report – Appendix D" (10 September 2021) at row 10.1.

¹²⁰⁵ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [21.21]. Transcript of Grocery Market Study Conference - Day 3 (26 October 2021) at 33 (lines 14-18).

¹²⁰⁶ Woolworths NZ "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at 64.

- 8.195.2 use this pricing information revealed during the private label tender process to subsequently negotiate down prices for supplier-branded products.
- 8.196 However, when combined with retail market power, there is a risk that suppliers sell at lower prices to retailers without these price reductions being passed through to consumers. Retailers' margins would increase while retail prices remain relatively stable.¹²⁰⁷ This transfer of margins from suppliers to retailers could negatively affect suppliers' investment incentives, if suppliers' expected returns are reduced below the level expected under workable competition.

The overall long-term impact of private labels on outcomes for New Zealand consumers is unclear, but some aspects could harm competition

- 8.197 It is difficult to assess the overall impact of private label products on New Zealand consumers.
- 8.198 The proportion of sales of private label products in New Zealand appears to be growing slowly.¹²⁰⁸ Some retailers appear to be placing greater emphasis on private label products, through consolidation of the range of grocery products they stock.
- 8.199 While the introduction of private label products could increase consumer choice and lower prices in the short term, there is a risk that growth of private labels could crowd out supplier-branded products. This could lead to a loss of consumer choice and higher prices over the longer term. Nevo and Van den Bergh (2017) noted:¹²⁰⁹

From a short term perspective, no harm can be seen if consumers prefer a private label product over a branded one, enjoy a greater selection of products and profit from better prices. From a long term perspective, though, the competition effects of private labels in the downstream market are uncertain.

...

Private labels increase the bargaining power of large retailers and may broaden the scope for abuse of buyer power in upstream markets. The increasing size of discounts to be granted and the transfer of commercial risks may weaken the financial viability of manufacturers and reduce their incentives to innovate. Private labels can also be used strategically to limit competition in downstream markets (de-listing of branded goods), so that the overall price level of goods will increase in the long run. However, the empirical findings are yet indecisive in setting a clear correlation between private label and abusive buyer power. There is no significant relationship between the share of private label sales and customer choice but the likely negative impact on product innovation warrants caution.

¹²⁰⁷ As discussed in Attachment D, there is limited evidence that lower prices from suppliers are passed through to consumers as lower retail prices. See paragraphs D52 to D63 for further details.

¹²⁰⁸ See paragraph 8.159 above.

¹²⁰⁹ Nevo, Hila and Van den Bergh, Roger "Private Labels: Challenges for Competition Law and Economics" (2017) *World Competition* 40, no. 2 at 280 and 297-298, [].

- 8.200 We agree that the risk of private label products adversely affecting outcomes for consumers is greater when retail competition is relatively weak. Castalia (for the NZFGC) submitted that “[c]oncentration in the retail market plays a significant role in determining whether a private label is likely to have a detrimental effect on outcomes”.¹²¹⁰ A competitive retail market is likely to constrain the impact of private labels in a way that best reflects consumer preferences.¹²¹¹
- 8.201 The impact of private labels is likely to vary across different product categories, depending (among other things) on the proportion of sales of private labels for each product category. Suppliers in categories that have a higher penetration of private label sales may face a greater imbalance of bargaining power than in product categories where private label penetration is low.¹²¹²
- 8.202 At this stage, it is not clear whether the overall longer-term risks associated with private label products outweigh any potential benefits to consumers in the short term. However, there are specific ways in which retailer conduct regarding private labels is likely to harm competition, such as:
- 8.202.1 discriminating between own label and supplier-branded products (for example, when allocating shelf space);
 - 8.202.2 using suppliers’ intellectual property and reducing innovation; or
 - 8.202.3 a risk of increasing retailers’ buyer power, leading to further transfer of risks and reduced margins for suppliers.

¹²¹⁰ NZFGC “Submission on Market study into grocery sector draft report: Attachment - Castalia - Private Labels, Buyer Power and Remedies in the NZ Grocery Sector” (26 August 2021) at 3.

¹²¹¹ [].

¹²¹² Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 33 (lines 14-18) and 37 (lines 18-31). Paragraph 8.162 above identifies categories that appear to have higher private label penetration.

Chapter 9 Recommendations to enhance competition

Summary of recommendations

Recommendations to improve conditions for entry and expansion

- Recommendation 1: Improve the availability of sites for retail grocery stores under planning law
- Recommendation 2: Prohibit restrictive and exclusive covenants that inhibit retail grocery store development, and monitor land banking by the major grocery retailers
- Recommendation 3: Require the major grocery retailers to consider requests for wholesale supply in good faith, and meet associated disclosure obligations
- Recommendation 4: The next reviews of the Overseas Investment Act and Sale and Supply of Alcohol Act should consider whether they unduly impede entry or expansion by grocery retailers
- Recommendation 5: Monitor strategic conduct that affects the conditions of entry or expansion

Recommendations to improve competition for the acquisition of groceries

- Recommendation 6: Introduce a mandatory grocery code of conduct to govern relationships between the major grocery retailers and their suppliers
- Recommendation 7: Consider a statutory authorisation or exception for collective bargaining by grocery suppliers
- Recommendation 8: Amend the Fair Trading Act to strengthen the business-to-business unfair contract terms regime

Recommendations to improve the ability of consumers to make informed decisions

- Recommendation 9: The major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand
- Recommendation 10: Mandate the consistent display of unit pricing
- Recommendation 11: The major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use practices is clear and transparent
- Recommendation 12: The major grocery retailers should cooperate with price comparison services

Other recommendations

- Recommendation 13: Establish a grocery regulator and dispute resolution scheme
- Recommendation 14: Review the state of competition in the grocery sector three years after implementation of our recommendations, and collect information in the interim to support this review

Our approach

- 9.1 In this chapter we outline our recommendations to improve competition and produce better long-term market outcomes for consumers in terms of PQRS.
- 9.2 The Act provides us with a broad power to make recommendations as part of the final report. However, we are not required to make any recommendations. We only make recommendations below where the information before us suggests that they are likely to improve competition for the long-term benefit of New Zealand grocery consumers.
- 9.3 We sought comment on options for recommendations in our draft report. We also invited suggestions of other options for recommendations that could improve competition. In reaching our final recommendations, we have considered the comments and suggestions we heard in the consultation process.
- 9.4 In producing our final report, we have endeavoured to make recommendations that would most directly address the factors affecting competition that we have identified, are likely to improve competition, and are likely to be feasible. Where possible, we have made high-level judgements about the likely scale of the costs and benefits of our recommendations. However, we consider that formal cost-benefit analysis falls outside the scope of our study.
- 9.5 We also note that there may be other costs and benefits or policy considerations that we have not considered as they are outside the scope of our study and do not relate to competition. This analysis may be undertaken by policy makers while developing or giving effect to any Government decisions after considering our final report.
- 9.6 For example, some Māori contributors have advocated for, or commented on, options they consider might support Māori, hapū and iwi to achieve their aspirations of greater involvement in the retail grocery sector. We acknowledge the importance of these aspirations and the Government may wish to take these into account in its response to our study. We have taken them into account in framing our recommendations to the extent that they fall within the scope of our study.
- 9.7 Our recommendations are necessarily interdependent, and we acknowledge that changes in one part of the supply chain can have implications for other parts of the supply chain. These recommendations ought to be considered with reference to their interrelationship, their potential aggregate impact on the functioning of the supply chain, and their ultimate impact on competition in the grocery market.
- 9.8 Several of the recommendations outlined below are directed at industry participants, who we consider are best placed to implement them. Other recommendations that are of a regulatory nature, or relate to the establishment of new institutions, are directed at Government. We have also identified areas which, independent of this study, are relevant to the use of our compliance and enforcement functions and powers under the Fair Trading and Commerce Acts.

Overview of our recommendations

Recommendations to improve conditions for entry and expansion

- 9.9 We consider that the best way to improve competition is through measures that are likely to improve the conditions for entry and expansion, particularly to enable a greater range of grocery retailers that can offer consumers a convenient one-stop shopping option.
- 9.10 There are two main areas where we consider changes would be desirable to help facilitate an increase in the number of grocery retailers that compete effectively with the major grocery retailers:
- 9.10.1 The first is taking measures to make more sites available for grocery retailing. We recommend using a range of mechanisms under planning law to ensure sufficient land is available to enable choice in sites for new retail grocery stores. We also recommend prohibiting the use of restrictive covenants on land and exclusivity covenants in leases.
- 9.10.2 The second is improving availability of a wide range of wholesale groceries on reasonable terms. We consider that retail competition would be enhanced by one or more of the major grocery retailers offering wholesale supply of groceries to other retailers on a voluntary basis. To increase transparency and predictability regarding the development of commercial wholesale arrangements, we recommend some limited regulatory measures including an obligation to consider requests for supply in good faith.
- 9.11 We expect that making more sites available, and greater voluntary wholesale supply of groceries, would significantly improve the conditions for retail entry and expansion. Freeing up sites for supermarkets is critical to facilitating direct competition with the major grocery retailers. Wholesale supply of groceries on reasonable terms is expected to enable other fringe grocery retailers to compete more effectively on range and price. Wholesale supply could also provide a stepping-stone for new entrants as they grow and develop their own direct relationships with suppliers.
- 9.12 In addition, we recommend considering whether the Overseas Investment Act 2005 and Sale and Supply of Alcohol Act 2012 unduly impact on the conditions of entry and expansion, the next time this legislation is reviewed. We also recommend monitoring the major grocery retailers' use of best price clauses and exclusive supply agreements, which may impact on the conditions of entry and expansion.

Recommendations to improve competition for the acquisition of groceries

- 9.13 To address imbalances in bargaining power between the major grocery retailers and many of their suppliers, we recommend introducing a mandatory grocery code of conduct, considering enabling collective bargaining by suppliers, and strengthening provisions relating to unfair business-to-business contract terms in standard form contracts.
- 9.14 Combined, we expect these changes would limit the major grocery retailers' ability to use their strong negotiating position to require agreement to unfavourable contract terms and transfer risk onto suppliers. This should help ensure that supply terms are not unduly impacting on suppliers' ability to invest and innovate to produce grocery products that meet consumers' needs, or leading to inefficient exit of the market by suppliers.

Recommendations to improve the ability of consumers to make informed decisions

- 9.15 We recommend measures directed at improving the ability of consumers to make informed decisions. These include the introduction of mandatory unit pricing, as well as the major grocery retailers ensuring that their pricing and promotional practices, and the terms and conditions of their loyalty programmes, are clear and easy to understand. We expect these changes would help consumers make more informed purchasing decisions and improve consumers' confidence. This in turn should enhance competition at the retail level of the market.

Other recommendations

- 9.16 Finally, we recommend that a sector-specific regulator and dispute resolution scheme be established. A regulator could have responsibility for general oversight, monitoring, and reporting on the performance of the retail grocery sector. It could also have a range of specific responsibilities, including enforcing the grocery code of conduct, unit pricing regulation, and prohibitions on the use of covenants. A sector-specific regulator could also have a role in monitoring matters such as industry progress regarding voluntary wholesale supply arrangements, use of best price clauses and exclusive supply agreements, and the major grocery retailers' pricing and promotional practices and loyalty programme terms and conditions. A dispute resolution scheme would cover disputes relating to the code of conduct and voluntary wholesale supply of groceries.
- 9.17 We consider that, if implemented, these recommendations should contribute to a material improvement in the state of competition in the sector. In particular, they should increase the prospect of a greater range of retailers emerging that can meaningfully compete with the major grocery retailers by offering consumers a convenient one-stop shopping option. However, it is difficult to anticipate the exact likelihood or degree of improvements in competition that will arise as a result.

- 9.18 We have considered other options which could directly stimulate retail competition by offering consumers additional one-stop shopping options. This includes facilitation or sponsorship of entry by government, or requiring the major grocery retailers to sell some of their stores to create additional major grocery retailers. Many consider that such initiatives are necessary because New Zealand is a challenging market for a new entrant and no large-scale competitors can be expected to grow from the existing fringe of other grocery retailers under current market conditions. We recommend options intended to improve the conditions for competition and we consider that they should be implemented and tested before further considering whether other initiatives may be required.
- 9.19 Given this, we propose that a further review of the state of competition in the retail grocery sector be undertaken three years after the Government has implemented any reforms that it chooses to proceed with. Information on how competition has developed would be available at this point. If competition is still not working as well as it could after three years, the review could consider whether other initiatives are required.

Recommendations to improve conditions for entry and expansion

- 9.20 As discussed above, we consider that the best way to improve competition is through measures that are likely to improve the conditions for entry and expansion, particularly to enable a greater range of retailers that can meaningfully compete with the major grocery retailers by offering consumers a convenient one-stop shopping option. As discussed in Chapter 6, our view is that the New Zealand market could sustainably accommodate at least one more large-scale rival, and that reducing current constraints on entry and expansion would help to facilitate this.
- 9.21 This section discusses the following measures to improve the conditions of entry and expansion:
- 9.21.1 Recommendation 1: Improve the availability of sites for retail grocery stores under planning law;
 - 9.21.2 Recommendation 2: Prohibit restrictive and exclusive covenants that inhibit retail grocery store development, and monitor land banking by the major grocery retailers;
 - 9.21.3 Recommendation 3: Require the major grocery retailers to consider requests for wholesale supply in good faith, and meet associated disclosure obligations;
 - 9.21.4 Recommendation 4: The next reviews of the Overseas Investment Act and Sale and Supply of Alcohol Act should consider whether they unduly impede entry or expansion by grocery retailers; and
 - 9.21.5 Recommendation 5: Monitor strategic conduct that affects the conditions of entry or expansion.

- 9.22 We consider that these interventions are likely to increase the prospect of entry or expansion. Entry or expansion could deliver the following benefits:
- 9.22.1 more intense competition at the retail level and greater choice in terms of PQRS for consumers;
 - 9.22.2 greater innovation, improved productivity and/or efficiency at the retail level through different business structures;
 - 9.22.3 in conjunction with our recommendations relating to a code of conduct (discussed below), more balanced bargaining positions between suppliers and retailers, potentially enabling greater innovation and higher quality products; and
 - 9.22.4 a potentially greater range of grocery suppliers and associated products as a result of an improved ability for suppliers to grow supply through smaller increments of demand.
- 9.23 These interventions may also support the achievement of aspirations we heard from a number of Māori partners and stakeholders in terms of entry into the retail grocery sector.

Recommendation 1: Improve the availability of sites for retail grocery stores under planning law

- 9.24 As we discussed in Chapter 6, compliance with planning law – specifically the Resource Management Act 1991 (RMA) – is a necessary pre-requisite to any entry or expansion in retail grocery. This is particularly, but not exclusively, the case for bricks-and-mortar retailers.
- 9.25 We consider that planning law may materially affect the conditions of entry and expansion for grocery retailers. Submitters on our draft report generally agreed with this position, including the major grocery retailers, Te Waihanga – New Zealand Infrastructure Commission, and the New Zealand Initiative.¹²¹³
- 9.26 Planning law can affect the conditions of entry and expansion in multiple ways, including:
- 9.26.1 zoning rules significantly reducing the number of suitable sites available for retail grocery stores;
 - 9.26.2 businesses attempting to use planning law to hinder their competitors' access to or ability to develop suitable development sites; and

¹²¹³ Comments by NZ Initiative, Transcript of Grocery Market Study Conference – Day 5 (28 October 2021) at 20 (lines 7-14); Te Waihanga – New Zealand Infrastructure Commission “Submission on Market study into grocery sector draft report” (26 August 2021) at 2; Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at 78; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at 66; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 38.

- 9.26.3 rule setting, notification and consenting processes causing delay and uncertainty in the establishment or expansion of retail grocery stores or supporting operations (such as distribution facilities).
- 9.27 All of these matters raise the cost of, and potentially discourage, entry and expansion. This limits the ability of the major grocery retailers to compete with each other in some areas and limits the constraints they face from other grocery retailers. While our study is limited to factors affecting competition in the supply and acquisition of groceries, these points may also be of general application in other industry sectors.
- 9.28 Disputes between the major grocery retailers under the RMA appear to have been common. Partially in response to this, Part 11A of the RMA was inserted to limit trade competitors' use of the objection process under the RMA.¹²¹⁴ While Part 11A has placed some limits on such disputes, the information we have gathered suggests there is reason to believe that a number of other RMA-related barriers to developing a grocery store remain.
- 9.29 A review of determined RMA applications, in relation to retail grocery stores, suggests that applicants and decision-makers are not consistently taking into account, or placing significant weight on, the benefits to consumers that arise from increased actual or potential competition. This is perhaps because there is a lack of clarity as to whether provisions in the RMA such as section 104(3)(a), which were intended to deter trade competitors from using resource management processes to prevent rivals from competing in the same market, allow the consideration of the positive effects of competition.¹²¹⁵
- 9.30 In addition, as discussed in Chapter 6, the Courts have stated that, while they may not have regard to the direct effects of trade competition, it is legitimate to take into account flow-on 'retail distribution effects' such as a downturn in business in an existing shopping centre when considering a request for resource consent. We understand this to mean that decision-makers may choose to decline a consent if it would lead to a significant downturn in economic activity in existing retail or commercial centres.¹²¹⁶

¹²¹⁴ *General Distributors Ltd v Foodstuffs Properties (Wellington) Ltd* [2011] NZEnvC 212 (2011) 16 ELRNZ 573, [2012] NZRMA 215.

¹²¹⁵ Ministry for the Environment "Departmental Report on the Resource Management (Simplifying and Streamlining) Amendment Bill" (June 2009) at 82-87.

¹²¹⁶ *Westfield (New Zealand) Limited v North Short City Council* [2005] NZSC 17, [2005] 2 NZLR 597 at [119]-[120].

- 9.31 The Government recently undertook a full review of the RMA, and is in the process of developing legislation that will replace it. This will include a new Natural and Built Environments Act (NBA), and a Strategic Planning Act (SPA). The NBA will be underpinned by national direction in the form of a National Planning Framework (NPF).¹²¹⁷
- 9.32 In our draft report, we outlined options to incorporate competition considerations into the NBA through inclusion of competition as an environmental outcome to be promoted, as an implementation principle, and through natural and built environment plans.
- 9.33 Following the publication of our draft report, Parliament’s Environment Committee reported back on its consideration on the Natural and Built Environments Bill exposure draft, and recommended that the list of proposed environmental outcomes be consolidated.¹²¹⁸ The proposed consolidated list includes reference to:
- 9.33.1 enabling enough development for housing, business use, and primary production to meet the diverse and changing needs of people and communities; and
 - 9.33.2 an urban form that promotes economic, social, cultural, and environmental benefits.
- 9.34 Given the Committee’s recommendation to consolidate the list of the outcomes, and to amend the list of environmental outcomes to reference business use and economic benefits, we no longer consider that a separate outcome related to promoting competition is necessary. We also note that the Committee considered that further work is required on whether a list of overarching implementation principles is desirable.

¹²¹⁷ More information on the proposed new resource management system, including the respective roles of the NBA, SPA, and NPF, is available at Ministry for the Environment “Our future resource management system: Materials for discussion” (November 2021), available at: <https://environment.govt.nz/assets/publications/Our-future-resource-management-system-materials-for-discussion.pdf>.

¹²¹⁸ Environment Committee “Inquiry on the Natural and Built Environments Bill: Parliamentary Paper” (November 2021) https://www.parliament.nz/resource/en-NZ/SCR_116599/0935c4f14c63608e55c528b75167a69daee92254.

- 9.35 There are, however, a range of other more specific interventions that could operate alongside the overall purpose, outcomes and principles of the NBA to ensure that the planning system better promotes competition and ensures suitable sites are made available for retail grocery store development. In particular, we make the following recommendations:
- 9.35.1 Recommendation 1A: District Plans should include sufficient land that is zoned to enable choice in sites for the development of retail grocery stores;
 - 9.35.2 Recommendation 1B: The new planning system should require Regional Spatial Strategies to provide sufficient spare capacity to enable choice in sites for the development of retail grocery stores;
 - 9.35.3 Recommendation 1C: The new planning system should require every NBA plan to include a minimum proportion of urban land that is zoned for retail grocery stores;
 - 9.35.4 Recommendation 1D: The new planning system should limit the discretion available to decision-makers regarding the approval of retail grocery stores;
 - 9.35.5 Recommendation 1E: The positive outcomes of trade competition should be able to be considered in planning instruments under the NBA; and
 - 9.35.6 Recommendation 1F: Retail grocery store development should not be able to be declined on the basis of adverse retail distribution effects on existing commercial centres.
- 9.36 We elaborate on each of these below.
- 9.37 We consider that these recommendations should materially improve the conditions of entry and expansion for existing and new grocery retailers. We also consider that they can be implemented without unduly impacting on the purpose of the resource management system in terms of protecting and enhancing the natural environment.

Recommendation 1A: District Plans should include sufficient land that is zoned to enable choice in sites for the development of retail grocery stores

- 9.38 It will be a number of years before the NBA, and associated NPF and NBA plans become operative. In the interim, when undertaking a review of their District Plans under the existing RMA, we recommend that territorial authorities ensure that sufficient land is zoned to allow new retail grocery stores to be developed in places where there is demand, or may be demand in the future.

- 9.39 These plans should account for the different retail grocery store typologies and commercial models including small, medium, and large-format stores. We recommend that such plans avoid taking a prescriptive approach to where such stores should be developed, and should provide excess capacity so as to best enable competition to organically develop in line with demand.
- 9.40 Rather than simply reserving land for retail grocery stores, to ensure that capacity provided for stores in District Plans – particularly in existing brownfields areas – is put to good use, territorial authorities may wish to consider making greater use of mixed-use (and equivalent) zoning, to enable a range of activities to take place.
- 9.41 This recommendation builds upon the provisions contained in section 30 and 31 of the RMA, and requirements in the National Policy Statement on Urban Development 2020 (NPS-UD) that local authorities must provide at least sufficient development capacity to meet expected demand for business land from different business sectors in the short, medium, and long term. Under the NPS-UD, ‘sufficient’ includes a competitiveness margin of 15-20 per cent. However, we consider that, when territorial authorities are giving effect to the NPS-UD, a greater margin would better enable choice in sites and competition.¹²¹⁹

Recommendation 1B: The new planning system should require Regional Spatial Strategies to provide sufficient spare capacity to enable choice in sites for retail grocery stores

- 9.42 The SPA is intended to work alongside the NBA to promote a strategic, integrated and long-term approach to how land use is planned for, through mandating the use of Regional Spatial Strategies.
- 9.43 We recommend that the new planning system (via either the SPA or NPF) require Regional Spatial Strategies to provide for sufficient capacity for the development of retail grocery stores. This could be achieved by ensuring that sufficient capacity is provided for growth in retail and commercial activity over the short, medium, and long term, in a variety of locations, and a variety of typologies.

Recommendation 1C: The new planning system should require every NBA plan to include a minimum proportion of urban land that is zoned for retail grocery stores

- 9.44 As discussed in Chapter 6, a number of stakeholders have indicated that council zoning policies currently impose a material limit on the number of sites available for the purposes of retail grocery store development.
- 9.45 To address this, once the NBA is in effect, we recommend that the NPF include rules that ensure that each NBA plan provides for a certain proportion or quantity of urban land in each district to be zoned to allow the development of retail grocery stores. This proportion or quantity should be developed by Government in consultation with local government, Māori, and businesses. This principle could also be extended to other retail or commercial developments.

¹²¹⁹ National Policy Statement on Urban Development 2020 at [3.3] and [3.22].

- 9.46 As above, we recommend that the NPF ensure that NBA plans account for and enable different retail grocery store typologies, avoid taking a prescriptive approach to where retail grocery stores should be developed, and provide excess capacity to enable competition to organically develop in line with demand. To ensure that capacity provided is put to good use, the NPF could provide for joint planning committees to make greater use of mixed-use zoning.

Recommendation 1D: The new planning system should limit the discretion available to decision-makers regarding the approval of retail grocery stores

- 9.47 In seeking to ensure that NBA plans provide sufficient capacity for future retail grocery stores, we recommend that the planning system – either through the NBA or NPF – ensure that zoning also provides sufficient certainty that such activities can take place.
- 9.48 This may be best achieved by ensuring that retail grocery stores are either deemed ‘permitted’ or ‘controlled’, rather than ‘discretionary’.¹²²⁰ This would either remove the need for a consent, or limit the discretion available to decision-makers when considering a consent application. This principle could also be extended to other retail or commercial developments.
- 9.49 Decision-makers would still be able to impose a range of restrictions regarding height, bulk, setbacks, operating hours, noise, traffic management, and a range of other matters through NBA plans. However, including such conditions up-front in NBA plans, rather than at the case-by-case discretion of decision-makers, would promote certainty and reduce the cost of entry or expansion.

Recommendation 1E: The positive outcomes of trade competition should be able to be considered in planning instruments under the NBA

- 9.50 The RMA contains a range of provisions that seek to prevent the impact of activities on trade competition from being considered. These were intended to ensure that businesses were not able to oppose development by their competitors. However, there is a lack of clarity as to whether they allow the positive impacts of competition to be considered.
- 9.51 We consider that, under planning law, to the extent that decision-makers retain discretion as to whether a retail grocery store may be built, decision-makers should:
- 9.51.1 be able to take into account the benefits of increased competition that may flow from a development; and

¹²²⁰ See Ministry for the Environment “Our future resource management system: Materials for discussion” (November 2021) at 30-31 for definitions of proposed resource consent activity categories.

- 9.51.2 be able to take into account the detriments of decreased competition that may flow from a development;¹²²¹ but
- 9.51.3 not be able to take into account any harm that any individual competitor may suffer from increased competition; and
- 9.51.4 not be able to take into account any benefit that any individual competitor may receive from decreased competition.
- 9.52 To achieve this position, in developing the NBA, we consider that the references to trade competition and competitors in the RMA (such as in sections 61(3), 66(3), 74(3), and 104(3)(a)(i)) may need to be amended, to the extent that they are carried over to the NBA. We consider that Part 11A of the RMA, which provides that the RMA must not be used to oppose trade competitors, should be carried over to the NBA.

Recommendation 1F: Retail grocery store development should not be able to be declined on the basis of adverse retail distribution effects on existing commercial centres

- 9.53 In addition to uncertainty as to whether decision-makers may formally consider the positive impacts of competition under the RMA, when deciding whether or not to grant a resource consent, decision-makers may – in effect – choose to decline a consent if it would lead to a significant downturn in economic activity in existing retail or commercial centres. Such impacts are commonly referred to as ‘adverse retail distribution effects’.
- 9.54 Part of this appears to hang on the definition of “environment” in the RMA, which includes social, economic, aesthetic, and cultural conditions and their effect on people, communities, and amenity values. It also relates to the duty in the RMA to avoid, remedy, or mitigate adverse effects on the environment.¹²²²
- 9.55 The definition of the environment in the NBA exposure draft does not refer to amenity values. However, it still refers to the social, economic and cultural conditions that affect people and communities and the built environment they create. It also still includes a purpose of avoiding, remedying or mitigating adverse effects on the environment.¹²²³ As such, it appears that the NBA may continue to provide decision-makers – to the extent that they retain discretion about whether a retail grocery store may be built – with the ability to decline consents for retail grocery stores or other retail development on the basis that they may have a negative impact on existing commercial centres.

¹²²¹ For example, if there is only limited land available that is suitable for particular commercial activity (such as a port), and a resource consent is sought to rezone that land for residential housing.

¹²²² Sections 2 and 17 of the Resource Management Act respectively.

¹²²³ Sections 3 and 5 of the exposure draft of the Natural and Built Environments Bill
https://www.parliament.nz/resource/en-NZ/PAP_112017/9dc086f746eacef36a4b75ab6602f67f2ffe1e2e.

- 9.56 We recommend that the NBA does not provide an ability for retail grocery store developments to be declined solely or predominantly on the basis of adverse retail distribution effects on existing commercial centres. This principle could also be extended to other retail or commercial developments.

Recommendation 2: Prohibit restrictive and exclusive covenants that inhibit retail grocery store development, and monitor land banking by the major grocery retailers

- 9.57 In Chapter 6 we explained that we have identified a large number of restrictive covenants on sites, and exclusivity covenants in lease agreements, that could be used to prevent parties from selling groceries.
- 9.57.1 A restrictive covenant is a promise not to do something that is registered against land and imposes restrictions on how that land can be developed or used. Restrictive covenants are attached to or run with land, meaning that they bind any third parties who subsequently acquire (or lease) that land.
- 9.57.2 Exclusivity covenants are provisions contained in lease agreements that restrict competitors from operating in the same shopping centre. The exclusivity covenants we have identified generally have durations of 20 or more years (after taking into account rights of renewal).
- 9.58 Such covenants are likely to reduce market participants' ability to access suitable sites and may hinder and raise the cost of entry and expansion. This is particularly so in developed urban areas where the cost of land is high and the number of available and suitable sites is likely to be low. As such, covenants are likely to have more impact on the conditions of entry and expansion in situations when planning law is relatively restrictive than in situations where it is permissive.
- 9.59 As discussed in Chapter 6, some stakeholders have argued that there can be pro-competitive rationales for the use of both restrictive covenants and exclusivity covenants in leases. This includes the use of exclusivity covenants as a means of attracting grocery stores as anchor tenants of a shopping centre. However, overall, we consider that the use of these covenants is likely to unduly restrict retail competition in the retail grocery sector, and that changes to the practice of lodging covenants restricting the development of supermarket or other grocery retailers would improve the conditions for entry and expansion.
- 9.60 The major grocery retailers have indicated that they have not found restrictive and exclusivity covenants to be a significant constraint on their ability to acquire sites. However, the fact that covenants have (at least until the commencement of our study) continued to be used suggests that they have value to the party imposing the constraint in terms of impeding entry or expansion. In addition, Woolworths NZ has acknowledged that actions taken by the ACCC to address exclusivity covenants in leases in Australia have had a positive impact on competition.

- 9.61 Submissions on our draft report (including by the major grocery retailers) were generally supportive of improving site availability by addressing restrictive covenants and exclusivity covenants in leases.¹²²⁴ For example:
- 9.61.1 Woolworths NZ has indicated support for making restrictive and exclusivity covenants unenforceable after a certain period following investment in a new site.
 - 9.61.2 Foodstuffs South Island indicated it is generally supportive of removing existing restrictive covenants on land, is willing to provide a binding undertaking that any covenants would not be enforced on land that has been sold, would not register new restrictive covenants on land as part of the process of selling property, and is supportive of a review of the use of covenants in other contexts.
 - 9.61.3 Foodstuffs North Island indicated a willingness to immediately start the process to remove all existing restrictive land covenants and exclusivity provisions in leases, and to make no further use of them, and is supportive of the development and implementation of an industry-wide solution addressing restrictive covenants and exclusivity provisions in leases. Foodstuffs North Island has advised that, following submissions, it has already removed a number of restrictive covenants that were formerly in place.¹²²⁵
- 9.62 However, as outlined in our draft report, and confirmed by the major grocery retailers in their submissions, the major grocery retailers may face practical difficulties in removing existing restrictive covenants on a voluntary basis. Even where records have been kept of existing covenants, removing them would require the support of other affected parties, such as the current owner. Proceedings under the Property Law Act 2007 may be required.
- 9.63 Section 27 and 28 of the Commerce Act 1986 already apply to exclusivity clauses in leases and restrictive covenants, respectively. However, establishing breach requires an assessment of local competition conditions on a case-by-case basis, in each relevant geographic market. A new entrant attempting to achieve scale would need access to sites for grocery retailing in multiple locations, and taking legal proceedings in an attempt to obtain appropriate sites would add significant cost, delay and uncertainty.

¹²²⁴ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [370]-[372]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [358]-[363]; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [13.1]-[13.2.2].

¹²²⁵ Foodstuffs NI “FSNI provides update on Action Plan ahead of grocery sector market study final report” (23 February 2022) <https://www.foodstuffs.co.nz/news-room/fsni-provides-update-on-action-plan-ahead-of-grocery-sector-market-study-final-report>.

- 9.64 Given this, to address the practical barriers to the voluntary removal of covenants that the major grocery retailers have identified, provide an enduring solution to the issue, and address the barriers to enforcement associated with sections 27 and 28 described above, we make the following recommendations:
- 9.64.1 Recommendation 2A: Prohibit restrictive covenants that relate to the development of retail grocery stores;
 - 9.64.2 Recommendation 2B: Prohibit exclusive covenants in leases that relate to the operation of retail grocery stores; and
 - 9.64.3 Recommendation 2C: Monitor land banking by the major grocery retailers.
- 9.65 We elaborate on each of these below.
- 9.66 We consider that these recommendations should complement our recommended changes to planning law to materially improve the conditions of entry and expansion for existing and potential grocery retailers. As discussed below, there appear to be limited pro-competitive rationales for the use of restrictive and exclusive covenants, and we consider that the costs of these interventions are likely to be limited.
- 9.67 Independent of this study, we have been reviewing whether there are any historic or ongoing matters raised in the context of the use of restrictive covenants and exclusive covenants in leases that might be at risk of breaching the Commerce Act 1986. We will continue to consider whether all or some of these matters warrant prioritisation for further investigation. When considering whether to investigate, we may have regard to the extent to which the major grocery retailers give effect to their commitments as outlined above, as well as whether our recommendations are taken up by Government.

Recommendation 2A: Prohibit restrictive covenants that relate to the development of retail grocery stores

- 9.68 We recommend that the Government prohibit the use of restrictive covenants that relate to the development of retail grocery stores (including specialist retailers such as greengrocers or butchers). In particular:
- 9.68.1 Restrictive covenants that explicitly and directly impede the development of retail grocery stores should be prohibited, regardless of the purpose of the covenant or the person lodging the covenant.
 - 9.68.2 Restrictive covenants that indirectly impede retail grocery store development (such as by saying that only certain (non-grocery-retail) activities may take place on the premises) should be prohibited if they:
 - 9.68.2.1 have a purpose of impeding retail grocery store development;
 - or

- 9.68.2.2 are lodged by a grocery retailer, or a person interconnected, associated with, or otherwise assisted by a grocery retailer (regardless of the purpose or likely effect of the covenant).
- 9.69 We also recommend that consideration be given to making a form of authorisation available to restrictive covenants that would fall within either of the above, where it can be demonstrated that the benefits of the covenant outweigh any detriment.¹²²⁶
- 9.70 The prohibition should state that any existing or future restrictive covenants of this nature are unenforceable, with a range of penalties and remedies for non-compliance. These could be consistent with the penalties and remedies provided for under Part 2 of the Commerce Act 1986.
- 9.71 These recommendations seek to provide an efficient and difficult to avoid method of prohibiting the use of restrictive covenants in situations where they are most likely to have a negative effect, while recognising that there may be justifications for the use of covenants that indirectly impact on grocery store development.
- 9.72 The arguments relating to the use of restrictive covenants may apply more broadly than just the retail grocery sector.¹²²⁷ As such, the Government may wish to consider extending any prohibition on the use restrictive covenants to other contexts. In practice, this could take the form of amending section 28 of the Commerce Act to provide that a commercial land covenant is unenforceable unless the person that lodged a covenant can prove that it does not have the purpose, effect, or likely effect of substantially lessening competition. However, as the potential for unintended consequences increases in line with the breadth of the prohibition, we would not recommend introducing a broader prohibition without further analysis as to potential unintended consequences (if any) of doing so.¹²²⁸

¹²²⁶ Under section 58 of the Commerce Act, authorisation is already available for certain restrictive trade practices that would contravene sections 27, 28, 37 or 38 of the Act. However, if new provisions were added to the Commerce Act or other legislation relating specifically to supermarket covenants, then the existing authorisation power would need to be extended or replicated (with amendments as necessary).

¹²²⁷ For example, in our retail fuel market study, we identified that restrictive Non-Petroleum Use (NPU) covenants create a barrier to retail competition, and that the purpose of the covenants could be achieved by less restrictive means, Commerce Commission “Market study into the retail fuel sector: Final report” (5 December 2019) at [6.122] and [8.128].

¹²²⁸ We note that MBIE’s departmental report on the Commerce Amendment Bill 2021 (9-1) analyses a number of examples of covenants identified by a submitter and concludes that they are either potentially anticompetitive, or that the objective of the covenant could be achieved via a less restrictive means, MBIE “Commerce Amendment Bill – Departmental Report to the Economic Development, Science and Innovation Committee” (6 July 2021), available at: https://www.parliament.nz/resource/en-NZ/53SCED_ADV_108304_ED1189/7aca35fe1deb3b200156fb6d85409ec2d36a327c.

Recommendation 2B: Prohibit exclusive covenants in leases that relate to the operation of retail grocery stores

- 9.73 We also recommend that the Government prohibit the use of exclusive covenants in leases that relate to the operation of retail grocery stores.
- 9.74 This would prohibit lease agreements which provide that a condition of a lease is that no other tenant may operate a retail grocery store (including specialist retailers such as greengrocers or butchers) in competition with the lessee. It would not, however, prohibit general clauses in lease agreements which state that premises may only be used for a particular type of activity.
- 9.75 As with restrictive covenants above, the prohibition should state that any existing or future exclusivity covenants in leases are unenforceable. A range of penalties and remedies should be provided to address non-compliance.
- 9.76 We have considered whether this prohibition should be subject to a defence or exception. While we acknowledge the potential pro-competitive rationales associated with exclusivity covenants in leases, we consider that these are likely to be outweighed by negative impacts on competition.
- 9.77 For example, we consider that, while a forward-looking time-limited exception for the use of exclusivity covenants might provide certainty of a return on investment by major grocery retailers, it may also have negative impacts that last well beyond the period of an exemption. This is because, if – as a result of an exclusivity covenant – a shopping centre is developed to include only one retail grocery store, substantial redevelopment of the centre might be required to enable the entry of a second grocery retailer. This may not take place until well after the exclusivity covenant has expired.
- 9.78 We accept, however, that there may be a case for a backward-looking exception for existing lease agreements. We note that undertakings accepted by the ACCC in relation to this issue included a five-year exception for existing lease agreements, but no exception was provided for new lease agreements.¹²²⁹ As noted in Chapter 6, the ACCC has publicly stated that the removal of exclusivity covenants from new leases has led to an increase in the number of shopping centres with more than one supermarket.
- 9.79 There is also the option to extend any prohibition on the use of exclusive covenants in lease agreements beyond grocery stores to also cover provisions that restrict competing retail or commercial developments more generally. However, as with restrictive covenants, we would not recommend introducing a broader prohibition without further analysis as to potential unintended consequences (if any) of doing so.

¹²²⁹

ACCC “Supermarket agreement opens way for more competition” (18 September 2009) <https://www.accc.gov.au/media-release/supermarket-agreement-opens-way-for-more-competition>.

Recommendation 2C: Monitor land banking by the major grocery retailers

- 9.80 As discussed in Chapter 6, there is the potential that any restriction on the use of covenants leads to an increase in land banking by the major grocery retailers. Given this, we recommend that the government – via a new grocery sector regulator (discussed below) – monitors the extent of land banking undertaken by the major grocery retailers.
- 9.81 In addition, land banking may, in some circumstances, be subject to section 47 of the Commerce Act, which relates to anticompetitive acquisitions, or otherwise section 27, which relates to anticompetitive agreements. We recommend that suppliers and retailers closely review the compliance of any proposed land acquisitions with the Commerce Act. Independent of this study, we have been reviewing whether there are any historic or ongoing matters raised in the context of the acquisition of land that might be at risk of breaching these sections of the Commerce Act. We will continue to consider whether all or some of these matters warrant prioritisation for further investigation.
- 9.82 We note that the Productivity Commission has previously considered issues related to land banking in the context of housing and recommended a shift to rating on the basis of land values to encourage the efficient use of land.¹²³⁰

Recommendation 3: Require the major grocery retailers to consider requests for wholesale supply in good faith, and meet associated disclosure obligations

The absence of wholesale options limits constraint from small independent retailers and small new entrants

- 9.83 A grocery retailer cannot provide a widespread, full range, competitively priced offering without first obtaining groceries on reasonable terms from either a range of suppliers or a grocery wholesaler.
- 9.84 As discussed in Chapter 6, there are limited wholesale options available in the New Zealand grocery sector, and none that offer a full range of competitively priced grocery products. For example, while independent foodservice wholesalers such as Bidfood and Service Foods may have the infrastructure required to wholesale grocery products, they operate in a different market from grocery wholesalers, and do not appear to be a viable source of a full range of groceries for resale by grocery retailers.

¹²³⁰ Productivity Commission “Using land for housing” (September 2015) <https://www.productivity.govt.nz/assets/Documents/6a110935ad/using-land-for-housing-final-report.pdf>.

- 9.85 The major grocery retailers are vertically integrated, and this is common internationally. While the major grocery retailers appear to be well-served by such a model, for other smaller retailers the lack of comprehensive wholesale supply options means that they may:
- 9.85.1 face high per-unit transaction costs in dealing with a wide range of suppliers, given their lack of scale;
 - 9.85.2 be unable to access as wide a range of products as the major grocery retailers, either due to the transaction costs described above, or because suppliers do not want to deal with them because of their small scale;
 - 9.85.3 pay a higher per-unit cost for the goods they obtain from suppliers than the major grocery retailers, due to their lack of scale; and/or
 - 9.85.4 in some cases, find purchasing goods directly from the major grocery retailers' retail stores to be their best option, given the issues described above.
- 9.86 During our study, several existing or potential grocery retailers have expressed interest in improved access to groceries for resale. Existing grocery retailers will – often by necessity – have direct relationships with suppliers and may wish to keep or increase these over time. However, retailers may nevertheless seek wholesale supply on the basis that:
- 9.86.1 there are grocery retailers who are unlikely to fully vertically integrate, as they would be unlikely to achieve benefits across a full product range greater than the cost savings offered by a wholesaler; and/or
 - 9.86.2 for some grocery retailers, access to groceries that supplement their existing commercial relationships may enable them to expand faster.
- 9.87 Our consultation with some Māori partners and stakeholders also suggested there are parts of New Zealand, particularly in rural areas, where the existing options do not meet their needs. Improved access to groceries for resale may enable greater options for these communities.
- 9.88 As discussed in Chapter 6, we consider that larger grocery retailers which might seek to enter or expand in the retail grocery market in the future – such as Aldi, Costco and The Warehouse – are unlikely to use wholesale in the long term (or, for some, at all). This is because they would likely have sufficient volumes and scale to receive competitive pricing by purchasing directly from suppliers.
- 9.89 However, wholesale supply may be viewed as an attractive long-term mechanism for existing small independent grocery retailers and small new entrants to obtain the full range of competitively priced grocery products needed for them to provide a competitive offering comparable to the major grocery retailers.

- 9.90 In addition, retailers will often expand their offering (eg, number of stores or range of available products) over time after entering. Access to wholesale supply may help grocery retailers receive competitively priced supply of grocery products in the short-to-medium term, until they achieve a level of scale which allows them to receive competitive prices directly from suppliers.
- 9.91 The price that grocery retailers pay suppliers for groceries, including any discounts for volume and economies of scale, only partially reflects the final net cost of those goods to the major grocery retailers. Suppliers also provide promotional funding (or trade and marketing spend) which can significantly reduce the retail price of goods. Any wholesale arrangement that does not address this issue is unlikely to result in wholesale prices to other grocery retailers lower than the retail prices charged by a large grocery retailer such as PAK'nSAVE, and is therefore unlikely to promote retail competition.
- 9.92 We consider that improved access to groceries for resale on reasonable terms would likely result in a material improvement in competition and outcomes for consumers:
- 9.92.1 Improved wholesale supply may enable small grocery retailers to improve their customer offerings, such as increasing their range or quality, or operating in new locations. An increase in range is likely to materially increase the extent to which these retailers are able to offer a one-stop shop for consumers, and in doing so, compete for consumers' main shop. This is particularly likely to be the case over the medium- to long-term as grocery retailers adjust their store configurations and locations. It may also permit new retail solutions to better meet currently unmet consumer demand, such as in areas that are not currently served well by existing major grocery retailers.
- 9.92.2 While improving wholesale prices may require that independent grocery retailers receive a significant portion of suppliers' promotional funding, this seems feasible. Suppliers may directly enter into promotional funding relationships with independent grocery retailers, or in some cases may permit pass-through by the wholesaler. The feedback we have received indicates that supplier preferences may vary, but generally suggests a willingness on the part of suppliers to consider negotiating promotional funding with independent grocery retailers receiving wholesale supply from one of the major grocery retailers.¹²³¹

- 9.93 While we consider greater availability of wholesale supply would likely lead to a material improvement in competition and outcomes for consumers, the exact extent of any improvement is unclear:
- 9.93.1 As noted above, existing or aspiring large grocery retailers are unlikely to make use of wholesale supply over the long term, and some may not make use of it at all.
 - 9.93.2 It is not clear whether improved access will also be associated with significant reductions in the price paid by independent grocery retailers. This is a crucial issue for enhancing competition.
 - 9.93.3 As outlined in Chapter 5, we do not consider that small grocery retailers such as Night n' Day and Supie currently impose a significant constraint on the major grocery retailers. However, improvements in the price, range, and quality of products available to them would be likely to increase the constraint. If we have underestimated the constraint posed by small independent grocery retailers, then it is likely we have also underestimated the impact of improving wholesale access.
- 9.94 In the following sections, we discuss various options for achieving greater availability of wholesale supply. These include:
- 9.94.1 commercial arrangements, without regulatory intervention;
 - 9.94.2 limited measures to improve transparency and better-facilitate commercial arrangements;
 - 9.94.3 regulated access regimes; and
 - 9.94.4 measures to facilitate the availability of independent wholesale supply.

Commercial arrangements appear feasible

- 9.95 It is generally accepted that negotiation of commercial contractual arrangements will involve lower costs than achieving the same outcome by economic regulation. For these reasons if effective commercial arrangements are likely to be reached, they are generally considered to be preferable.
- 9.96 The major grocery retailers each own firms which currently perform some wholesale functions, primarily for the foodservice sector. We consider commercial supply by the major grocery retailers of groceries for resale will be likely to occur if the following conditions are met:
- 9.96.1 commercial wholesale arrangements are technically feasible;
 - 9.96.2 major grocery retailers consider it is in their commercial interests to supply rivals; and

- 9.96.3 potential customers consider it is in their commercial interests to rely on supply from a rival because:
- 9.96.3.1 the supply offers something – such as price or range – that is commercially attractive; and
 - 9.96.3.2 they have confidence that the commercial arrangements that are offered will provide sufficient commercial certainty and protection, including of confidential information, to make reliance on those arrangements appropriate.
- 9.97 In our draft report we concluded that it was unlikely that the major grocery retailers would agree to supply on competitive terms absent the prospect of regulatory intervention. This was for two primary reasons:¹²³²
- 9.97.1 where a vertically-integrated firm faces limited retail competition, it is likely to have limited incentive to supply potential retail competitors; and
 - 9.97.2 grocery retailers (or potential retailers) would be reluctant to rely on a rival for wholesale supply given:
 - 9.97.2.1 their supplier may be incentivised to provide supply on terms, including wholesale prices, that may limit their ability to compete in the retail market;
 - 9.97.2.2 it may be uncertain when wholesale supply would be available, and on what terms, and whether supply may, in the future, be withdrawn or limited; and
 - 9.97.2.3 their supplier could use information on quantity, range and price of goods ordered to inform its own retail strategy.
- 9.98 Following publication of our draft report:
- 9.98.1 Woolworths NZ stated that it has an open mind toward voluntarily negotiating commercial wholesale supply contracts with other grocery retailers;¹²³³ and
 - 9.98.2 Foodstuffs North Island and Foodstuffs South Island stated that they are exploring how they could put together commercially attractive offers to supply products to other grocery retailers.¹²³⁴

¹²³² Commerce Commission “Market study into the retail grocery sector – Draft report” (29 July 2021) at [9.39].

¹²³³ Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [29.2].

¹²³⁴ Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [4.2]; Foodstuffs SI “Post conference submission on Market study into grocery sector” (3 December 2021) at [3.2].

- 9.99 These statements are predicated on establishing that there would be net benefits from supplying groceries for resale, and only after other recommendations have been implemented without a resulting material improvement in competitive conditions and/or after further engagement with the Commerce Commission or government.
- 9.100 The benefits of vertical integration appear to be significant, and it appears that these, rather than technical difficulties associated with wholesale supply, are the primary reason for the prevalence of vertically-integrated grocery retailers. The information provided to us suggests that commercial wholesale is technically feasible, although there will be costs in doing so. We note that Woolworths Australia has recently entered the wholesale market.
- 9.101 Based on discussions with, and submissions from, stakeholders, we consider that one (but not necessarily the only) feasible model for commercial wholesale supply could involve:¹²³⁵
- 9.101.1 **A separate wholesale unit with a sales and account team and separate key performance indicators and financial reporting.** This would be supported by investment in ordering and inventory, customer relationship management, and cost-to-serve systems and functions.
 - 9.101.2 **No separation of the buyer team.** We accept submissions that there are likely significant benefits in the end-to-end efficiencies and positive customer outcomes of having a single, retail-facing, buying team.
 - 9.101.3 **No separation of logistics functions.** We agree with submissions that it would be important that existing distribution centre supply chain and logistics processes were not disrupted, as this would create inefficiencies and additional costs, and in some cases safety issues.
 - 9.101.4 **Information barriers** between the wholesale unit and the rest of the business.
- 9.102 This type of wholesale arrangement would not involve physical access by the access seeker to the distribution centre. Orders could include the full range of products stocked by the wholesaler's retail arm, with the option, but no requirement, to stock wholesale-only products. Orders would be fulfilled by the wholesaler and would involve a "full case" pick, rather than splitting boxes and setting out smaller quantities.

- 9.103 As is discussed later in this chapter, potential customers have a clearly expressed preference for an independent wholesale supplier, and have supported the potential concerns outlined in our draft report. In particular, they are likely to continue to have concerns:
- 9.103.1 that purchasing from the major grocery retailers provides them with performance and volume data which may undermine an independent retailer's ability to compete; and
 - 9.103.2 over the reliability of, and restrictions on, its supply arrangements, and the potential for them to be cut off.
- 9.104 Addressing these concerns remains a hurdle to uptake of any commercial offer, but given they are common commercial concerns, they do not seem insurmountable. It is less clear whether any commercial offer will include something – such as price or range – that is commercially attractive or enables direct competition.

We recommend some limited regulatory measures to facilitate commercial wholesale supply

- 9.105 Even if commercial arrangements are feasible, and potential customers are willing to purchase from a vertically-integrated wholesale supplier, there remains a question of whether the major grocery retailers would be incentivised to offer wholesale supply on reasonable terms, absent the prospect of regulation.
- 9.106 We note Woolworths NZs' views that it would be incentivised to make such a commercial offering work.¹²³⁶ We agree that major grocery retailers would face some incentive to make commercial supply work, to the extent that they have invested in wholesaling capabilities. However, such commercial incentives would likely only exist to the extent that the return on investment in wholesale capabilities was expected to exceed lost income as a result of greater retail competition.
- 9.107 To provide improved predictability and transparency for parties seeking commercial wholesale supply, and to allow the government to monitor the extent to which commercially attractive wholesale supply arrangements are developing, we recommend some limited regulatory measures. This aligns with Woolworths NZ's submission that it would expect a grocery regulator to have some function in relation to wholesale supply.¹²³⁷

¹²³⁶ Woolworths NZ "Post conference submission on Market study into grocery sector" (23 November 2021) at [29.7.3].

¹²³⁷ Woolworths NZ "Post conference submission on Market study into grocery sector" (23 November 2021) at [29.7.2].

Recommendation 3A: Require the major grocery retailers to consider all requests for commercial wholesale supply in good faith

- 9.108 As an overarching principle, we recommend that regulation provide that the major grocery retailers must consider all requests for commercial wholesale supply in good faith.¹²³⁸
- 9.109 While there should be no regulatory obligation to agree to any request, we recommend that regulation provide that all requests for supply should be notified to the grocery regulator, along with the outcome of any requests, and – in the case that a request for supply is declined – a summary of the retailer’s reasons for declining to provide supply.

Recommendation 3B: Require the major grocery retailers to put in place and disclose principles and terms and conditions of wholesale supply

- 9.110 We also consider that some transparency over the rules, criteria or procedures adopted by the major grocery retailers in considering such requests, as well as their terms and conditions of wholesale supply, would be desirable. We recommend that the major grocery retailers be required to:
- 9.110.1 put in place formalised rules, criteria and procedures for considering requests for wholesale supply;
 - 9.110.2 put in place standardised terms and conditions of wholesale supply, or, to the extent that particular terms and conditions (such as price) are not standardised, put in place principles for determining how such terms and conditions will be decided; and
 - 9.110.3 provide these to the regulator, and to any person who requests them for the purpose of considering or making a request for commercial wholesale supply.

Recommendation 3C: Establish a formal dispute resolution mechanism for wholesale supply disputes

- 9.111 If our recommendations in relation to a grocery code of conduct (see Recommendation 6 below) are accepted, and an appropriate dispute resolution mechanism is created, we suggest that consideration be given to making this service available to resolve wholesale supply disputes. Much like supplier arrangements, the availability of fast, low cost, impartial dispute resolution is likely to improve confidence in any wholesale arrangements.

¹²³⁸ This might involve, for example, acting honestly, reasonably, and not arbitrarily or capriciously. Further discussion of the concept of good faith is included in relation to Recommendation 6.

- 9.112 We envisage that a dispute resolution mechanism could consider matters such as whether the wholesale supplier considered requests for wholesale supply in good faith (particularly when it declines to provide supply), as well as other matters such as disputes over order fulfilment or delivery. If it was found that the supplier did not consider a request in good faith, it could be required to reconsider a request (and be subject to financial penalties or other remedies if it did not), but could not be ordered to provide wholesale supply. To avoid costly and complex supply disputes, we do not recommend that the dispute resolution mechanism extend to the price or quantity of any actual or proposed supply agreement.
- 9.113 We also recommend that the dispute resolution body should be empowered to share aggregated information on disputes with any grocery regulator. Reporting on disputes will provide the regulator with greater insight into how well commercial arrangements are operating. The regulator could then report to the Government on the success or otherwise of commercial wholesale agreements, including making recommendations for further regulatory intervention, if it considered that appropriate commercial arrangements were not being reached.

We do not recommend substantive access regulation at this time

- 9.114 Our recommendations outlined above are designed to increase transparency and predictability regarding the development of commercial wholesale arrangements. We consider that the measures proposed would be low cost, and unlikely to discourage major grocery retailers from offering wholesale supply of groceries for resale.
- 9.115 However, while we are encouraged by the open mind that the major grocery retailers have expressed regarding the development of commercial wholesale supply arrangements, it is possible that attractive commercial wholesale supply arrangements nevertheless do not develop. If this is the case, the transparency mechanisms proposed above should alert the Government to this outcome and allow it to consider further regulation. Nevertheless, we have considered whether more substantive intervention to facilitate wholesale supply should be recommended at the current time.
- 9.116 In our draft report, we consulted on the option of economic regulation designed to provide access to groceries for resale. Access regulation comes in many forms, including:
- 9.116.1 detailed regulation that seeks to base access terms on the access provider's costs and an allowable return on its investments; or
 - 9.116.2 lighter-touch regulation that avoids price or earnings control.

- 9.117 Although a number of submitters indicated they considered access to groceries for resale was important for competition, access regulation was generally not supported. Generally, these submitters supported more significant interventions to create an independent wholesaler.¹²³⁹
- 9.118 The submissions from the major grocery retailers have highlighted a number of difficulties with both types of access regulation. While some of the arguments made by the major grocery retailers appear overstated, many appear well grounded. In particular, we would highlight:
- 9.118.1 The lack of any essential facility or natural monopoly characteristic means that grocery wholesaling is not the type of industry ordinarily regarded as potentially amenable to such intervention.
- 9.118.1.1 Any regulation regime would be novel and unprecedented, increasing the design and implementation cost – and uncertainty – arising from the regulation.¹²⁴⁰ It would also increase the risk of unintended consequences.
- 9.118.1.2 As there is no ‘monopoly asset’ involved, it is likely to be more difficult to identify the precise boundaries of the regulated wholesale service, and what assets would be required to provide that service.¹²⁴¹ Technological change and vertical integration mean the boundary between ‘wholesale’ and ‘retail’ is increasingly indistinct.
- 9.118.1.3 The sector is more dynamic than many regulated sectors, and certainly more diverse in its product offerings, increasing the cost and difficulty of regulation.¹²⁴²

¹²³⁹ For example: Ernie Newman “Submission on Market study into grocery sector draft report” (26 August 2021) at 7; Comments from Night ‘n Day, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 5 (lines 1-5); Comments from Supie, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 5 (lines 17-20); Comments from Tex Edwards, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 4 (lines 32-35).

¹²⁴⁰ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [22.5.1].

¹²⁴¹ Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 1 - Peter Harris AO - Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand” (25 November 2021) at [79].

¹²⁴² Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 2 - Henry Ergas AO -Comments on the recommendations for third party access by the Commerce Commission New Zealand” (25 November 2021) at [11]-[12].

- 9.118.2 Principles that might be necessary to implement a full regulatory access regime, such as non-discrimination and equivalence, assume that the needs of the independent grocery retailers are similar to those of the major grocery retailers themselves, and that the service is to a degree “one-size-fits-all”.¹²⁴³ Grocery wholesaling requirements are likely to vary significantly, and require different services from the major grocery retailers, meaning non-discrimination and equivalence may not be workable principles for regulation.
- 9.118.3 Significant intervention could disrupt existing efficient vertical integration efficiencies, operational efficiencies, efficiencies of scale and scope, dynamic efficiency, and introduce significant additional costs.¹²⁴⁴ It may also reduce retail competition on price.¹²⁴⁵ It will require significant monitoring and regulatory oversight.¹²⁴⁶
- 9.119 Given this, we do not recommend that substantive access regulation be imposed at this time. There are a significant number of issues that would need to be resolved before economic regulation would be feasible. Even if feasible, careful cost-benefit analysis would be desirable, beyond that which is within the scope of our study.

We do not recommend operational or structural separation of retail and wholesale

- 9.120 As outlined above, we consider that there is a reasonable chance that greater availability of wholesale supply will improve competition and outcomes for consumers.
- 9.121 Above, we discuss options to improve the availability of wholesale supply from the major grocery retailers. Our draft report also considered a number of options to improve access to wholesale supply that is independent of the major grocery retailers (to differing extents), such as:
- 9.121.1 operational separation of the major grocery retailers’ wholesale and retail businesses;
- 9.121.2 structural separation of the major grocery retailers’ wholesale and retail businesses, with or without divestiture; and

¹²⁴³ Woolworths NZ “Submission on Market into grocery sector draft report” (10 September 2021) at [22.5.3]-[22.5.4].

¹²⁴⁴ Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 2 - Henry Ergas AO - Comments on the recommendations for third party access by the Commerce Commission New Zealand” (25 November 2021) at [55]-[126].

¹²⁴⁵ Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 1 – Peter Harris AO – Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand” (25 November 2021) at [79].

¹²⁴⁶ Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 1 – Peter Harris AO – Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand” (25 November 2021) at [92].

- 9.121.3 facilitation of wholesale entry by the Government, such as by providing funding following a contestable procurement process or entering into a joint venture.
- 9.122 As discussed above, while we do recommend some limited regulatory measures, we do not recommend a substantive regulatory wholesale access regime at this time.
- 9.123 We received a range of views from stakeholders on the other options we proposed. For example:
- 9.123.1 The major grocery retailers, and consultants they commissioned, were strongly opposed to operational or structural separation of wholesale and retail businesses, including due to the practical difficulties associated with separation, potential loss of economies of scale and supply chain resilience, and impacts on investment incentives, amongst other reasons.¹²⁴⁷
- 9.123.2 Coriolis has highlighted that Metcash is the only independent grocery wholesaler in peer group countries, and that it is changing its business model.¹²⁴⁸ The concept of an independent wholesaler, Coriolis says, has failed and would not work in New Zealand.¹²⁴⁹
- 9.123.3 Some existing retailers (Supie and Night n' Day) have argued that an independent wholesale grocery option is required. However, their submissions did not offer evidence as to the feasibility of independent grocery wholesale.¹²⁵⁰
- 9.123.4 The NZFGC did not expressly advocate for operational or structural separation, or facilitation of entry, but argued that "structural remedies are not unprecedented, 'radical' or 'extreme' in the circumstances".¹²⁵¹

¹²⁴⁷ For example: Woolworths NZ "Post conference submission on Market study into grocery sector" (23 November 2021) at [31]; Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 1 – Peter Harris AO – Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand" (25 November 2021); Foodstuffs NI "Post conference submission on Market study into grocery sector" (3 December 2021) at [282.3].

¹²⁴⁸ Coriolis Ltd "Post conference submission on Market study into grocery sector" (18 November 2021) at [43].

¹²⁴⁹ Coriolis Ltd "Post conference submission on Market study into grocery sector" (18 November 2021) at [45].

¹²⁵⁰ Comments from Night 'n Day, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 5 (lines 1-5); Comments from Supie, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 5 (lines 17-20).

¹²⁵¹ NZFGC "Post conference submission on Market study into grocery sector" (25 November 2021) at [3.23].

- 9.124 Taking into account our conclusions in previous chapters, informed by the submissions we have received, we do not consider operational or structural separation (with or without divestment) of the major grocery retailers' wholesale and retail businesses (ie, vertical separation) to be necessary or desirable. This is for a number of reasons, including:
- 9.124.1 Our assessment is that any large potential competitors to the major grocery retailers would largely seek to establish their own wholesale supply (at least in the long term), rather than make use of the wholesale supply of a separate wholesaler. This, and international evidence, suggests that it is unlikely that there would be sufficient demand to support the successful entry of an independent wholesaler without an associated retail operation.
 - 9.124.2 We accept the submissions of the major grocery retailers that there are substantial efficiencies associated with a degree of vertical integration in respect of retail and wholesale operations. Without line-of-business restrictions preventing re-entry into wholesale markets, it is likely that the major grocery retailers would, in time, seek to re-establish their wholesale functions, further limiting demand for the services of an independent wholesaler. If line-of-business restrictions were imposed, it is likely that this would have substantial implications for the efficiencies of the major grocery retailers' operations.
 - 9.124.3 We also accept that there would be a range of practical challenges and transaction costs associated with operational or structural separation.
 - 9.124.4 We consider that other options to improve competition that we have recommended elsewhere in this chapter should be implemented and tested before considering whether other initiatives may be required.

We do not recommend proactive facilitation of wholesale entry at this time

- 9.125 It appears unlikely that demand from grocery retailers (excluding the vertically-integrated major grocery retailers) would form a sufficiently large customer base to sustain entry by an independent wholesaler offering a full range of groceries. In addition to uncertainty around whether there would be sufficient demand for an independent wholesaler, any procurement or joint venture process would likely be complex, potentially expensive, and could present a high risk of failure. On this basis, we do not recommend proactive facilitation of wholesale entry by Government at this time.

Recommendation 4: The next reviews of the Overseas Investment Act and Sale and Supply of Alcohol Act should consider whether they unduly impede entry or expansion by grocery retailers

Recommendation 4A: The next review of the Overseas Investment Act should consider its impacts on grocery sector competition

- 9.126 Several parties have raised the impact of the Overseas Investment Act 2005 on the conditions of entry and expansion for foreign-owned grocery retailers. We understand that recent changes to the Act have streamlined the regime and removed the need for some transactions to seek approval. However, for the transactions that still require approval, the regime could have impacts such as:
- 9.126.1 the delay associated with waiting for approval;
 - 9.126.2 the uncertainty associated with the need for approval;
 - 9.126.3 the legal and compliance cost associated with preparing an application; and/or
 - 9.126.4 the cost of application fees.
- 9.127 As discussed in Chapter 6, the Overseas Investment Act is driven by a range of policy considerations. Nevertheless, we recommend that, when the Act is next reviewed, alongside any other matters driving the review, consideration is given to whether the residual impediments the Act may impose on entry or expansion by foreign-owned grocery retailers are justified by other policy considerations, and if not, how these impediments could be reduced or removed.

Recommendation 4B: The next review of the Sale and Supply of Alcohol Act should consider its impacts on grocery sector competition

- 9.128 As discussed in Chapter 6, some retailers have raised the potential for current alcohol licensing laws to be a factor impacting on their ability to enter and expand in the retail grocery sector. In particular, the changes made by the Sale and Supply of Alcohol Act 2012 restricted the types of premises in which alcohol may be sold. As consumers value having a wide range of products in one place, the unavailability of alcohol in some existing or potential grocery stores may limit the ability of those retailers to effectively compete with the major grocery retailers.

9.129 We acknowledge that there are public policy reasons for restricting the types of businesses which are licensed to sell alcohol, most notably to reduce the extent of alcohol-related harm. We understand that the Minister of Justice has signalled his intention to commence a review of the Sale and Supply of Alcohol Act this parliamentary term.¹²⁵² We recommend that, when that review occurs, alongside any other matters driving the review, consideration be given to whether the policy considerations relating to restricting the availability of alcohol can be achieved in a way that provides a more level playing field for grocery retailers. Options could include either tightening current restrictions (such as by preventing the major grocery retailers from selling alcohol), or loosening them (such as by allowing other retailers to sell alcohol).

Recommendation 5: Monitor strategic conduct that affects the conditions of entry or expansion

9.130 In Chapter 6, we discussed a range of conduct by suppliers and retailers which could potentially affect the ability of new entrants or existing firms to source products at competitive prices. This includes:

9.130.1 suppliers refusing to supply grocery retailers which set retail prices below a certain level (either on their own accord or due to pressure from other retailers);

9.130.2 supply arrangements affecting the terms on which suppliers can supply to other parties, including exclusivity of supply agreements and best price clauses; and

9.130.3 attempts at strategic acquisitions of actual or potential competitors.

9.131 We have distinguished this conduct from other terms and conduct between retailers and suppliers (discussed below and in Chapter 8), as they primarily relate to the conditions of entry and expansion, rather than issues of bargaining power.

9.132 All of this conduct is potentially subject to the Commerce Act 1986, and independent of this study, the Commission will be alert to strategic conduct that may breach the Act in the future. We note that the Commerce Amendment Bill currently before Parliament contains amendments that will strengthen the Commerce Act's prohibition against the misuse of market power, and could potentially be used in relation to some forms of strategic conduct by major grocery retailers in the future.¹²⁵³

¹²⁵² Rachel Thomas "Calls for urgent overhaul of laws to tackle NZ's 'British drinking culture'" (27 September 2021) <https://www.stuff.co.nz/national/health/126499209/calls-for-urgent-overhaul-of-laws-to-tackle-nzs-british-drinking-culture>.

¹²⁵³ New Zealand Parliament "Commerce Amendment Bill" https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_108304/commerce-amendment-bill.

We intend to further investigate refusals to supply due to low retail pricing

- 9.133 As discussed in Chapter 6, we are aware of examples of some suppliers refusing to supply retailers where they are concerned that the retail prices being offered are too low, or indicating that they are only willing to supply if a grocery retailer does not undercut the retail prices set by other grocery retailers of the supplier's products. This may be due to:
- 9.133.1 direct pressure from grocery retailers;
 - 9.133.2 unilateral actions by suppliers, due to concern about the possible response from major grocery retailers; or
 - 9.133.3 unilateral action by suppliers for other reasons.
- 9.134 Refusal to supply due to low retail pricing could potentially breach sections 37 and 38 of the Act, which prohibit the practice of resale price maintenance. It could also breach section 36 of the Act, to the extent that a refusal to supply reflects the influence of a major grocery retailer with substantial market power.
- 9.135 We have not enquired further into the types of conduct described above at this stage. However, independent of this study, we intend to open an investigation into compliance with the Act in respect of certain conduct that we have become aware of during the course of this study.

Recommendation 5A: Monitor the use of best price clauses

- 9.136 As discussed in Chapter 6, best price clauses can impede competition to the extent that they prevent suppliers and retailers from freely bargaining over the price of goods to be supplied. In particular, they can act as a barrier to a supplier offering a retailer lower prices for goods, on the basis that the supplier would then also need to offer this (or potentially a lower) price to the retailer who they supply under the arrangement containing a best price clause.
- 9.137 However, they can also have pro-competitive rationales and efficiency benefits, such as if a best price clause is used in conjunction with a commitment to buy a certain volume of goods. They also appear to be used relatively rarely in the grocery sector. This conduct should also be distinguished from attempts to control the retail (as distinct from wholesale) price of goods, as described above, which is less likely to have a pro-competitive rationale.
- 9.138 Best price clauses are already subject to section 27 of the Commerce Act, which relates to anticompetitive agreements, where it can be established that such clauses have the purpose, effect, or likely effect of substantially lessening competition. We recommend that suppliers and retailers closely review the compliance of any such clauses with the Commerce Act. Independent of this study, if we identify any agreements that we consider may breach the Commerce Act in the future, we may consider appropriate action utilising our Commerce Act compliance and enforcement functions and powers at that time.

9.139 Given the potential impact of such clauses on the conditions of entry and expansion, we also recommend that the government – via a new grocery sector regulator (discussed below) – monitors the extent to which the major grocery retailers make use of best price clauses. If there is increasing use of best price clauses, or there is otherwise evidence that the use of these clauses is having a negative effect on the conditions of entry and expansion in the retail grocery sector, the Government may wish to consider further regulatory intervention.

Recommendation 5B: Monitor the use of exclusive supply agreements

9.140 Exclusive supply agreements can, in some instances, impede entry or expansion, particularly to the extent that they are negotiated in contracts with suppliers of ‘must-have’ products. We have heard concerns from suppliers that they can be requested or imposed by retailers in situations where they are not sought by suppliers.¹²⁵⁴ We have also heard from competing retailers that exclusivity agreements – whether in writing or otherwise – can have a material impact on their ability to obtain goods from key suppliers.¹²⁵⁵

9.141 However, exclusive supply agreements can also be pro-competitive. We understand that the justifications for exclusivity arrangements include that they may be intended to reflect and recoup joint investment between retailers and suppliers, that they can lead to greater promotional activity by retailers for suppliers’ products, and that they can generally promote greater differentiation between retailers.

9.142 Like best price clauses, exclusivity agreements are already subject to section 27 of the Commerce Act. We recommend that suppliers and retailers closely review the compliance of any such agreements with the Commerce Act. Independent of this study, if we identify any agreements that we consider may breach the Commerce Act in the future, we may consider appropriate action utilising our Commerce Act compliance and enforcement functions and powers at that time.

9.143 As with best price clauses, we recommend that the government – via a new grocery sector regulator (discussed below) – monitors the extent to which the major grocery retailers make use of exclusive supply agreements. As above, if there is evidence that these agreements are having a negative effect on the conditions of entry and expansion in the retail grocery sector, the Government may wish to consider further regulatory intervention.

¹²⁵⁴ For example, comments by NZFGC, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 13.

¹²⁵⁵ For example, comments by Supie, Transcript of Grocery Market Study Conference – Day 7 (2 November 2021) at 24.

Strategic acquisitions are subject to the Commerce Act

- 9.144 As noted in Chapter 6, some submitters have raised historical strategic acquisitions (and attempts at strategic acquisitions) as impacting on competition in the grocery sector. In the course of this study, we have not identified any recent or systemic acquisitions (or attempts) of a nature or scale that are sufficient to justify opening an investigation into whether this conduct is likely to be in breach of the Commerce Act 1986.
- 9.145 Any further attempted acquisitions would be subject to section 47 of the Commerce Act, as well as the clearance and authorisation regime set out in sections 66 and 67. Given this, while we recommend that suppliers and retailers closely review the compliance of any proposed acquisitions with the Commerce Act, we do not recommend any specific interventions in respect of these matters.

Recommendations to improve competition for the acquisition of groceries

- 9.146 We consider that our recommendations to improve the conditions of entry and expansion can be complemented through direct interventions in respect of competition for the acquisition of groceries. This section discusses the following recommendations:
- 9.146.1 Recommendation 6: Introduce a mandatory grocery code of conduct to govern relationships between the major grocery retailers and their suppliers;
 - 9.146.2 Recommendation 7: Consider a statutory authorisation or exception for collective bargaining by grocery suppliers; and
 - 9.146.3 Recommendation 8: Amend the Fair Trading Act to strengthen the business-to-business unfair contract terms regime.
- 9.147 Combined, we consider that these options are likely to constrain – albeit likely not remove – the major grocery retailers’ ability to use their strong negotiating position to secure suppliers’ agreement to unfavourable contract terms. This should help ensure that supply terms are not unduly impacting on suppliers’ ability to innovate and produce high-quality goods for consumers, or leading to inefficient exit of the market by suppliers.

Recommendation 6: Introduce a mandatory grocery code of conduct to govern relationships between the major grocery retailers and their suppliers

- 9.148 We recommend that a mandatory code of conduct be introduced for grocery retailers and their suppliers. There has been general support from submitters for the introduction of a code of conduct.¹²⁵⁶ A mandatory code would need to be contained in either primary or secondary legislation of some form.
- 9.149 As discussed in Chapter 8, for many suppliers, there are limited alternative options available to them to sell their products other than to the major grocery retailers. Those suppliers are significantly more dependent on retailers than the retailers are on those suppliers. As a result, those suppliers often have limited ability to negotiate with the major grocery retailers.
- 9.150 This leads to an imbalance in bargaining power in many cases. This can result in cost savings that are passed on to consumers. However, we consider the major grocery retailers have the ability to use their strong negotiating position to:
- 9.150.1 transfer costs and risks to suppliers, despite retailers being better placed to manage them;
 - 9.150.2 reduce transparency and certainty over terms of supply; and
 - 9.150.3 limit suppliers' ability or incentive to provide favourable supply terms to other grocery retailers.
- 9.151 We have heard many examples which suggest that this is happening. Over time, this type of conduct can lessen suppliers' incentive and ability to innovate and invest in ways that ultimately harm consumers. Most obviously, this could lead to reduced production, reduced capacity, reduced product quality and fewer new product offerings.
- 9.152 Suppliers have only been willing to approach us on a confidential basis, which prevents the sharing of specific details with major grocery retailers. It is clear, however, that some of these allegations are disputed, in some cases they may have occurred a number of years ago, and in any event may not involve all grocery retailers equally.

¹²⁵⁶

For example: Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [376]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [371]; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [7.2]; NZFGC "Submission on Market study into grocery sector draft report" (26 August 2021) at [7.9].

- 9.153 We do not consider that necessarily means a code, or any specific part of it, is not required:
- 9.153.1 the fact that the major grocery retailers may choose not to exercise their strong negotiating position does not mean that they do not have the ability to do so;
 - 9.153.2 a code of conduct will provide suppliers with greater certainty that they will not be subject to these behaviours; and
 - 9.153.3 a major grocery retailer that does not engage in these behaviours will not be disadvantaged, avoiding a race to the bottom.
- 9.154 We acknowledge the risk that the introduction of a code of conduct could reduce the ability of the major grocery retailers to negotiate fairly but firmly with suppliers, and lead to higher prices for consumers. Our recommendations below are designed to minimise this risk. In particular, many of the features of the proposed code relate to procedural, rather than substantive, matters. We consider that the benefits of a code in terms of providing more transparency and predictability, and better allocation of risk (with potential benefits in terms of a greater ability of suppliers to innovate and deliver high-quality goods) outweigh any risk of price increases or other poor outcomes for consumers.
- 9.155 We consider that the proposed provisions of the code – not least an overarching duty of good faith – may support Māori suppliers to achieve some of the aspirations we have heard expressed by some Māori contributors in terms of greater access to retail distribution networks for Māori products. As with other suppliers, it should address the concerns that we have heard from some Māori contributors about the ability of the major grocery retailers to engage in conduct or transfer risk to Māori suppliers that limits their ability to innovate and develop high-quality products in the domestic market.¹²⁵⁷ We recommend that development of the code involves further consultation with Māori suppliers to understand whether they face different issues or have different aspirations that should be reflected in the code.

¹²⁵⁷ For example, Rangitāne Tamaki nui-a-Rua Iwi “Post conference submission on Market study into grocery sector” (25 November 2021) at [1c] and [1i]; Hoki-mai Chong “Post conference submission on Market study into grocery sector” (25 November 2021) at 1.

A grocery code of conduct should be based on the provisions in the Australian Food and Grocery Code

- 9.156 Many of the concerns raised by suppliers with the Commission have been addressed in Australia through provisions in the Australian Food and Grocery Code.¹²⁵⁸ The United Kingdom has addressed similar concerns through a Groceries Supply Code of Practice.¹²⁵⁹ There is an opportunity for the development of a New Zealand code to benefit from these codes, which have been in force for a number of years.
- 9.157 One of our major grocery retailers, and a number of suppliers, operate in both Australia and New Zealand. If our recommendation is accepted and a code of conduct is to be adopted in New Zealand, we consider that, where there is a choice of approach, the Australian approach should be preferred unless there is a good reason not to.

Recommendation 6A: Supply relationships should be subject to an overarching principle of good faith

- 9.158 A grocery code of conduct should include an overarching principles-based behavioural obligation to act in good faith, in line with the Australian Food and Grocery Code.
- 9.159 Good faith is not defined in the Australian Code. However, the Code lists a number of factors that may be taken into account when deciding whether or not a retailer or wholesaler has acted in good faith when dealing with a supplier.¹²⁶⁰

¹²⁵⁸ Australian Government “Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015” as amended.

¹²⁵⁹ UK Government “Groceries Supply Code of Practice” (4 August 2009).

¹²⁶⁰ For example, whether the retailer or wholesaler has:

- acted honestly;
- cooperated;
- not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
- not acted in a way that is retribution for past complaints and disputes;
- conducted their trading relationship with the supplier without duress;
- conducted their trading relationship with the supplier in a way that recognises the need for certainty about the risks and costs of trading; and
- observed any confidentiality requirements,

ACCC “Acting in good faith under the Food and Grocery Code”

<https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct/acting-in-good-faith-under-the-food-and-grocery-code>.

- 9.160 Some parties suggested to us a distinction between an obligation to act in good faith, and a principle of fair dealing, as explained in the UK Groceries Supply Code of Practice.¹²⁶¹ While these concepts are distinct, good faith is central to the UK Code's concept of fair dealing, and the Australian Food and Grocery Code has expanded its concept of good faith to an extent where they substantially overlap.
- 9.161 If there is a desire to impose an additional obligation beyond the concept of good faith contained in the Australian code, we recommend doing so by further clarifying or specifying the expectations of parties acting in good faith. This will provide additional certainty, and assist in speedy resolution of disputes, when compared with a more broadly drafted obligation.

Recommendation 6B: A grocery code of conduct should include provisions to improve the transparency of supply agreements

- 9.162 We consider that a code should set requirements aimed at improving the up-front transparency of the terms of supply. Ambiguity in the terms of supply increases the likelihood of disputes, and makes it more difficult for suppliers to understand and enforce their rights under any supply agreement.
- 9.163 To ensure parties are clear about their rights and obligations, we recommend a code includes a requirement that all agreements between major grocery retailers and suppliers, including any variations, must be:
- 9.163.1 recorded in writing;
 - 9.163.2 written in clear and concise language;
 - 9.163.3 kept by the retailer for the duration of the agreement, and a period afterwards; and
 - 9.163.4 provided to the supplier.
- 9.164 To ensure that areas of common dispute, or areas that may significantly affect the rights and obligations of the parties, are subject to agreement in advance, we also recommend that some specified matters be required to be covered in all supply agreements. These should include:
- 9.164.1 any quantity standards (such as minimum supply volumes);
 - 9.164.2 any quality standards;
 - 9.164.3 any delivery requirements set by the retailer;

¹²⁶¹ The Code provides that fair dealing means that a retailer must at all times deal with its suppliers fairly and lawfully. Fair and lawful dealing will be understood as requiring the retailer to conduct its trading relationships with suppliers in good faith, without distinction between formal or informal arrangements, without duress and in recognition of suppliers' need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.

- 9.164.4 when groceries may be rejected;
- 9.164.5 the maximum period for payment; and
- 9.164.6 circumstances when payment may be withheld, or deductions made.

Recommendation 6C: A grocery code of conduct should prohibit or limit a range of conduct

- 9.165 A grocery code of conduct should also identify any specific behaviours that should not occur or should occur only in defined circumstances.
- 9.166 We suggest that consideration be given to including limits on matters including, but not necessarily limited to:
- 9.166.1 **Unilateral variations of the terms of supply, including the imposition of additional costs or discounts.** If these are to be permitted at all, they should only occur where the ability to do so is provided for in the agreement, should require reasonable notice, and should be reasonable in the circumstances having regard to the benefits, costs and risks to the supplier and retailer.
 - 9.166.2 **Retrospective variations of the terms of supply, including requests for additional payments outside of the original terms.** We consider retrospective variations are unlikely to be justifiable, and consideration should be given to their prohibition.
 - 9.166.3 **Payments for the major grocery retailers' business activities or costs, such as promotional funding or merchandising.** As discussed in Chapter 8, promotional funding and payments for merchandising appear to be a relatively entrenched feature of the retail grocery sector, and they can be efficient in some circumstances. Prohibiting such payments entirely would likely simply result in suppliers being paid a lower list price for their products. However, as both retailers and suppliers can benefit from both promotional activity and fully-stocked shelves, there is a risk that suppliers are expected to fund a disproportionate share of retailers' benefits from such activities. Given this, we consider that such payments should only be permitted when they are reasonable in the circumstances, having regard to the benefits and costs to suppliers and retailers. We anticipate that guidance will be required as to when such payments are reasonable.
 - 9.166.4 **Payments for shrinkage or wastage.**^{1262, 1263} We consider that payments by a supplier to a retailer for shrinkage should be prohibited. Payments for wastage should only be permitted in circumstances where the supplier bears responsibility for the loss.

¹²⁶² Shrinkage means a loss of grocery products that occurs after a retailer or wholesaler has taken possession of them and arises from theft, other loss or accounting error.

¹²⁶³ Wastage means groceries that are unfit for sale.

9.166.5 **Discrimination on ranging and shelf allocation.** Retailers should apply the same product ranging and shelf-space allocation principles to suppliers' products and their own private label products.

9.166.6 **The circumstances in which a major grocery retailer can delist a supplier's products.** A code of conduct should address both the circumstances in which this may occur, and the process that should be followed.

9.167 We also consider that the code should incorporate protections for the confidential information and intellectual property of suppliers, to address supplier concerns about conduct such as their information and intellectual property being shared with the major grocery retailers' private label divisions. This will ensure disputes over these matters are able to be dealt with through the code dispute resolution mechanisms where appropriate.

Separate provisions relating to fresh produce could be included in a code

9.168 The perishable nature of fresh produce creates some specific problems for fresh produce suppliers. In particular:

9.168.1 different terms may be required, or different industry practices may need to be accommodated;

9.168.2 suppliers of fresh produce are particularly vulnerable to last-minute renegotiation; and

9.168.3 rapid dispute resolution will be essential.

9.169 A code of conduct could include provisions specific to fresh produce, in areas where this would be desirable.

9.170 We note that a separate Horticulture Code of Conduct has been produced in Australia. The Horticulture Code covers contracts between growers and merchants or agents (not retailers). Although the Horticulture Code does not directly cover relationships between growers and retailers, some of its principles may be relevant.

9.171 Consideration should be given to the terms of the Horticulture Code to see whether matters relevant to fresh produce should be included in any New Zealand grocery code of conduct.

A grocery code of conduct should be mandatory

- 9.172 We consider that a code of conduct should be mandatory, to ensure sufficiently wide coverage across grocery retailers in New Zealand. A mandatory code is supported by all of the major grocery retailers.¹²⁶⁴
- 9.173 If a code was voluntary, one or more of the major grocery retailers, or any new entrants, may not sign up to it, or may withdraw from the code. This would likely undermine the effectiveness of a code. In particular, it is possible that market participants, including new entrants, may respond to enhanced competition by seeking to apply greater pressure to suppliers. A mandatory code would help to prevent this from happening.
- 9.174 In reaching this view, we acknowledge the Australian Food and Grocery Code is, on its face, voluntary. However, the Commonwealth Government has expressed views on who should agree to be bound by the code, and we understand that this has resulted in an expectation with similar effect to a mandatory code.¹²⁶⁵

A grocery code of conduct should apply to the major grocery retailers, and all suppliers

- 9.175 We consider that the code should apply to the grocery retailers who are most likely to have a significant bargaining power advantage over their suppliers. At present, we consider that Foodstuffs North Island, Foodstuffs South Island, and Woolworths NZ, have – in general – the greatest bargaining power over their suppliers. The NZFGC has indicated that it agrees with this view.¹²⁶⁶
- 9.176 Some stakeholders have argued that a wider range of grocery retailers should be covered by a code of conduct.¹²⁶⁷ We agree that other retailers should be covered, to the extent that they develop significant bargaining power in relation to their suppliers over time. While there is no single proxy for bargaining power, we consider that annual grocery revenue is likely to be the most appropriate threshold for determining coverage of the code. The UK Groceries Supply Code of Practice uses an annual grocery turnover threshold to determine who it applies to, and the Australian Commonwealth Government’s view on who should agree to be bound by the Australian Food and Grocery Code was expressed in terms of revenue or market share.

¹²⁶⁴ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 10; Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 12; Comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 8.

¹²⁶⁵ Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 16 (line 30) to 17 (line 9).

¹²⁶⁶ Comments by NZFGC, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 14-15.

¹²⁶⁷ For example, comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 13.

- 9.177 In determining the application of the code, a decision would need to be made as to whether the code applied on a whole of business basis, or whether the annual grocery revenue threshold applied on a store-by-store basis. We note that the major grocery retailers have indicated a willingness to be covered on a whole of business basis.¹²⁶⁸
- 9.178 We acknowledge that not all suppliers will require the protections offered by a code of conduct. However, there is likely to be limited downside to broad protections:
- 9.178.1 even large suppliers rely on the major grocery retailers to stock their products, and as such may still often be in a weaker relative bargaining position;
 - 9.178.2 many of the proposed provisions of the code are procedural, rather than substantive, and are therefore arguably appropriate to apply to larger suppliers; and
 - 9.178.3 there could be practical difficulties in designing thresholds or screens that identify those firms who have similar or greater bargaining power to the major grocery retailers.¹²⁶⁹
- 9.179 We therefore consider that the code should apply to all suppliers. Our recommendations above regarding the content of a code are designed with the intent of avoiding undermining the ability of the major grocery retailers to negotiate firmly but fairly with suppliers.

A grocery code of conduct should be determined by Government in consultation with industry and Māori

- 9.180 We recommend that a grocery code of conduct be determined by Government, in consultation with retailers, suppliers, and Māori, rather than set through industry self-regulation.

¹²⁶⁸ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 13; Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 21; Comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 23.

¹²⁶⁹ For example, while a maximum revenue threshold could be set, decisions would need to be made about whether this was on the basis of a supplier's total sales, sales to the major grocery retailers, or sales to each grocery retailer individually. As the major grocery retailers have thousands of suppliers, a maximum revenue threshold could also create practical issues for the major grocery retailers in determining which of their suppliers are protected by the code.

- 9.181 It will be important that any code of conduct is workable for the parties that are required to apply it. However, we do not recommend that the code be developed by industry. Suppliers lack confidence in the current supplier charters, which were negotiated by industry. To the extent there is a significant imbalance in bargaining power, there is a real risk that the outcome of industry negotiations would further reflect any imbalance in bargaining power and represent a minimal improvement on the current position.

Recommendation 6D: Establish a formal dispute resolution mechanism for grocery code of conduct disputes

- 9.182 A code of conduct should include a formal mechanism to resolve disputes between retailers and suppliers. A code dispute resolution mechanism will not prevent disputes being resolved directly between a retailer and a supplier. It should, however, provide access to an independent decision maker for disputes that are not able to be resolved in this way.
- 9.183 We consider that a dispute resolution mechanism should, to the extent possible, have the following attributes:
- 9.183.1 **Independence.** To provide suppliers with confidence in the process, the dispute resolution mechanism should be independent of, and unable to be influenced by, the major grocery retailers.
 - 9.183.2 **Accessible and affordable.** Cost should not be a barrier to raising disputes, particularly for small suppliers.
 - 9.183.3 **Timely.** Feedback from those involved in administering and reviewing the UK and Australian codes suggests that the speed of resolution is crucial.
 - 9.183.4 **Informed by specialist expertise.** A specialist adjudicator with industry experience and/or commercial credibility is likely to be desirable.
 - 9.183.5 **Confidentiality.** To avoid fears of retribution, the identity of suppliers raising disputes should remain confidential.

9.184 There may, in practice, be trade-offs between some of these attributes. Australia and the UK have taken different approaches to each other, and over time, when implementing their dispute resolution model. Australia, for example, has recently introduced changes to its Code dispute resolution mechanism through the introduction of Code Arbiters, backed by an Independent Reviewer.¹²⁷⁰ The Australian Independent Reviewer has noted that it may be too early to tell if the changes to dispute resolution mechanisms are working as intended, with only four complaints being referred to Code Arbiters in the 2020/21 reporting period.¹²⁷¹

The grocery code of conduct should be monitored and enforced by a grocery regulator

9.185 Where an industry is characterised by significant imbalances in bargaining power, and there is the potential for retaliation against suppliers who make complaints, self-enforcement and dispute resolution processes alone are unlikely to be sufficient. This is further reinforced by the high cost of, and time taken to conclude, civil litigation in New Zealand, and the disparity of resources between some suppliers and major grocery retailers.

9.186 In addition to any dispute resolution body, we consider it will be necessary to establish a regulator with appropriate powers and resources to monitor compliance with the code, and undertake enforcement action where appropriate. We expect that this regulator would generally take action in respect of systemic non-compliance with the code, rather than in respect of individual disputes. This regulator could also have a range of other responsibilities in relation to the grocery sector, which we discuss later in this chapter.

¹²⁷⁰ ACCC “Changes to the Food and Grocery Code” <https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct/changes-to-the-food-and-grocery-code>.

Under this model:

- Code Arbiters are appointed by retailers subject to the Code, but must not be engaged by the retailer in any other capacity, and may not be unduly influenced by the retailer.
- Code Arbiters are responsible for investigating and proposing a resolution to disputes or complaints, and have authority to enter into an agreement on the behalf of a retailer or wholesaler.
- Arbiters need to take all reasonable steps to conclude complaints within 20 business days.
- Matters referred to a Code Arbiter remain confidential, except with the supplier’s explicit consent, or where the identity needs to be disclosed to put in place a remedy.
- The Independent Reviewer may review Code Arbiters’ processes in dealing with complaints, identify and address emerging and systemic issues in the grocery supply chain relating to the operation of the Code, and publish non-binding guidance material relating to compliance with the Code.
- Suppliers can also seek independent mediation or arbitration of a dispute, outside of the Code Arbiter or Independent Reviewer process.

¹²⁷¹ Food and Grocery Code Independent Review “Annual Report 2020-21” (2021), available at: https://treasury.gov.au/sites/default/files/2021-11/p2021-229034_0.pdf.

- 9.187 Monitoring of compliance and the publication of summary analysis is likely to incentivise compliance and ensure that any enforcement action is able to be appropriately targeted. It is also likely to assist in any periodic review of the code. We also recommend that there be an ability for the dispute resolution body to share aggregated information with the regulator, to support the regulator's compliance and enforcement activities.
- 9.188 We recommend that appropriate enforcement mechanisms be provided to improve compliance with a code of conduct. This could include civil pecuniary penalties to deter breaches of the code, and the ability to order payment of compensation to those affected by any breach of the code.
- 9.189 We also suggest that consideration be given to the protection of whistle-blowers and complainants, including through the inclusion of anti-retaliation measures. These may assist in bringing conduct to the attention of the dispute resolution body and the regulator.

Recommendation 7: Consider a statutory authorisation or exception for collective bargaining by grocery suppliers

- 9.190 Collective bargaining in a product market involves two or more competitors jointly negotiating with a common supplier or customer about terms and conditions of supply, which may include price. This may involve appointing a single representative, such as an industry association, to act on their behalf in negotiations.
- 9.191 Small businesses can sometimes be better off negotiating as a group. They may be able to negotiate more efficiently with larger businesses and may be able to achieve better terms and conditions, than they can on their own. Larger businesses may also benefit from collective bargaining, particularly where it reduces their costs in dealing with individual suppliers.
- 9.192 In the retail grocery sector, we consider that collective bargaining by suppliers could have benefits in situations such as where a major grocery retailer intends to modify non-price terms and conditions that are common to many suppliers. We note that collective bargaining is also relatively common in relation to groups of fresh produce suppliers.
- 9.193 As collective bargaining by suppliers involves an agreement between competitors, there is a risk that any such agreement may breach competition laws. Such agreements can, and have, been authorised by the Commission under the Commerce Act where they are likely to be of net public benefit. There are, however, costs in obtaining an authorisation, and these costs may discourage small businesses from individually applying. In addition, the existing application-based authorisation regime may not be the most efficient means of enabling conduct when the issues being addressed exist across a sector.
- 9.194 In our draft report, we suggested that collective bargaining by small suppliers could be authorised, or provided a statutory exception, on a class basis.

- 9.195 We received mixed feedback on this recommendation:
- 9.195.1 The Food and Grocery Council, Vegetables New Zealand and Horticulture New Zealand were supportive of enabling collective bargaining, although did not express a clear view on the circumstances in which collective bargaining would be used.¹²⁷²
- 9.195.2 The major grocery retailers generally indicated that they considered the authorisation process contained in the Commerce Act to be sufficient, and that a class authorisation would not be in the interests of consumers and could raise a range of practical considerations.¹²⁷³
- 9.195.3 The National Māori Authority noted the challenges individual Māori suppliers face at present in terms of being disconnected when bargaining with the major grocery retailers.¹²⁷⁴
- 9.196 We remain of the view that collective bargaining by suppliers may have some benefits, in some circumstances. Collective bargaining by suppliers may not be sufficient, on its own, to overcome a significant imbalance between suppliers and major grocery retailers. It may, however, complement some of our other recommendations, including a grocery code of conduct. We therefore recommend consideration of a statutory authorisation or exception for collective bargaining by grocery suppliers.
- 9.197 The benefits associated with collective bargaining do not appear to be particularly pronounced in, or limited to, the retail grocery sector. We note, for example, that the Australian Competition and Consumer Commission (ACCC) has recently issued a class exemption for collective bargaining that extends across the economy.¹²⁷⁵ Given this, consideration could be given to whether there are benefits in allowing for a form of authorisation or class exception for collective bargaining that extends beyond the grocery sector.

¹²⁷² Comments by NZFGC, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 41; Vegetables New Zealand and Horticulture New Zealand “Submission on Market study into grocery sector draft report” (26 August 2021) at [14].

¹²⁷³ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 10 and 41; Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 8; Comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 3 (26 October 2021) at 9.

¹²⁷⁴ National Māori Authority “Post conference submission on Market study into grocery sector” (30 November 2021) at 5.

¹²⁷⁵ Australian Competition and Consumer Commission “Collective Bargaining Class Exemption” (3 June 2021), available at: <https://www.accc.gov.au/public-registers/class-exemptions-register/collective-bargaining-class-exemption-0>.

- 9.198 Any such authorisation or exception would need to ensure that:
- 9.198.1 **The collective bargaining was limited to the businesses, and circumstances, where it was likely to be beneficial.** This would likely include a maximum size for any business involved in collective bargaining.
 - 9.198.2 **The collective bargaining did not permit, or facilitate, additional conduct that would be likely to harm competition.** This would include, but not be limited to, cartel conduct such as price fixing.
 - 9.198.3 **It was transparent when collective bargaining was occurring.** This would allow the effect of any authorisation or exception to be monitored.
 - 9.198.4 **It can be tailored to circumstances as they arise.** It would be desirable if the authorisation or exception was able to be amended, to reflect any identified concerns, unforeseen issues or changes in circumstances.

Recommendation 8: Amend the Fair Trading Act to strengthen the business-to-business unfair contract terms regime

- 9.199 In August 2021, the Fair Trading Amendment Act 2021 received Royal Assent. From August 2022, the Fair Trading Act will include a prohibition against unconscionable conduct and a business-to-business unfair contract terms regime.¹²⁷⁶ These reforms could potentially provide additional tools to address conduct of the kind reported to us during our study.
- 9.200 The unconscionable conduct prohibition will be enforceable by the Commission and private parties. In Australia, the unconscionable conduct prohibition has been used with some success to address and deter unconscionable conduct by retailers against suppliers.¹²⁷⁷
- 9.201 The business-to-business unfair contract terms regime will apply to standard form contracts that form part of a trading relationship with an annual value of less than \$250,000 (including GST). Many suppliers to the major grocery retailers would have trading relationships in excess of \$250,000. However, the provisions will potentially cover the standard form contracts entered into with the smallest suppliers who may currently face the most significant imbalance in bargaining power and have an inability to negotiate departure from standard form terms and conditions presented on a ‘take it or leave it’ basis.

¹²⁷⁶ Sections 6 and 7 of the Fair Trading Amendment Act 2021, respectively.

¹²⁷⁷ ACCC “Court finds Coles engaged in unconscionable conduct and orders Coles pay \$10 million penalties” (22 December 2014) <https://www.accc.gov.au/media-release/court-finds-coles-engaged-in-unconscionable-conduct-and-orders-coles-pay-10-million-penalties>.

- 9.202 The principles-based nature of the unfair contract terms and unconscionability provisions means they are potentially of wide application, but are inherently less certain than the specific provisions adopted in the UK and Australian codes of conduct. We consider that this uncertainty, coupled with the application only to standard form contracts and the annual value cap of \$250,000 for the unfair contract terms protections, means that – while useful – these provisions are unlikely to be a substitute for a code of conduct.
- 9.203 Unlike other provisions of the Fair Trading Act and the Commerce Act, both the existing consumer and new business-to-business unfair contract terms provisions are only able to be enforced by the Commission. They are also subject to a ‘two-step’ enforcement process, under which it is not an offence to include a term in a contract unless that term has previously been declared by a Court to be unfair.¹²⁷⁸

Recommendation 8A: Allow private action in respect of unfair contract terms

- 9.204 Any dispute between suppliers and retailers over unfair terms in a standard form contract may form part of a larger dispute that could also relate to matters such as misleading, deceptive, or unconscionable conduct. While private legal action may be unlikely, for the reasons discussed above and in Chapter 8, we nevertheless consider that the option should be available to suppliers in respect of unfair contract terms, as it is for other matters. Given this, to provide greater incentives for unfair terms to be proactively removed from grocery supply contracts, and to improve consistency with the rest of the Act, we recommend that the Fair Trading Act be amended to allow private action in respect of unfair contract terms.

Recommendation 8B: Simplify the mechanism for imposing penalties and other remedies in relation to the use of unfair contract terms

- 9.205 We also recommend that the provisions for unfair contract terms be amended (at least insofar as they apply to grocery supply contracts), so that the prohibition relates to the inclusion of terms that meet the definition of being unfair, rather than only terms that have previously been declared to be unfair. This would mean that, if a Court found that there was a contravention of the unfair contract terms provisions, it could immediately impose penalties or other remedies, rather than only if the party continued to include or rely on such terms. This could be accompanied by a defence if, for example, a person had reasonable grounds to believe a term was not unfair.

¹²⁷⁸ This is because the prohibitions on unfair contract terms in the Fair Trading Act 1986 specifically relate to terms that have previously been declared to be unfair. This differs from most other prohibitions in the Fair Trading Act and Commerce Act, which relate to conduct generally, not solely conduct that has previously been subject to a court declaration.

- 9.206 We note that the Government has already signalled an intent to consider this and Recommendation 8A in the future.¹²⁷⁹

Recommendation 8C: Consider raising the transaction value cap for unfair contract terms

- 9.207 As discussed above, at present many suppliers will not be covered by the business-to-business unfair contract term provisions, as the value of their trading relationships with the major grocery retailers will exceed \$250,000 per annum. We recognise that the intent of the transaction value cap as provided for in the Fair Trading Amendment Act was to avoid interfering in high-value, ‘strategic’ contracts between businesses. However, in the context of the retail grocery sector, there are likely to be many trading relationships with a value exceeding \$250,000 per annum where the supplier nevertheless still faces a substantial imbalance in bargaining power with the major grocery retailers.
- 9.208 Consequently, the Government may wish to consider whether there would be benefit in raising the transaction value cap for the business-to-business unfair contract terms provisions (at least insofar as they apply to grocery supply contracts), to increase the proportion of suppliers who benefit from the protections. We consider that other features of the regime, in particular the fact that the protections only apply to standard form contracts that have not been subject to ‘effective negotiation’, may be sufficient to ensure that the unfair contract terms provisions do not inadvertently protect suppliers with a high degree of bargaining power.

We will consider using our compliance and enforcement functions

- 9.209 Independent of the outcomes of this study, we will continue to provide guidance and consider the appropriate use of the full range of our investigation and enforcement tools in relation to unfair business-to-business standard form contracts and unconscionable conduct.

Recommendations to improve the ability of consumers to make informed decisions

- 9.210 Well-functioning markets rely on consumers having an ability to make well-informed decisions and switch to suppliers who best meet their needs.
- 9.211 This section discusses the following measures to improve outcomes for consumers and enhance competition between the major grocery retailers:
- 9.211.1 Recommendation 9: The major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand;
- 9.211.2 Recommendation 10: Mandate the consistent display of unit pricing;

¹²⁷⁹ Office of the Minister for Small Business and Office of the Minister of Commerce and Consumer Affairs “Unfair Commercial Practices: Policy Decisions” (24 July 2019) at [34], available at: <https://www.mbie.govt.nz/dmsdocument/6621-unfair-commercial-practices-policy-decisions-proactiverelease-pdf>.

9.211.3 Recommendation 11: The major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use practices is clear and transparent; and

9.211.4 Recommendation 12: The major grocery retailers should cooperate with price comparison services.

9.212 We expect that these recommendations, several of which are directed at the major grocery retailers, should result in consumers having better tools to make more informed comparisons and purchasing decisions, and improve consumer confidence. This in turn should enhance competition between the major grocery retailers.

Recommendation 9: The major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand

9.213 As discussed in Chapter 7, the major grocery retailers make use of a range of promotional practices, and provide a range of information to consumers. The use of short-term promotional pricing is related to the use of promotional funding by suppliers and retailers, as noted in Chapter 8.

9.214 Competitive pricing and the provision of information to consumers are generally beneficial. However, where the promotional mechanism or information provided is confusing, it may make it harder for consumers to make informed decisions.

9.215 In our view, the pricing and promotional practices and materials used by the major grocery retailers can make it more difficult for consumers to make meaningful comparisons between offers and products. This is particularly the case where multiple pricing and promotional mechanisms are used frequently and often in combination with one another.

9.216 For example, New World and Countdown currently use at least four pricing and promotional tickets. The same style ticket may be used for both a “was/now” promotion and a ‘multi-buy’ or an ‘everyday low price’ offering may also be part of a multi-buy offer. Feedback we have received from consumers suggests they find such practices confusing, and that easy-to-understand pricing and promotional mechanisms can help consumers to make better purchasing decisions.

9.217 To address these issues, we recommend that the major grocery retailers ensure that their pricing and promotional practices and materials are simple and easily understood by consumers. This could include:

9.217.1 ensuring that the number of different promotional mechanisms and their use in combination does not result in consumer confusion;

9.217.2 using different tickets for different mechanisms to clearly indicate the type of mechanism being used;

9.217.3 ensuring that the usual price is accurate and consistently and clearly displayed alongside the promotional price; and

9.217.4 ensuring that member-only discounts are clearly labelled and easily distinguishable from other pricing and promotional mechanisms.

9.218 As discussed in Chapter 7, the major grocery retailers have all indicated that they have already, or are in the process of, reducing the frequency of their short-term promotions and moving towards a greater proportion of products with ‘everyday low pricing’. In addition, Foodstuffs NI has indicated that it intends to reduce the number of different promotional mechanisms used at its New World and PAK’nSAVE stores.

We do not recommend specific regulation of pricing or promotional practices at this time

9.219 We have considered whether other interventions may be required, such as sector-specific regulation regarding the use of promotional mechanisms or frequency of discounting. However, on balance, we do not recommend sector-specific regulatory intervention in relation to promotional pricing at this time.

9.220 While we consider that some level of voluntary simplification of promotional mechanisms is likely to promote competition and improve outcomes for consumers, there is a risk that prescriptive regulation of promotional mechanisms could have negative impacts for consumers. For example, while requiring major grocery retailers to shift entirely to an ‘everyday low price’ model could result in the ‘usual’ price of many products reducing, it could also result in consumers missing out on genuine savings during promotional periods. It could also limit innovation and the extent to which retailers compete through promotions.

Pricing and promotional practices are subject to the Fair Trading Act 1986

9.221 While we do not recommend sector-specific regulation of promotional practices at this time, we do recommend that the major grocery retailers closely review the compliance of their pricing and promotional practices with the Fair Trading Act 1986. Independent of this study, the Commission will continue to consider and take action under the Fair Trading Act 1986 where appropriate in response to complaints it receives about the pricing and promotional practices of the major grocery retailers. As discussed in Chapter 7, the Commission will also continue to consider the scope of guidance on the Fair Trading Act that may assist businesses engaged in price promotions in relation to grocery products, and across the retail sector.

Recommendation 10: Mandate the consistent display of unit pricing

9.222 As noted in Chapter 7, consistent unit pricing can help consumers compare the price of goods within and between retailers. Even when not directly comparing products and retailers, clear and accurate unit pricing information can help consumers to develop perceptions of value over time which in turn help them to decide where to shop to best meet their needs.

- 9.223 Where unit pricing information is not consistently available or cannot easily be assessed and acted upon by consumers, they may be less able to make informed decisions and less likely to shop around. This can result in a softening of competition between grocery retailers.
- 9.224 Unit pricing is mandated in Australia and the European Union.¹²⁸⁰ While unit pricing is not currently mandatory in New Zealand, it is used to a reasonable extent by the major grocery retailers. It is not, however, used consistently.
- 9.225 We consider that consistent use of unit pricing would assist consumers to make informed decisions and – at the margin – help promote both inter-brand and inter-retailer competition. There was relative consensus among submitters to our draft report, and participants at our conference, that regulation of the display of unit pricing would be beneficial.¹²⁸¹
- 9.226 Given this, we recommend that certain grocery retailers be required to display unit pricing in a specified and consistent format.¹²⁸² We consider that the Australian Code is a useful starting point for such regulations. We recommend that:
- 9.226.1 **Minimum standards regarding display be specified.** For example, in Australia, the unit price for a grocery item must be prominent, legible, unambiguous, and in close proximity to the selling price for the grocery item.
- 9.226.2 **Standardised units of measurement be specified for each category of products to be covered by the requirements.** For example, in Australia, grocery items sold by weight must display unit prices per 100 grams, while grocery volumes sold by volume must display unit prices per 100 millilitres, unless otherwise specified.

¹²⁸⁰ ACCC “Unit Pricing Code” <https://www.accc.gov.au/business/industry-codes/unit-pricing-code>; European Commission “Price indication directive” https://ec.europa.eu/info/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/price-indication-directive_en.

¹²⁸¹ Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 32-33; Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 33; Comments by Foodstuffs SI, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 33; Comments by National Council of Women New Zealand, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 34; Comments by Consumer NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 34-35; Comments by Ian Jarratt, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 35.

¹²⁸² This could be done as a consumer information standard under the Fair Trading Act, or through regulations under the same legislation that is used to put in place a code of conduct and/or other recommended interventions.

- 9.226.3 **Some product categories be exempted from a requirement to display a unit price, where the unit price would not provide useful information** (for example, gift cards, magazines, and flowers). This aligns with the approach taken in Australia, the major grocery retailers' current practices, and submissions on our draft report. Generally, we recommend that only grocery products be included, to avoid a wide range of products being included if 'big box' retailers such as The Warehouse were to be covered by the provisions (see below).
- 9.226.4 **The requirements apply to in-store display and advertising in print media and online where the selling price is displayed**, but not television, radio, and other video or audio content. This is broadly consistent with the EU Directive, UK legislation, and the Australian Code.
- 9.226.5 **An appropriate transitional period be provided before compliance is mandatory, to ensure necessary retailer systems can be implemented.** For example, Foodstuffs NI has told us that more than two thirds of its Four Square stores cannot currently offer unit pricing, as they do not have appropriate software.¹²⁸³
- 9.226.6 **There be an appropriate monitoring and enforcement regime, including penalties for non-compliance.** The consumer information standard regime under the Fair Trading Act 1986 already provides a means of regulation and enforcement of information requirements. If a different regulatory mechanism is used, the Fair Trading Act's enforcement framework could be carried across to this mechanism.

Both online and physical retailers above an annual grocery revenue threshold should be subject to unit pricing requirements

- 9.227 Following the publication of our draft report, we received a range of views from submitters about which retailers any unit pricing requirements should apply to. Australia's Unit Pricing Code applies to online retailers, and grocery retailers with more than 1000 square metres of floor space, provided that they sell products from all of 11 specified categories of food-based grocery items.¹²⁸⁴
- 9.228 We received submissions that the scope of application of any New Zealand requirements should be broader than the scope of the Australian Unit Pricing Code, to encompass a wider range of retailers.¹²⁸⁵ On the other hand, we also heard concerns that the inclusion of smaller retailers would create significant additional costs and impact on conditions of entry and expansion.

¹²⁸³ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [390].

¹²⁸⁴ These are: bread, breakfast cereal, butter, eggs, flour, fresh fruit and vegetables, fresh milk, meat, rice, sugar, and packaged food (other than food already mentioned).

¹²⁸⁵ For example: Comments by Woolworths NZ, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 32-33; Comments by Foodstuffs NI, Transcript of Grocery Market Study Conference – Day 2 (22 October 2021) at 8.

- 9.229 We recommend that retailers (both physical and online) be covered by unit pricing requirements if they meet a minimum threshold in terms of annual grocery revenue. A decision would need to be made about whether the minimum annual threshold was at store level or group level. This could be influenced by factors such as the scope of shared systems.
- 9.230 The major grocery retailers submitted, and we agree, that there should be a minimum threshold before retailers are required to comply with the code. This is to ensure the code does not place disproportionate compliance costs on smaller retailers and impact on the conditions of entry and expansion in the retail grocery sector. We understand that both physical and online grocery retailers would face compliance costs associated with unit pricing regulation. A revenue threshold – unlike the minimum floor space requirement used in Australia – would be applicable to both physical and online retailers.
- 9.231 We considered whether grocery retailers should also need to sell a specified range of grocery products to be subject to a code, as in Australia. However, we consider that application of the Australian Unit Pricing Code may be too narrow, and would risk excluding retailers for which consumers could benefit from their inclusion. For example, under the Australian Code, if a retailer does not sell meat, or fresh fruit and vegetables, it would not be required to display unit pricing. We think that a grocery revenue threshold is likely to be sufficient to limit coverage to where it is most appropriate.
- 9.232 While we do not make a recommendation as to the specific annual revenue threshold that should be employed, we consider that it may be appropriate for the threshold to be lower than the threshold specified for any grocery code of conduct (discussed above). This is because unit pricing is about improving the availability of information for consumers, and is likely to have benefits regardless of which grocery retailer is providing this information. In contrast, a grocery code of conduct is predominantly about addressing imbalances in bargaining power between large grocery retailers and their suppliers, and is unlikely to be necessary or have the same benefits when extended to smaller grocery retailers.

Recommendation 11: The major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use practices is clear and transparent

Recommendation 11A: The major grocery retailers should ensure disclosure of loyalty programme terms and conditions is clear and transparent

- 9.233 As noted in Chapter 7, even when provided with some information, most consumers do not appear to have a good understanding of how loyalty programmes such as Onecard and Clubcard work, particularly regarding rates at which benefits or points can be earned by consumers and redeemed for various rewards.

- 9.234 We consider that complex rewards structures could make it harder for consumers to identify the benefits available to them, and – at the margin – reduce price competition by shifting consumer focus away from retail prices and towards rewards. They also make it difficult to compare the benefits offered by a loyalty programme with other discount promotions offered by the same, or other grocery retailers.
- 9.235 We do not consider these programmes and practices to be a significant impediment to competition at this time. However, we consider that there would be benefits from the major grocery retailers ensuring that the presentation of the reward structures offered by their loyalty programmes is clear, transparent and readily understandable by consumers. This could include:
- 9.235.1 explaining in clear and direct language the difference between transaction-based benefits and accumulated rewards;
 - 9.235.2 clearly and prominently explaining the rate of reward consumers can earn through accumulating points and its value (i.e. the dollar spend required to earn points and the dollar value of any corresponding reward once earned);
 - 9.235.3 ensuring that consumers are adequately notified if their accumulated points are approaching expiry; and
 - 9.235.4 notifying consumers of any changes to their rewards structures.
- 9.236 Following the publication of our draft report, the major grocery retailers have already indicated a willingness to address many of these issues voluntarily.¹²⁸⁶
- 9.237 We note that the issues related to the disclosure of loyalty programme terms and conditions are unlikely to be limited to the retail grocery sector. In Australia, the ACCC has carried out a cross-sector study into customer loyalty schemes.¹²⁸⁷ Outside of retail grocery stores, the Commission has received a small number of complaints about loyalty schemes in other sectors, including fuel, airlines, and general retail. Given this, consideration could be given to whether there would be benefits in carrying out a similar cross-sector review into loyalty programmes in New Zealand. As part of this, the agency undertaking the review could consider the extent to which the major grocery retailers have altered their practices in line with our recommendations above.

¹²⁸⁶ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [391]; Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [386]; Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at [10.1].

¹²⁸⁷ Australian Competition and Consumer Commission “Customer loyalty schemes review” (2019) <https://www.accc.gov.au/focus-areas/market-studies/customer-loyalty-schemes-review>.

Recommendation 11B: The major grocery retailers should ensure disclosure of consumer data collection and use practices is clear and transparent

- 9.238 As noted in Chapter 7, we also consider that many consumers do not understand how their personal data is collected and used in their loyalty programmes. This is unlikely to significantly impact on competition overall at this time. However, it may inhibit competition for consumers with strong data use or privacy preferences, if consumers are not able to make decisions about their participation in loyalty programmes that accurately reflect their data use and privacy preferences.
- 9.239 While the major grocery retailers disclose some of these practices, their privacy policies lack specificity about who might be provided with consumer data and on what basis. In addition, the terms and conditions are lengthy and difficult for consumers to understand. Consumers may therefore not be aware of what they are signing up for.
- 9.240 We recommend that the major grocery retailers ensure that they are providing consumers with appropriate relevant information to make informed decisions. This could include:
- 9.240.1 ensuring that their explanation of the nature of consumer data collection and use practices is sufficiently prominent, by:
 - 9.240.1.1 improving the accessibility, clarity and readability of privacy policies and other related terms and conditions;
 - 9.240.1.2 clearly describing how consumer data is shared, with whom and why; and
 - 9.240.1.3 minimising information overload by prominently presenting the key aspects of their policies;
 - 9.240.2 providing consumers with timely and prominent notice of any changes to these practices and an option to cancel their membership if they do not accept the changes;
 - 9.240.3 clearly disclosing if consumers' payment cards are being linked to their loyalty membership to track purchasing behaviour when they do not scan their loyalty card, or otherwise ceasing this practice; and
 - 9.240.4 ensuring that consumers are provided with information about how to cancel their membership and about the status (including any future use) of any personal information that has been collected or will continue to be collected after cancellation of a membership.

- 9.241 As with loyalty programme structures, the major grocery retailers have committed to voluntarily addressing many of these issues.¹²⁸⁸
- 9.242 We consider that data collection and use practices could also form part of the scope of a cross-sector review into loyalty programmes, as described above.

Recommendation 12: The major grocery retailers should cooperate with price comparison services

- 9.243 As discussed in Chapter 7, price comparison websites can promote competition by making it easier for consumers to make well-informed decisions when choosing between goods and services. They can also create a risk of facilitating coordination. However we consider that the risk of increased coordination is low in the retail grocery sector, as a high degree of price monitoring is already undertaken by retailers.
- 9.244 New Zealand consumers do not appear to widely use third-party grocery price comparison services. There is currently one price comparison website for retail grocery in New Zealand: FoodMe. FoodMe allows consumers to add groceries to a basket and compare the prices of that basket. However, at present it only has pricing information on a limited range of products, and is not integrated with the major grocery retailers' online ordering systems. This means that consumers cannot currently create a basket of items on FoodMe and then purchase them via a retailer. We understand that there are other New Zealand services in development, and similar services in Australia.
- 9.245 As noted in Chapter 7, the wide range of products, the low ticket-value of most individual grocery items, and the requirements of different shopping missions, can make meaningful price comparison for retail groceries considerably more difficult than in other markets. However, it is possible that a comprehensive price comparison site that is integrated into the online ordering systems of the major grocery retailers could be valued by consumers.
- 9.246 Price comparison websites (including FoodMe) typically work by 'scraping' and compiling publicly-available information about prices. However, they can also be enabled through direct feeds of information from suppliers and/or retailers. We note that Woolworths NZ has already indicated a willingness to cooperate in relation to the development of price comparison services.¹²⁸⁹

¹²⁸⁸ Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [391]; Foodstuffs SI "Submission on Market study into grocery sector draft report" (10 September 2021) at [386]; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [10.1].

¹²⁸⁹ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [3.4.2]

- 9.247 As demand for grocery price comparison services from New Zealand consumers is unclear at this stage, we do not recommend further intervention – such as mandating the provision of direct feeds of pricing information to comparison websites – at this time. However, given the international evidence about the benefits of price disclosure and comparison websites (including in the retail grocery sector), and the low likelihood of additional coordination being facilitated, we do recommend that the major grocery retailers cooperate with existing or potential providers of price comparison services.
- 9.248 If, at an appropriate time after the completion of this market study, the Government was of the view that there was sufficient demand for price comparison services in the retail grocery sector, and that there were barriers to these services being put in place, it could consider regulatory intervention. For example, we note that the Government has recently agreed to introduce a consumer data right framework which would extend to product-level data (information about the products or services offered to consumers by a business, including prices) in designated sectors.¹²⁹⁰

Options to directly improve retail competition in grocery markets

- 9.249 Our draft report considered options to directly facilitate greater retail grocery competition. This was on the basis that, while interventions such as improving the availability of wholesale supply might enhance competition by making retail entry or expansion easier in the long run, such measures might be less effective, cost more and take longer than direct structural change.
- 9.250 Options we considered included:
- 9.250.1 Government facilitating entry into retail grocery markets, such as by providing funding following a contestable procurement process or entering into a joint venture. This could be facilitation of a vertically-integrated entrant, or a retail-only entrant if there were ready access to wholesale grocery supply.
 - 9.250.2 Government-mandated divestiture of existing retail stores by the major grocery retailers.

¹²⁹⁰

Office of the Minister of Commerce and Consumer Affairs “Establishing a consumer data right” (2021)
<https://www.mbie.govt.nz/dmsdocument/15536-establishing-a-consumer-data-right-proactiverelease-pdf>. If extended to the retail grocery sector, this would allow the government to require grocery retailers to provide data feeds relating to the price and other attributes of their grocery products to parties seeking to provide price comparison services.

9.251 Submissions on these options were mixed:

- 9.251.1 As with options to support access to wholesale supply, the major grocery retailers, and consultants they commissioned, were strongly opposed to divestiture of existing retail stores, including due to the practical difficulties associated with separation, potential loss of economies of scale and supply chain resilience, and impacts on investment incentives, amongst other reasons.¹²⁹¹
- 9.251.2 Coriolis Ltd argued that forced separation (at Foodstuffs) or divestment (at Woolworths NZ) was the only way to achieve greater competition between traditional supermarkets in any meaningful timeframe.¹²⁹²
- 9.251.3 Northelia recommended that the Government require the major grocery retailers to divest 200 supermarkets to two new entities, or otherwise sufficient retail stores to allow a new entrant to achieve a minimum of 15 per cent market share.¹²⁹³
- 9.251.4 Most Māori contributors did not explicitly advocate for or against divestment of retail stores. However, if there were to be divestment of retail store assets, many advocated for consideration of Māori ownership of these assets.¹²⁹⁴
- 9.251.5 The New Zealand Initiative argued that a new government-backed entrant into grocery retail would not be effective given that, without solving underlying issues relating to the conditions of entry and expansion, including planning law, it would face the same issues as a privately-backed retailer seeking to enter the market.¹²⁹⁵

¹²⁹¹ For example: Woolworths NZ “Post conference submission on Market study into grocery sector” (23 November 2021) at [31]; Woolworths NZ “Post conference submission on Market study into grocery sector: Attachment 1 - Peter Harris AO - Views on the Commerce Commission Draft Market Study Report on Grocery Retailing in New Zealand” (25 November 2021); Foodstuffs NI “Post conference submission on Market study into grocery sector” (3 December 2021) at [262].

¹²⁹² Coriolis Ltd “Post conference submission on Market study into grocery sector” (18 November 2021) at [72].

¹²⁹³ Northelia “Submission on Market study into grocery sector draft report” (26 August 2021) at 4; Comments by Northelia, Transcript of Grocery Market Study Conference – Day 6 (1 November 2021) at 23-24.

¹²⁹⁴ For example: Ngati Porou Holding Company Ltd “Post conference submission on Market study into grocery sector” (23 November 2021) at 6; Rangitāne Tamaki nui a Rua Iwi “Post conference submission on Market study into grocery sector” (25 November 2021); Ngāti Kahungunu Iwi Incorporated “Post conference submission on Market study into grocery sector” (24 November 2021); Ngāi Tahu Holdings “Post conference submission on Market study into grocery sector” (23 November 2021).

¹²⁹⁵ NZ Initiative “Submission on Market study into grocery sector draft report” (26 August 2021) at 7-8.

- 9.252 As with the recommendations to improve the conditions of entry and expansion, direct intervention to facilitate a greater number of retailers might have benefits in terms of:
- 9.252.1 more intense competition at the retail level and greater choice in terms of PQRS for consumers;
 - 9.252.2 greater innovation, improved productivity and/or efficiency at the retail level through different business structures;
 - 9.252.3 in conjunction with our recommendations relating to a code of conduct, more balanced bargaining positions between suppliers and retailers, potentially enabling greater innovation and higher quality products (although it is likely that a degree of imbalance in bargaining power would remain); and
 - 9.252.4 a potentially greater range of grocery suppliers and associated products as a result of an improved ability for suppliers to grow supply through smaller increments of demand.
- 9.253 However, we have not been able to quantify the likelihood or extent to which improvements would occur and would benefit consumers.
- 9.254 There are likely to be a range of costs associated with divestiture of existing retail stores, including:
- 9.254.1 practical challenges associated with divestment and transaction costs for the businesses affected;
 - 9.254.2 lost economies of scale and increased costs of supply; and
 - 9.254.3 lost bargaining power with multinational suppliers.
- 9.255 As discussed above, some Māori contributors suggested that divestment could support Māori, hapū and iwi to achieve their aspirations of greater involvement in the retail grocery sector. We acknowledge the importance of these aspirations and the Government may wish to take them into account in its response to our study. However, in this instance, we consider they fall outside the remit of the scope of our study.

We do not recommend divestiture of existing retail stores at this time

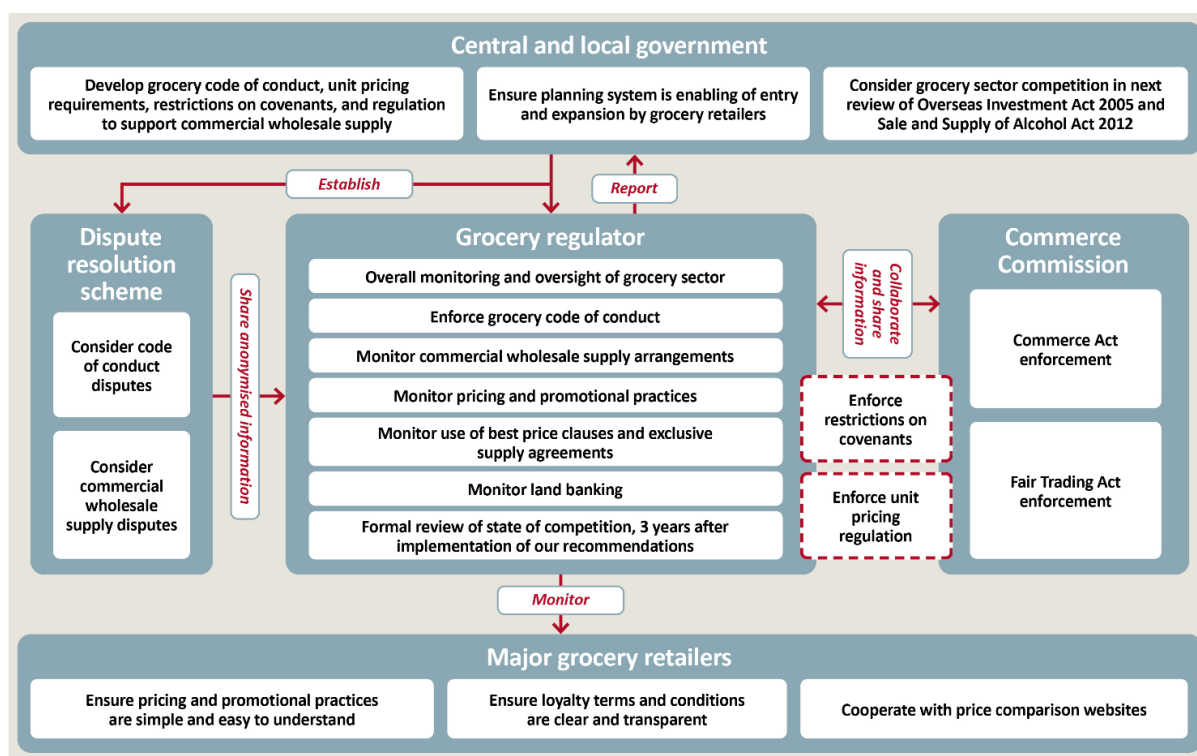
- 9.256 Based on the information available to us at this time, while we have considered the option of divestment of existing retail stores, we cannot conclude that the benefits of divestiture would exceed the costs, particularly as we expect that some of the benefits could be achieved by the other interventions that we are recommending. Elsewhere in this chapter, we have recommended a number of options intended to improve the conditions for competition. We consider that they should be implemented and tested before further considering whether other initiatives may be required. This could occur three years after the Government has implemented any reforms that it chooses to proceed with as a result of our recommendations, if the Government concludes at that point that competition is still not working as well as it could be.

We do not recommend proactive facilitation of retail entry by government at this time

- 9.257 We also do not recommend proactive facilitation of retail entry by government at this time. This is, in part, because a new government-facilitated entrant would likely face the same issues relating to conditions of entry or expansion as any other potential entrant. This includes in relation to access to suitable sites, and availability of wholesale supply. In addition, as with proactive facilitation of wholesale entry, any procurement or joint venture process would likely be complex, potentially expensive, and could present a high risk of failure. Given this, we propose that our recommendations relating to the conditions of entry and expansion be implemented prior to proactive facilitation of retail entry. However, as above, this could be revisited three years after the response to our recommendations have been implemented.

Institutional arrangements

- 9.258 Our conclusions and recommendations outlined above are directed at a number of parties, and have a range of institutional implications. The diagram below illustrates these at a high level.

Figure 9.1 Institutional arrangements

9.259 Below, we explore these potential implications in more detail.

A number of our recommendations are directed at industry

9.260 A number of our recommendations are directed at industry. These include:

- 9.260.1 Recommendation 9: The major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand;
- 9.260.2 Recommendation 11: The major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use practices is clear and transparent; and
- 9.260.3 Recommendation 12: The major grocery retailers should cooperate with price comparison services.

Some of our conclusions have implications for the Commerce Commission

- 9.261 A number of our conclusions relate to conduct which is subject to provisions of the Commerce Act 1986 and Fair Trading Act 1986, both of which are enforced by the Commission.
- 9.262 Our study does not enquire into compliance with the provisions of either Act, and therefore a conclusion that particular conduct affects competition, and may be the subject of a recommendation, is not a conclusion that it breaches the provisions of either Act.

- 9.263 However, we retain the ability to separately investigate anticompetitive or misleading or deceptive conduct if information collected during our study, or outside of it, gives us reason to believe that such conduct may be occurring in breach of either Act. Throughout this report, we have identified instances where we – independent of this process – will continue to consider the appropriate use of the full range of our compliance, investigation and enforcement functions and powers under these Acts.
- 9.264 In addition to enforcement of provisions in existing legislation enforced by the Commission, we also expect that some of our recommendations could potentially lead to additional responsibilities for the Commission under that legislation. This includes:
- 9.264.1 Recommendation 2: Prohibit restrictive and exclusive covenants that inhibit retail grocery store development, if any changes are made via the Commerce Act 1986; and
- 9.264.2 Recommendation 10: Mandate the consistent display of unit pricing, if this is implemented via a consumer information standard under the Fair Trading Act 1986.

Many of our recommendations will need further policy work and implementation by central or local government in the first instance

- 9.265 Aside from our recommendations that are directed at industry, or relate to enforcement of the Commerce Act or Fair Trading Act, our recommendations would have a number of implications for central and local government. We expect that:
- 9.265.1 Responsibility for giving effect to our recommendations relating to the planning system would sit with the Ministry for the Environment, Strategic Planning Reform Board, territorial authorities, and the joint planning committees that are proposed under the resource management reforms.
- 9.265.2 Responsibility for developing regulation relating to restrictions on the use of restrictive and exclusive covenants (Recommendation 2), commercial wholesale supply (Recommendation 3), a grocery code of conduct (Recommendation 6), collective bargaining (Recommendation 7), unfair contract terms (Recommendation 8), and unit pricing (Recommendation 10) would sit with MBIE. MBIE would also have responsibility for establishing any new grocery sector regulator and dispute resolution scheme (see below).
- 9.265.3 The Treasury, in conjunction with Land Information New Zealand, would be responsible for any future review of the Overseas Investment Act 2005 (Recommendation 4A).

- 9.265.4 The Ministry of Justice would be responsible for any future review of the Sale and Supply of Alcohol Act 2012 (Recommendation 4B).

Recommendation 13: Establish a grocery regulator and dispute resolution scheme

- 9.266 To give effect to a number of our other recommendations, we recommend the establishment of a grocery sector regulator, and a dispute resolution scheme.

Recommendation 13A: Establish a grocery sector regulator

- 9.267 We envisage that a regulator could have responsibility for general oversight of the retail grocery sector, and monitoring and reporting – both publicly and to government – on its performance.
- 9.268 In addition, we envisage that the grocery sector regulator would have a range of other specific functions. These would include:
- 9.268.1 enforcing the grocery code of conduct, in situations where dispute resolution or private enforcement is not appropriate or does not lead to satisfactory outcomes;
 - 9.268.2 overall stewardship of the relationship between major grocery retailers and suppliers, including the dissemination of best-practice information and guidance to sector participants about productive and appropriate retailer-supplier relationships, informed by aggregated information received from the dispute resolution body;
 - 9.268.3 monitoring requests for voluntary wholesale supply and the terms on which wholesale supply is provided, providing recommendations (but not enforcement) about principles for wholesale supply arrangements, and reporting to government on the success or otherwise of commercial wholesale supply arrangements;
 - 9.268.4 enforcing unit pricing regulation, if this was made under sector-specific legislation rather than as a consumer information standard under the Fair Trading Act;
 - 9.268.5 monitoring and reporting on the pricing and promotional practices, and loyalty programme terms and conditions, of the major grocery retailers (enforcement of the Fair Trading Act would remain with the Commission);
 - 9.268.6 monitoring and reporting on government progress at improving the conditions of entry and expansion for grocery retailers, including under planning law;
 - 9.268.7 monitoring and enforcing compliance by major grocery retailers with tighter restrictions on the use of restrictive covenants and exclusivity covenants in leases, if any changes are made on a sector-specific basis rather than via the Commerce Act 1986;

- 9.268.8 monitoring the extent of land banking by the major grocery retailers;
 - 9.268.9 monitoring the use of best price clauses and exclusive supply agreements by the major grocery retailers; and
 - 9.268.10 collecting information from the major grocery retailers to enable a subsequent review of the state of competition three years after the Government has implemented any reforms that it chooses to proceed with as a result of our recommendations.
- 9.269 The regulator would need robust information gathering powers to support many of these functions.
- 9.270 The Commission is not proposing that it would be the grocery sector regulator, although we expect that any new regulator would need to work closely with the Commerce Commission, given our role as the enforcement body for the Fair Trading Act 1986 and Commerce Act 1986. Decisions about institutional arrangements are ultimately a matter for the Government.

Recommendation 13B: Establish a dispute resolution scheme

- 9.271 The dispute resolution scheme would consider disputes relating to both the code of conduct, and disputes regarding commercial wholesale supply arrangements, as discussed at paragraphs 9.111 and 9.182. It would not consider disputes regarding the price or quantity of goods supplied under any actual or potential commercial access arrangements.

Monitoring and review

Recommendation 14: Review the state of competition in the grocery sector three years after implementation of our recommendations, and collect information in the interim to support this review

- 9.272 We have recommended a range of actions to be taken by the major grocery retailers, and by Government, to improve competition in the retail grocery sector. We consider that, if implemented, these recommendations should contribute to a material improvement in the state of competition in the sector. In particular, we consider that – taken together – our recommendations should increase the prospect of a greater range of retailers emerging that can meaningfully compete with the major grocery retailers by offering consumers a convenient one-stop shopping option.

Recommendation 14A: Undertake a further review of competition three years after implementation of our recommendations

- 9.273 It is difficult to anticipate the exact likelihood or degree of improvements in competition that will arise as a result of our recommendations, particularly given the dynamic nature of the sector. Given this, we recommend that Government consider a further review of the state of competition in the retail grocery sector three years after the Government has implemented any reforms that it chooses to proceed with. We recommend that a review be conducted by the new grocery sector regulator.
- 9.274 If, after conducting this review, the Government still considers that competition is not working as well as it could, then the Government may wish to consider further intervention at that point.
- 9.275 The review could consider the extent to which there is greater competition with the major grocery retailers in the form of additional competition for all shopping missions, as well as larger-scale competitors that offer the convenience of a one-stop shop. A review should also specifically consider the extent to which the recommendations given effect to have improved competitive outcomes from the perspective of Māori consumers, particularly those in remote communities, and Māori suppliers.

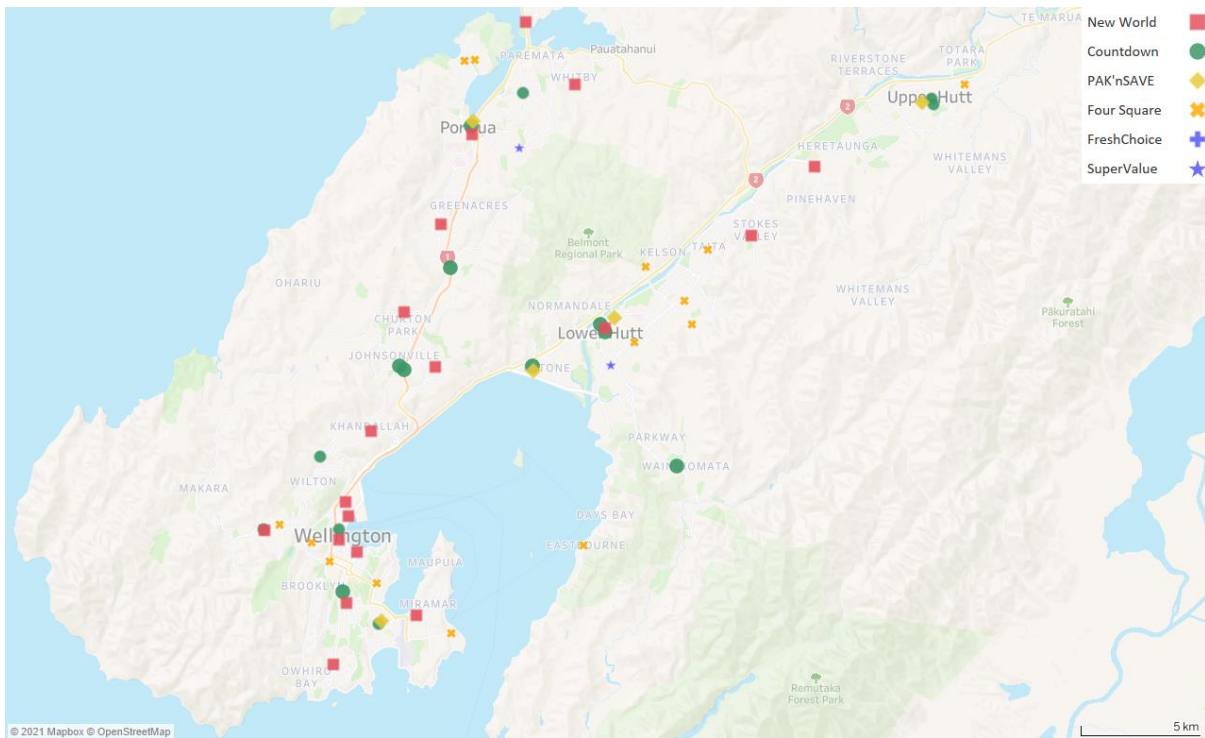
Recommendation 14B: Collect information to support a further review of competition

- 9.276 To facilitate a successful review, and to support the grocery regulator's general monitoring and enforcement functions, we recommend that consideration be given to implementing a form of information disclosure regime that would apply to specified grocery retailers. This would require specified grocery retailers to collect and supply to the new grocery sector regulator (or another part of government) information, in a consistent and specified format, on matters such as:
- 9.276.1 the market shares of grocery retailers, including at a regional and product category level;
 - 9.276.2 store locations and details;
 - 9.276.3 information to inform assessments of profitability;
 - 9.276.4 proportion of retail sales that are private label; and
 - 9.276.5 numbers and details of consumer complaints received.
- 9.277 This information would sit alongside other information that we would expect the regulator to collect as part of its monitoring and enforcement functions described above, including in relation to supplier relationships and disputes, commercial wholesale supply agreements, and land banking. Further work would be required to define the types of information that would need to be supplied to enable this analysis, and we expect that the grocery regulator would have some influence over those requirements.

Attachment A Additional maps of grocery stores

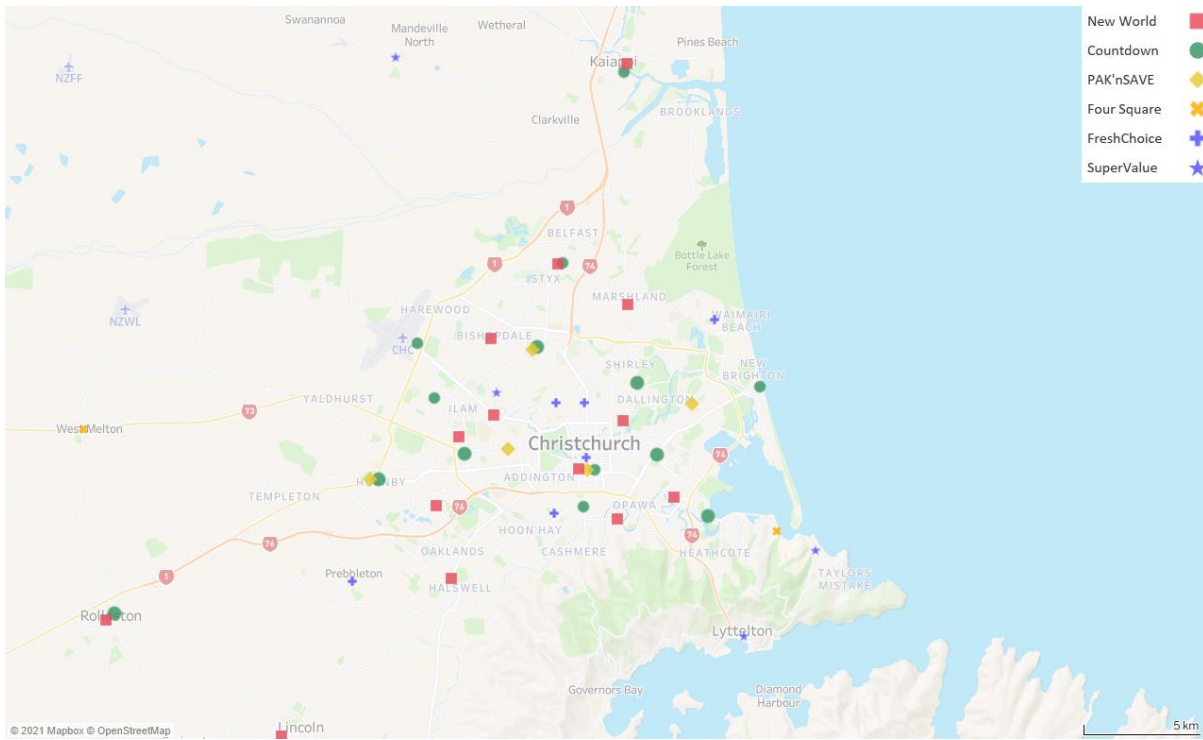
- A1 This attachment includes maps additional to those included in our report showing supermarket locations in New Zealand.
- A2 Figure A1 and Figure A2 show the location of major grocery retailer stores by retail banner in Wellington and Christchurch. A similar map of Auckland is included in Chapter 2 at Figure 2.4.
- A3 Figure A3 and Figure A4 show the location of major grocery retailer stores in the upper and lower North Island. A similar map of the South Island is included in Chapter 2 at Figure 2.3.
- A4 Figure A5 and Figure A6 show the location of other grocery stores in Wellington and Christchurch. Similar maps of Auckland, and regional maps of the North Island and South Island are included in Chapter 4 at Figure 4.8, Figure 4.9 and Figure 4.10.
- A5 Chapter 4 also provides more detail of which other grocery stores are included in these maps.

Figure A1 Major grocery retailer store locations in Wellington by retail banner



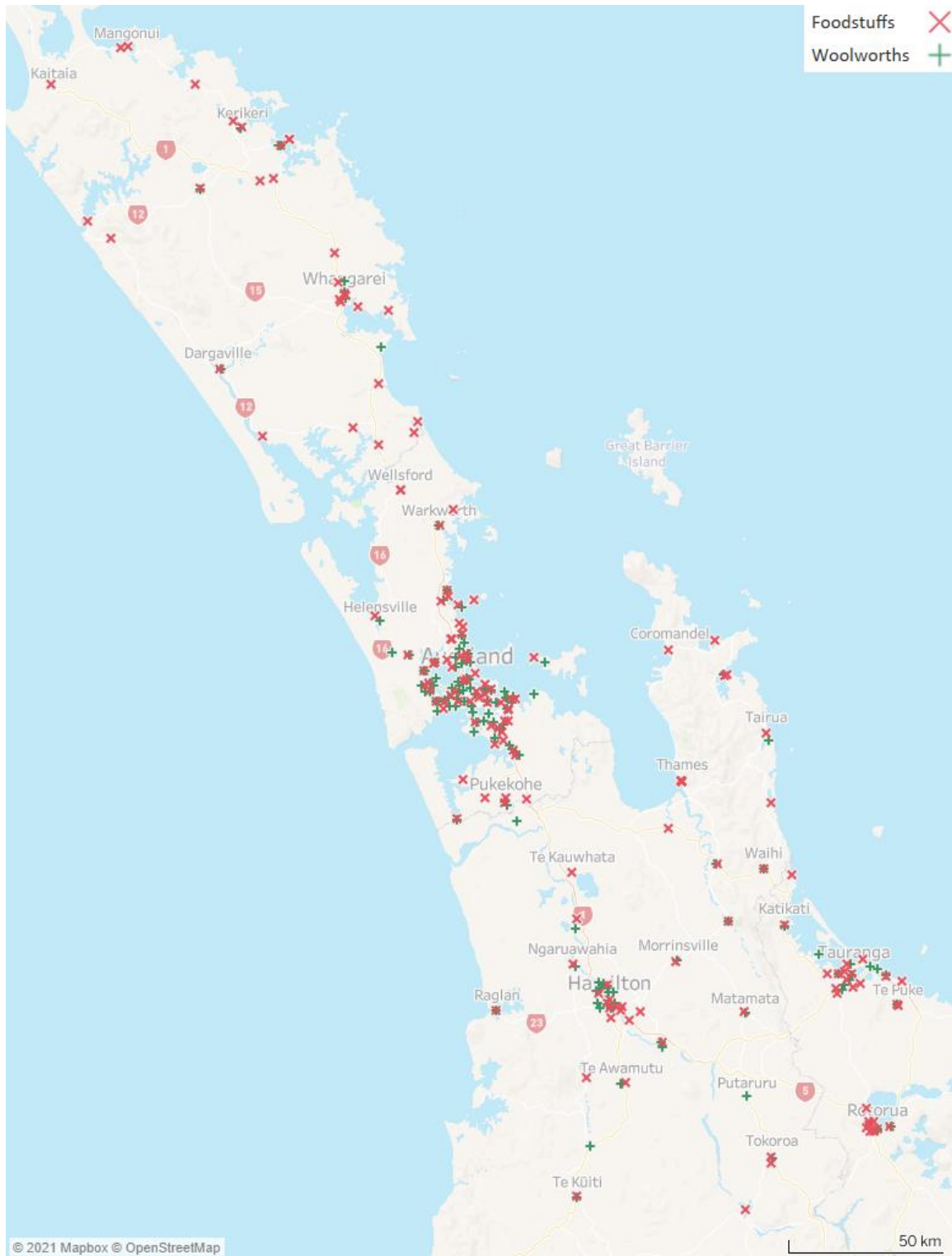
Source: Commission analysis of information provided by major grocery retailers, as at December 2020.¹²⁹⁶

Figure A2 Major grocery retailer store locations in Christchurch by retail banner



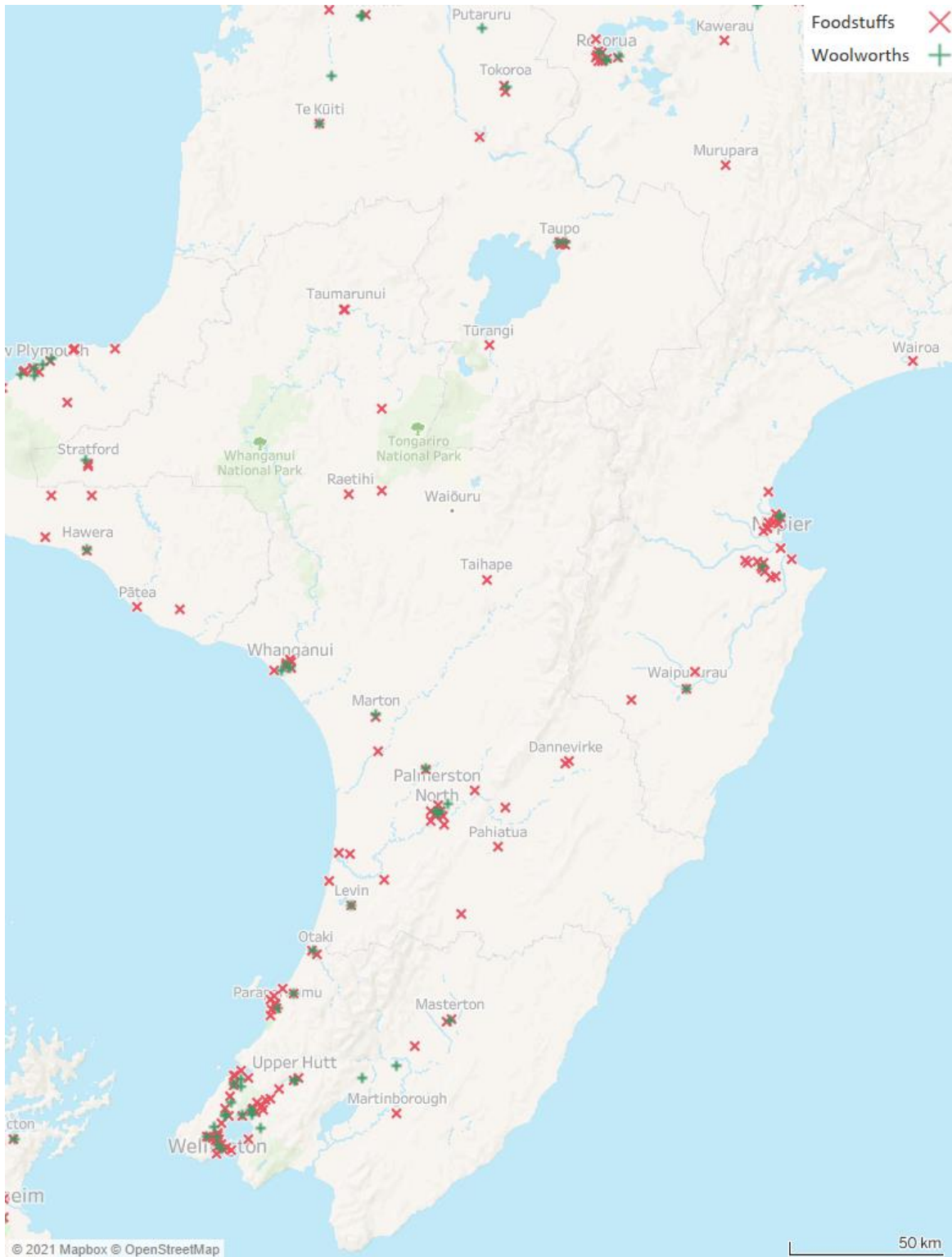
Source: Commission analysis of information provided by major grocery retailers, as at December 2020.¹²⁹⁷

Figure A3 Major grocery retailer store locations in the upper North Island



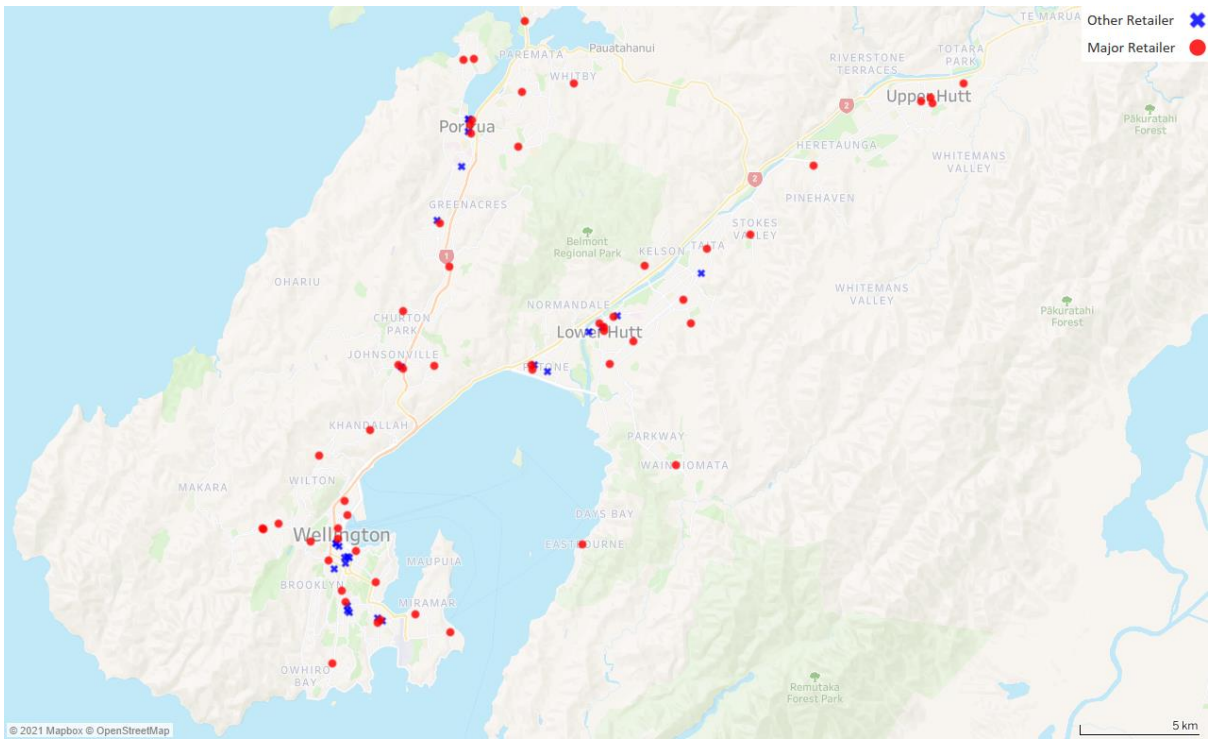
Source: Commission analysis of information provided by major grocery retailers, as at December 2020.¹²⁹⁸

Figure A4 Major grocery retailer store locations in the lower North Island



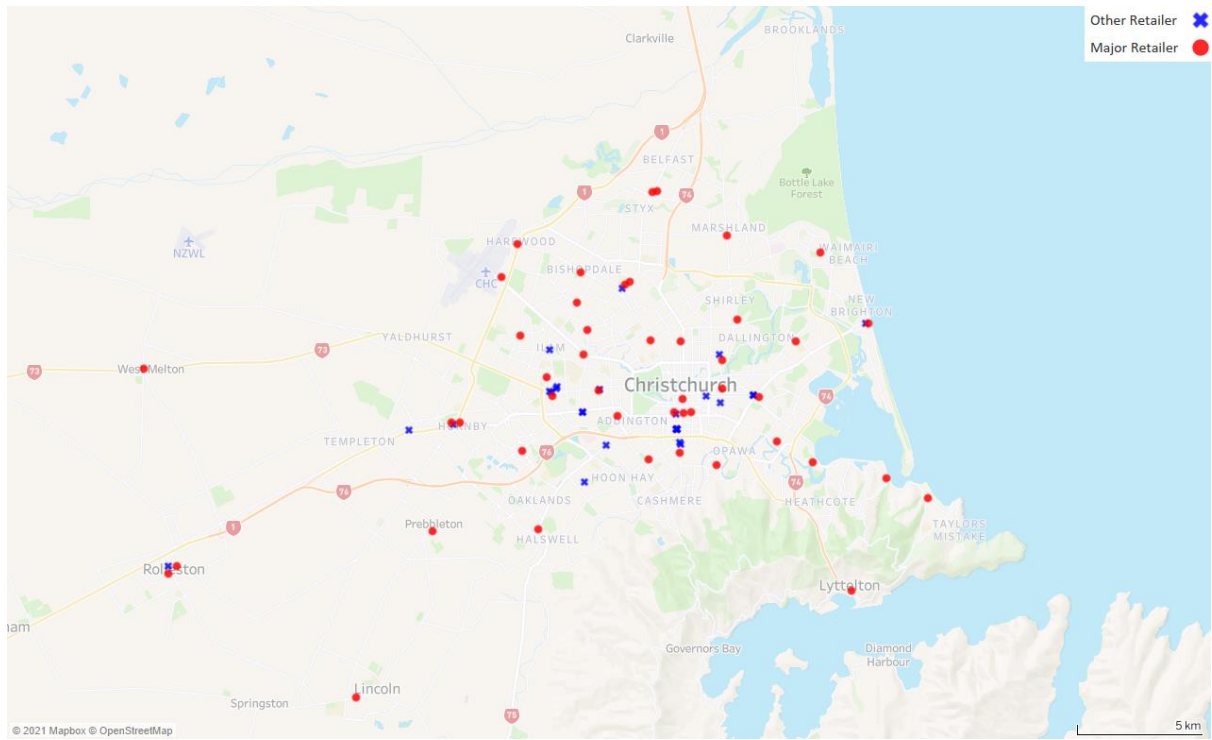
Source: Commission analysis of information provided by major grocery retailers, as at December 2020.¹²⁹⁹

Figure A5 Grocery store locations in Wellington



Source: Commission analysis of information provided by major grocery retailers.¹³⁰⁰

Figure A6 Grocery store locations in Christchurch



Source: Commission analysis of information provided by major grocery retailers.¹³⁰¹

Attachment B Our assessment of WACC and ROACE profitability

Introduction

- B1 This attachment provides details about how we assessed profitability within the retail grocery sector, focussing on our approach to estimating the WACC and ROACE.
- B2 The sections in this attachment are:
- B2.1 our estimation of normal levels of profitability for grocery retailing in New Zealand; and
- B2.2 our assessment of the ROACE for the major grocery retailers.

Our estimation of normal levels of profitability for grocery retailing in New Zealand

Introduction

- B3 This section explains how we have estimated a normal rate of return for firms in the New Zealand retail grocery sector.

What is the cost of capital?

- B4 Firms raise the capital they need from two main sources, debt and equity. Both have a cost. For debt, it is the future interest payments. For equity, it is the expectation of dividend payments by the firm to equity investors. The WACC reflects the cost of debt and the cost of equity, and the respective portion of each that is used to provide the firm's capital.
- B5 The cost of capital cannot be observed, and accordingly it needs to be estimated. For this study we have:
- B5.1 estimated the cost of debt with reference to the yield on publicly-traded New Zealand corporate bonds of similar credit rating to the major grocery retailers;
- B5.2 estimated the cost of equity for a participant in the retail grocery sector using our standard methodology for estimating the cost of equity;
- B5.3 combined the cost of debt and equity to give an estimate of the WACC; and
- B5.4 compared this estimate of WACC against other available estimates of the cost of capital for this sector to test for reasonableness and long-term estimates of average market return.

- B6 Our approach to estimating the cost of capital has been developed since 2001 and has been formalised in the context of economic regulation through our cost of capital input methodologies. These methodologies have been consulted on heavily, with many parties over many years. They have been reviewed and accepted by the High Court.¹³⁰²
- B7 Our methodology for estimating the cost of capital has been applied to many sectors, including electricity lines businesses, gas pipelines, specified airport services and certain telecommunication services.¹³⁰³ We consider that our standard methodology for estimating the cost of capital is appropriate for the current study.
- B8 We acknowledge the different businesses within the retail grocery sector. This includes the differing scale of many of the grocery retailers, and the different operations involved in grocery retailing, including grocery retailing itself and property ownership.
- B9 We note that while there are a range of participants, our main focus is on the three major grocery retailers, which we consider are broadly similar to each other in respect of grocery retailing.
- B10 Consistent with our fuel market study we have developed a range of WACC estimates. This includes a central estimate that is our best estimate of the WACC, and a higher estimate of WACC, as a sensitivity. This is based on establishing a range for certain of the key parameters that are required for estimating the WACC.

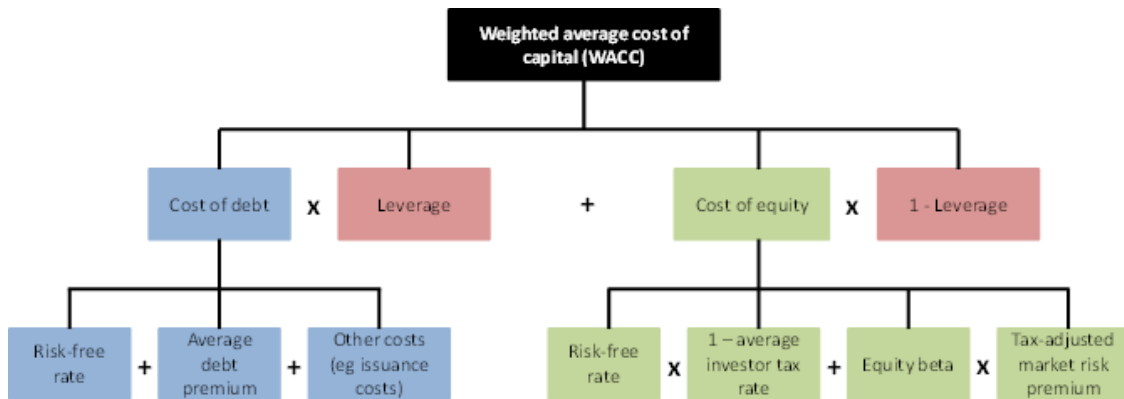
There are seven key parameters required to estimate the WACC

- B11 The values for seven parameters are required to estimate the cost of capital. These are the risk-free rate, the debt premium, asset beta (and subsequently equity beta), tax-adjusted market risk premium, investor and corporate tax rates, and leverage. Each parameter is described in turn. Combining these produces an estimate of WACC.
- B12 The key parameters for estimating a vanilla WACC, and how they feed into the calculation of the WACC, are summarised in Figure B1 below.¹³⁰⁴

¹³⁰² *Wellington International Airport & Others v Commerce Commission* [2013] NZHC 3289 [11 December 2013] at Part 6, available at: <https://forms.justice.govt.nz/search/Documents/pdf/jdo/53/alfresco/service/api/node/content/workspace/SpacesStore/1c117dea-b8ba-491e-ba1d-d4cd30dbe522/1c117dea-b8ba-491e-ba1d-d4cd30dbe522.pdf>.

¹³⁰³ For example, Commerce Commission “Electricity Distribution Services Input Methodologies Determination 2012” (20 May 2020), available at: https://comcom.govt.nz/_data/assets/pdf_file/0017/60542/Electricity-distribution-services-input-methodologies-determination-2012-consolidated-January-2019-31-January-2019.pdf. The cost of capital input methodology was last reviewed during 2015 to 2016. For further details see Commerce Commission “2015/16 IM review” <https://comcom.govt.nz/regulated-industries/input-methodologies/projects/201516-im-review>.

¹³⁰⁴ The parameters for estimating a post-tax WACC are the same as for the vanilla WACC, except that the cost of debt is also multiplied by $1 - \text{the average corporate tax rate}$.

Figure B1 Components of the WACC

Source: Fibre Input Methodologies reasons paper.¹³⁰⁵

Risk-free rate

- B13 A risk-free rate is the rate of return expected when there is no risk of default. Debt issued by the New Zealand Government and denominated in New Zealand dollars is considered to be free of default risk. The return on New Zealand Government issued debt can generally be readily observed from trading on the debt market.
- B14 Generally, the rate of return varies with the term of the investment. In regulatory contexts we choose a term of the risk-free rate that matches the length of the regulatory period, which is typically five years. However, in the context of a market study there is no regulatory term. More common commercial practice is to use a term of 10 years.
- B15 In this market study we are using our estimate of WACC in various contexts, including assessing the returns on new investment and assessing firm profitability over longer time frames.
- B15.1 Spot risk-free rates are useful when evaluating new investments, since spot rates reflect the cost of funds at the time the investment is being made.
- B15.2 However, spot rates are less useful when assessing the profitability of a firm over longer time periods since the spot rate at one point in time is unlikely to be reflective of the risk-free rate throughout the period (and investments will have been made throughout the period).
- B15.3 When assessing the profitability of an unregulated firm over time, an average risk-free rate is appropriate.

¹³⁰⁵ Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020) at Figure 6.1.

- B16 The risk-free rate is volatile and has declined materially in recent years. This is particularly true with the effects of the COVID-19 pandemic, which has seen a reduction in interest rates internationally due to central bank policies to counter the adverse economic impacts.
- B17 Given these considerations, we propose using the New Zealand and ten-year risk-free rate estimated during the years from 2015 to 2019, which is the period during which our profitability assessment is focused. This ten-year risk-free rate averaged at 2.70% pa.

Debt premium

- B18 Companies fund part of their activities with money borrowed from others. When companies raise debt, they pay a higher rate of interest than the Government (ie, the risk-free rate), to reflect the corporate's default premium, liquidity premium and systematic risk premium. This higher rate of return on corporate debt (above the risk-free rate) is called the debt premium.
- B19 Using our standard methodology, we estimate the debt premium by looking at the yield to maturity on publicly-traded bonds in New Zealand relative to the yield to maturity on government bonds. While corporates can raise money using a wide range of debt instruments, we use publicly-traded bonds to estimate the debt premium, as information on the cost of these is publicly available. The debt premium on other debt facilities is generally not publicly known.
- B20 In our retail fuel market study, we used Z Energy's publicly-traded bonds to estimate the debt premium to include in our estimate of WACC. However, the major grocery retailers do not have publicly-traded debt in the New Zealand market for us to directly observe.
- B21 As such, we have observed the yield to maturity on publicly-traded bonds of New Zealand companies that have a credit rating of between BBB- and BBB+. We have chosen this range because Woolworths Australia currently has three bond issues in Australia with a Standard & Poor's (S&P) rating of BBB.
- B22 We estimated the average daily debt premium on publicly-traded bonds of credit rating of BBB- and BBB+ above the risk-free rate with the same remaining term to maturity for the six-monthly periods between 2015 to 2019.¹³⁰⁶ For example, for a bond with a remaining term of five years we:
- B22.1 estimate its yield to maturity;
 - B22.2 estimate the risk-free rate on a government bond with an interpolated remaining term of five years;

¹³⁰⁶ Estimated by linear interpolation based on the Nelson-Siegel-Svensson approach to modelling interest rate yield curves and term structures.

B22.3 take the difference between those estimates as an estimate of the debt premium; and

B22.4 repeat those calculations across the years 2015 to 2019.

B23 The resulting estimate of the debt premium on the sample of corporate bonds with the longest remaining term to maturity ranged between 161 to 176 basis points (ie, 1.61% to 1.76% pa, with a remaining term of close to five years) over this period. The average debt premium was 167 basis points. This is summarised in Table B1.

Table B1 Estimated debt premium on NZ corporate bonds: BBB- to BBB+

	2015	2016	2017	2018	2019
Five year debt premium	1.65%	1.76%	1.68%	1.66%	1.61%
Average	1.67%				

Source: Commerce Commission analysis of Bloomberg data.¹³⁰⁷

B24 We have considered whether the use of a five-year term is too conservative. However, our debt premium estimate is not inconsistent with the spread of estimates used internally by Woolworths and Foodstuffs who should be well placed to observe debt costs.

B25 In our draft report, consistent with our input methodology for determining WACC, we included a 20 basis-point (0.2%) uplift in the debt premium to reflect debt issuance costs. However, estimated firm-level profits are net of debt issuance costs, so including them in WACC would double count these costs. Consequently, we have excluded debt issuance costs from our WACC estimate for the final report. This is consistent with our approach in the retail fuel market study.

Asset beta

B26 The Brennan-Lally Capital Asset Pricing Model (CAPM) model requires an estimate of the equity beta in calculating the cost of equity. We require an equity beta estimate for the sector that we are investigating, and therefore need to use a sample of comparable companies in that sector with publicly-traded stocks.

B27 Beta is a measure of exposure to systematic risk. Systematic risk measures the extent to which the returns of a company fluctuate relative to the equity returns in the stock market as whole.¹³⁰⁸

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¹³⁰⁸

If an investment had no systematic risk (ie, it would show no correlation with returns on the market), its equity beta would be zero. If an investment in the equity of a company is of average risk, the equity beta will be 1. This means that the premium over the risk-free rate that equity investors expect will be the same as the average for the overall market (known as the tax-adjusted market risk premium, or TAMRP).

- B28 We start by estimating a sector-wide asset beta in order to strip out the effects of each firms' leverage, which impacts its equity beta. Once we have estimated the average asset beta for the sector, we can re-lever the asset beta to estimate the equity beta using our estimate of notional leverage applying to the sector.
- B29 We estimate asset beta empirically by identifying publicly-listed firms that undertake activities that are broadly comparable to those undertaken by firms in the New Zealand retail grocery sector. We then estimate the relationship between the share prices of those publicly-listed firms and the market index for the country in which they are listed.
- B30 We identified comparable firms from Bloomberg using the following criteria:
- B30.1 listed in an OECD country, with a market capitalisation of at least \$100m US dollars (USD); and
 - B30.2 in the Global Industry Classification Standard (GICS) category of Bloomberg of "Food Retail".
- B31 Of the resulting sample of companies we excluded:
- B31.1 companies whose percentage of revenue from 'supermarkets' was less than 75%. This excluded those with more than 25% of their revenues coming from convenience store revenue, drug store and/or pharmacy store revenue;
 - B31.2 companies who had over 75% revenue from "hypermarkets"; and
 - B31.3 companies who had very little or no revenue data available in Bloomberg.
- B32 This produced a sample of 30 companies, which are listed in Table B2 and which we consulted on through our draft report.¹³⁰⁹
- B33 We note that this sample may include some companies that are not entirely comparable to the New Zealand grocery retailers we are assessing. For example, some of the overseas retailers may have a wider range of retail products, including spirits with a higher alcohol content or retail higher volumes of fuel. In other cases, the overseas retailers may own a greater proportion of their land and buildings, as opposed to leasing the premises. Nevertheless, we still consider the sample is representative of grocery retailing given the use of Bloomberg's GICS category of "Food Retail".

¹³⁰⁹ We have included Woolworths Australia in our sample because it meets our sampling criteria, despite Woolworths NZ being included in Woolworths Australia. However, Woolworths NZ is only a relatively small portion of Woolworths Australia, so we are comfortable with its inclusion. We did however test the exclusion of Woolworths Australia in the sample and it did not materially alter the results for Asset Beta or Leverage.

Table B2 Listed comparator companies

Company Name	Country
TESCO PLC	United Kingdom
KONINKLIJKE AHOLD DELHAIZE N	Netherlands
KROGER CO	United States
WESTON (GEORGE) LTD	Canada
METRO INC/CN	Canada
JERONIMO MARTINS	Portugal
COLRUYT SA	Belgium
EMPIRE CO LTD 'A'	Canada
SAINSBURY (J) PLC	United Kingdom
DINO POLSKA SA	Poland
BIM BIRLESIK MAGAZALAR AS	Turkey
WM MORRISON SUPERMARKETS	United Kingdom
AXFOOD AB	Sweden
GROCERY OUTLET HOLDING CORP	United States
CASINO GUICHARD PERRACHON	France
SPROUTS FARMERS MARKET INC	United States
SHUFERSAL LTD	Israel
LA COMER SAB DE CV	Mexico
WEIS MARKETS INC	United States
NORTH WEST CO INC/THE	Canada
SOK MARKETLER TICARET AS	Turkey
MIGROS TICARET A.S	Turkey
INGLES MARKETS INC-CLASS A	United States
RAMI LEVY CHAIN STORES HASHI	Israel
RALLYE SA	France
VICTORY SUPERMARKET CHAIN LT	Israel
VILLAGE SUPER MARKET-CLASS A	United States
TIV TAAM HOLDINGS 1 LTD	Israel
ADESE ALISVERIS MERKEZLERI T	Turkey
WOOLWORTHS AUSTRALIA	Australia & New Zealand

Source: Commerce Commission analysis of Bloomberg data.¹³¹⁰

- B34 In response to submissions on our draft report we have also excluded a further three companies:
- B34.1 Incenta reviewed the sample used in our draft report and, with one exception, agreed with the firms included.¹³¹¹ Incenta noted that Rallye SA should be removed as it is a holding company of shares in Casino SA (and Casin SA is already in our sample). We have confirmed this and consequently removed it from the comparator set.
 - B34.2 NERA noted that one company in the sample had a negative beta (Grocery Outlet Holdings).¹³¹² We consider that this company is an outlier in the sample and have consequently removed it from the comparator set.
 - B34.3 Woolworths noted that George Westin includes a pharmacy division.¹³¹³ An examination of their accounts shows that the bulk of this company's revenue is from a separate grocery business called Loblaw and their accounts show that pharmacy sales make up 27.5% of its total sales. Consequently, we have removed this firm from the comparator set.
- B35 We also considered Woolworths NZ's submission, raised in the context of profit to sales margins comparisons, that a number of comparable prominent supermarkets should also be included in the comparator set.¹³¹⁴ Of the 14 companies referred to by Woolworths NZ, we found 10 are engaged in non-grocery activities such as non-grocery merchandise and the other four are privately owned. Consequently, we did not add any of these firms to the comparator set.
- B36 Consistent with our methodology for estimating the cost of capital under Part 4 and the Telecommunications Act 2001, and our approach in our retail fuel market study, we estimated asset beta for the comparator companies:
- B36.1 for up to 20 years (subject to the availability of data) by splitting the period into four consecutive five-year periods; and
 - B36.2 using daily, weekly, and four-weekly data. To limit the risk of estimation error based on the choice of reference day, the weekly and four-weekly estimates are averaged over each day of each period, rather than being sourced directly from Bloomberg estimates.¹³¹⁵

¹³¹¹ Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix A - Incenta - Review of grocery retailing: Comment on the Commerce Commission's analysis of profitability" (10 September 2021) at [95]-[96].

¹³¹² Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [86].

¹³¹³ Woolworths NZ "Submission on Market study into the grocery sector draft report" (10 September 2021) at [27.5.3].

¹³¹⁴ Woolworths NZ "Submission on Market study into the grocery sector draft report" (10 September 2021) at [27.5.3].

¹³¹⁵ Commerce Commission "Input methodologies review decisions: Topic paper 4: Cost of capital issues" (20 December 2016) at [291].

B37 The resulting sample averages for each period are shown in Table B3 below.¹³¹⁶

Table B3 Average comparator company asset beta

	2000-2004	2005-2009	2010-2014	2015-2019
Number in sample	18	20	23	27
Weekly asset beta	0.39	0.45	0.45	0.49
Four-weekly asset beta	0.36	0.44	0.47	0.47
Average weekly and four-weekly asset beta for 2010-14 and 2015-19 periods				0.47

Source: Commerce Commission analysis of Bloomberg data.¹³¹⁷

B38 Consistent with our retail fuel market study, we prefer to give greatest weight to weekly and four-weekly estimates, and the two more recent time periods of 2010 to 2014 and 2015 to 2019.¹³¹⁸ The average of the weekly and four-weekly results over the two five-year periods was 0.47.

Other evidence on asset beta

B39 Submissions on our draft report raised several points regarding asset beta. NERA submitted that we should adopt the asset beta from the internal Woolworths estimates and noted in support that:

- B39.1 internal estimates for business purposes should be unbiased and the Commission should use the asset beta estimate of Woolworths Australia;¹³¹⁹
- B39.2 there is wide variability of asset beta estimates from the Commission's comparator set;¹³²⁰
- B39.3 UK and Australian grocery retailers are the closest comparators,¹³²¹ and

¹³¹⁶ As noted, we have excluded 2020 from our time period of analysis to remove the effects of the COVID-19 pandemic.

¹³¹⁷ [].

¹³¹⁸ Daily asset beta estimates can be distorted by low liquidity stocks and older estimates may have smaller sample sizes (and changes over time may mean older estimates are less relevant to the risks faced today). For further discussion, see: Commerce Commission "Input methodologies review decisions: Topic paper 4: Cost of capital issues" (20 December 2016) at [297]-[307].

¹³¹⁹ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [75]-[81].

¹³²⁰ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [84]-[88].

¹³²¹ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report" (10 September 2021) at [88]-[91].

- B39.4 the Commission’s estimates for the UK companies and Woolworths Australia alone (for the 2015-2019 sample) act as a cross-check which supports the internal Woolworths estimate.¹³²²
- B40 We agree with the NERA submission that the asset beta estimates within the comparator set are variable – this is not unusual, our experience in the airport and fibre sectors showed similarly high levels of variability.¹³²³ By itself, variability does not imply the estimate is biased. We note there are many subsets of the comparator set which would give rise to a different overall beta estimate (both higher and lower) and would lower variability. Without evidence as to why comparator retail grocery companies should be excluded, we prefer to keep a wide sample set which is more likely to balance out any unknown firm-specific factors which may bias estimates upwards or downwards.
- B41 NERA has also pointed to a ‘jump’ between beta estimates of 0.45 and 0.55.¹³²⁴ This jump only appears in the 2015 to 2019 period. We agree that there is a step change in observed asset betas in the comparator set for this time period. However, this is not apparent in the previous five-year period of 2010 to 2014, and we do not see this as representing a fundamental flaw in the comparator set.
- B42 NERA has proposed that the UK and Australian grocery retailers within the comparator set are the best comparators to Woolworths NZ’s operations.¹³²⁵ It has further submitted that the higher asset beta that results from this refined comparator set of only UK and Australian grocery retailers (four firms) cross-checks the internal estimate of Woolworths. We have tested these propositions against available public evidence and note that:
- B42.1 There is some evidence to suggest there is a difference between current estimates of betas for US retailers and European retailers. Publicly-available asset beta estimates from Professor Damodaran for the “Retail (Grocery and Food)” sector show US estimates are lower than European estimates and Global estimates. However, this varies over time and there is no such difference when the data is averaged over the 2015 to 2019 period.¹³²⁶

¹³²² Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [88]-[91].

¹³²³ Commerce Commission “Input Methodologies review decisions: Topic Paper 4: Cost of capital issues” (20 December 2016) at [590]-[595.7]; Commerce Commission “Fibre input methodologies: Main final decisions – reasons paper” (13 October 2020) at [6.896]-[6.899].

¹³²⁴ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [88a].

¹³²⁵ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [88b].

¹³²⁶ Professor Aswath Damodaran “Data Archives” Damodaran Online https://pages.stern.nyu.edu/~adamodar/New_Home_Page/dataarchived.html#discrate.

B42.2 There is no further evidence, either submitted or that we have found, that New Zealand grocery retailers' exposure to systematic risk is closer to grocery retailers in Australia and the UK (or to the US). Nor why UK grocery retailing differs in exposure to systematic risk to other western European grocery retailers which would be excluded under NERA's approach. In all markets, grocery retailing sells essential items used daily by consumers, and we would expect demand for such products to be considerably less affected by general economic conditions than for many other products and services.

B42.3 Our comparator set of 27 companies is not particularly sensitive to the exclusion of particular countries, unless it is narrowed to a very limited subset as NERA has suggested. NERA's subset includes only four comparator companies from Australia and the UK. We consider a comparator set limited to only four companies to be unreliable given the variability which can occur in stock market data.

B42.4 []¹³²⁷
 []¹³²⁸
 []

¹³²⁷ [].

¹³²⁸ [].

B43 NERA has further submitted that, because the internal beta estimates were for business purposes, they will be unbiased and therefore should be used.¹³²⁹ We have internal reports providing central estimates of [].¹³³⁰ They therefore provide a higher estimate than our comparator set. As NERA submitted these estimates are developed for business use, including to assess capital investment decisions. In our view, this means that they may in part reflect the business’ attitude to risk, and we do not agree that they will necessarily be unbiased, for example:

B43.1 []¹³³¹
[]

B43.2 []¹³³²

B44 We have reviewed other estimates as a further reasonableness check on our comparator set. These provide limited support for a higher asset beta.

B45 An independent appraisal report, prepared by Grant Samuel for the Board of the Coles Group, on a proposed takeover offer, provides a range of estimates for equity beta.¹³³³ Using our standard de-leveraging formula, we have estimated the equivalent asset beta range as 0.53 to 0.68.

B46 Professor Damodaran produces annual estimates of asset beta that we have averaged between 2015 and 2019 for Retail (Food and Grocery) for Europe (0.57), US (0.53) and Global (0.54).¹³³⁴ These estimates are produced based on industrial classification so may not be as refined a comparator set and consequently need to be treated with some caution.

¹³²⁹ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA “Grocery Market Study: Review of the NZCC Draft Report” (10 September 2021) at [75]-[78].

¹³³⁰ []; []; [].

¹³³¹ [].

¹³³² [].

¹³³³ Grant Samuel “Independent Expert Report in Coles Group Limited: Scheme Booklet Supplement” (21 September 2007), available at: <https://www.asx.com.au/asxpdf/20071001/pdf/314w5y3fgt938l.pdf>.

¹³³⁴ Professor Aswath Damodaran “Data Archives” Damodaran Online https://pages.stern.nyu.edu/~adamodar/New_Home_Page/dataarchived.html#discrate.

- B47 PwC published a Cost of Capital report in 2019.¹³³⁵ PwC’s estimates of asset beta for New Zealand retail companies vary from 0.4 to 0.8 noting that it assumes a minimum asset beta of 0.4. These estimates include retailers we would expect to have more exposure to systematic risk due to greater demand response to economic conditions. For example, if we exclude the Kathmandu and Michael Hill the range falls to 0.4 to 0.6.
- B48 This observation is consistent with Damodaran’s estimates for other retail sectors; Food and Grocery asset beta is lower than that of other types of retailing (see Table B4). This indicates that systematic risk is lower for essential goods.

Table B4 Damodaran retail asset beta estimates¹³³⁶

Industry Name	European Beta 2015-19	US Beta 2015-19	Global Beta 2015-2019
Retail (Automotive)	0.61	0.72	0.65
Retail (Building Supply)	0.47	1.07	0.75
Retail (Distributors)	0.58	0.83	0.55
Retail (General)	0.52	0.82	0.78
Retail (Grocery and Food)	0.57	0.53	0.54
Retail (Online)	1.17	1.26	1.22
Retail (Special Lines)	0.91	0.78	0.76

- B49 We have also considered our asset beta estimate for regulated airports in New Zealand. Demand for airport services is derived from the demand for air travel, which we would expect to be more sensitive to economic conditions than demand for grocery items. Hence, we see this as a potential upper cap on beta for grocery companies. Our most recent estimate of asset beta for airports is 0.65.¹³³⁷

Our conclusion on asset beta

- B50 For the purposes of our retail grocery market study, we have used a central estimate for asset beta of 0.47 and a higher estimate of 0.60. This range captures most of the observed average asset betas above. Our higher estimate represents what we believe to be the credible upper bound taking into account the wider evidence before us.

¹³³⁵ PwC “The PwC Cost of Capital Report” (December 2019).

[].

¹³³⁶ Unlevered beta data by year and region/country can be found on Damodaran’s website: Professor Aswath Damodaran “Data Archives” Damodaran Online https://pages.stern.nyu.edu/~adamodar/New_Home_Page/dataarchived.html#discrate.

¹³³⁷ Commerce Commission “Input methodologies review decisions: Topic paper 4: Cost of capital issues” (December 2016) at Chapter 4.

- B51 Adopting a range for the asset beta input parameter helps address estimation error and accounts for differences in the type of activities undertaken by the New Zealand grocery retailers and those in the international sample, which may give rise to differences in systematic risk between these companies.
- B52 We do not need a single point estimate of asset beta for the purposes of market studies in the same way that we do for Part 4 regulation.¹³³⁸
- B53 We tested whether the exclusion of companies who had over 75% revenue from “hypermarkets” was distortionary given we have determined that New Zealand has a higher proportion of larger-scale supermarkets than overseas. There was only one company in this category. Including this company in the sample did not materially change the average asset beta.

Tax-adjusted market risk premium

- B54 The tax-adjusted market risk premium (TAMRP) is a market-wide measure which reflects the additional expected return over and above the risk-free rate required to compensate investors for holding the stock market portfolio. We use a range of TAMRP from 7.0% to 7.5%. This range is consistent with the TAMRP we use under our Part 4 regulatory regime of 7.0% and the latest estimate under Part 6 of the Telecommunications Act is 7.5%.¹³³⁹
- B55 This range of TAMRP is also consistent with the previous and most recent advice from Dr Lally, an expert advisor to the Commission.¹³⁴⁰
- B56 Given our profitability assessment is primarily focused on the period from 2015 to 2019, a 7.0% TAMRP is the more appropriate estimate of TAMRP for the retail grocery sector. Nevertheless, we have adopted the latest estimate of TAMRP to reflect the most recent research and findings that are available in our high estimate.

¹³³⁸ For example, we require single points estimate in Part 4 regulation for beta and WACC to set price-quality paths. In the regulatory context we recognise and treat estimation risk differently. Specifically, we consider whether to apply an uplift to our mid-point estimate of WACC, Commerce Commission “Amendment to the WACC percentile for price-quality regulation for electricity lines services and gas pipeline services” (30 October 2014) at Section 5, available at: https://comcom.govt.nz/_data/assets/pdf_file/0029/88517/Commerce-Commission-Amendment-to-the-WACC-percentile-for-price-quality-regulation-Reasons-Paper-30-October-2014.PDF.

¹³³⁹ Commerce Commission “Input methodologies review decisions: Topic paper 4: Cost of capital issues” (December 2016) at Chapter 4; Commerce Commission “Fibre Input Methodologies Determination 2020” (9 July 2021) at [67], available at: https://comcom.govt.nz/_data/assets/pdf_file/0029/259373/Fibre-Input-Methodologies-Determination-2020-consolidated-July-2021-.pdf.

¹³⁴⁰ Dr Martin Lally “Estimation of the TAMRP” (26 September 2019), available at: https://comcom.govt.nz/_data/assets/pdf_file/0043/189889/Dr-Martin-Lally-Estimation-of-the-TAMRP-26-September-2019.pdf.

Investor and corporate tax rates

B57 We assume a corporate and investor tax rate of 28%, consistent with the New Zealand company tax rate and the prescribed investor tax rate for a portfolio investment entity, respectively. More detailed reasons are set out in the Input Methodologies (IMs) reasons paper 2010.¹³⁴¹

Leverage

B58 Leverage reflects the proportion of a company's total funding that is borrowed/debt financed. The international comparator companies we used in our assessment of the asset beta have an average leverage of around 17%.¹³⁴² We use this as our best estimate of leverage for calculating the WACC.

B59 In our draft report we noted there was some variance in the leverage within this comparator sample. Based on the variance in this sample we used a range for leverage of 10% to 30%.

B60 However, our WACC estimate uses a zero debt beta. Using the average leverage of the comparator sample used to estimate asset beta avoids the anomaly of WACC increasing with leverage.¹³⁴³ We note that the higher asset beta is approximately equivalent to restricting the sample set to just Western Europe and Australian comparators, but this would give rise to a lower leverage figure. Consequently, we have held leverage constant at 17% for both our central and higher estimates.

We estimate a WACC of between 5.5% to 6.6% for the retail grocery sector

B61 Combining these parameter values produces an estimate of WACC ranging from 5.5% to 6.6%. This is shown in Table B5.

¹³⁴¹ Commerce Commission "Input Methodologies (Electricity distribution and gas pipeline services) Reasons Paper" (22 December 2010) at [H10.5]-[H10.17].

¹³⁴² The reasons for this are set out in: Commerce Commission "Input Methodologies (Electricity distribution and gas pipeline services) Reasons Paper" (22 December 2010) at Attachment H3.

¹³⁴³ Commerce Commission "Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper" (22 December 2010) at Appendix H.

Table B5 Our parameter inputs for our estimate of WACC

	Central WACC Estimate	Higher WCC Estimate
Risk-free rate	2.70%	2.70%
Average debt premium	1.67%	1.67%
Leverage	17%	17%
Asset beta	0.47	0.60
TAMRP	7.00%	7.50%
Corporate tax rate	28%	28%
Debt issuance costs	–	–
Cost of equity (post tax)	5.9%	7.3%
Cost of debt	4.4%	4.4%
Post-tax WACC	5.5%	6.6%

Source: Commerce Commission analysis.¹³⁴⁴

We have not amended our WACC estimate to account for operating leases

- B62 Incenta commented on the use of the WACC when submitting on the impact of operating leases on profitability analysis.¹³⁴⁵ Its comments were not primarily concerned with the estimation of the WACC, but we have considered whether they have any implications. Incenta has submitted that the IFRS 16 accounting standard will align better with the underlying economic relationships by requiring a recognition of interest costs, assets and liabilities from renting.
- B63 IFRS 16 was introduced over the period for which we estimate the WACC. We have considered the potential implications of the introduction of IFRS 16 on leverage (and net debt) when estimating beta and calculating our estimate of the WACC. In particular:
- B63.1 we use net debt to calculate company leverage to de-lever equity betas and lever asset betas in coming to estimate of beta for use in the WACC,¹³⁴⁶ and
- B63.2 we use the overall leverage estimate from the sample set to estimate the WACC overall.

¹³⁴⁴ [].

¹³⁴⁵ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix A - Incenta - Review of grocery retailing: Comment on the Commerce Commission’s analysis of profitability” (September 2021) at [25]-[30].

¹³⁴⁶ Commerce Commission “Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper” (22 December 2010) at [H8.51]-[H8.60].

- B64 We have examined the Bloomberg data for net debt of comparator companies and it is clear that net debt figures increase substantially from the point firms implemented the new accounting standards on operating leases. The dates at which companies adopt the IFRS 16 accounting standard varies across the comparator sample.
- B65 We have re-estimated beta and WACC using amended data by examining the change in net debt at the point operating leases were capitalised to estimate a consistent time trend of net debt. This assumes the value of operating leases incorporated into net debt remains constant prior to the change to the new accountancy standards.
- B66 This substantially increases net debt and leverage and therefore decreases asset beta but has an ambiguous impact on equity beta (we use leverage to estimate individual company asset betas but then use average leverage to estimate overall equity beta from the average asset beta). The overall impact is that the mid-point WACC estimate drops slightly compared with the base case not accounting for the historical impact of operating leases.
- B67 In principle we would not expect the extent of leverage to change the cost of capital for firms unless leverage reached the point that endangered the financial viability of the firm. This was debated when the IMs were set in 2010 and in the subsequent Merits Review of that decision. Given this, and that all market estimates we are aware of that have not attempted to make a similar adjustment, we have opted to retain our original methodology.¹³⁴⁷

Our estimate of WACC compared to the major grocery retailers' estimates

- B68 To test the reasonableness of our estimate of post-tax WACC we compared it to the estimates provided by the major grocery retailers.¹³⁴⁸ These are higher than our higher WACC estimate. The key difference between our WACC estimates and those of the major grocery retailers is their choice of asset beta, which is higher than our estimate of 0.47.

¹³⁴⁷ Commerce Commission "Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons Paper" (22 December 2010) at [H3.46]-[H3.46].

[].

¹³⁴⁸

[].

The risks of mis-estimating WACC

- B69 As WACC cannot be observed, there is a risk of mis-estimating it, which is why we provide a range of estimates above. In some contexts where a point estimate is required, we make an additional allowance for the risk of estimation error. This is especially so when there are asymmetric consequences from getting that estimate wrong.¹³⁴⁹
- B70 In this study we have estimated both a central WACC estimate and a higher WACC estimate that we have compared profitability against. The use of a range increases the likelihood that our estimates capture the true but unobservable level of WACC.

Our assessment of the ROACE for the major grocery retailers

- B71 The following sections provide further information on our assessment of ROACE for the three major grocery retailers: Foodstuffs NI, Foodstuffs SI and Woolworths NZ. This includes details on the various adjustments and tests we have made when calculating ROACE.

ROACE for Foodstuffs NI and Foodstuffs SI

Approach for calculating ROACE for Foodstuffs NI and Foodstuffs SI

- B72 Our approach has been to combine the co-operative with its retail member stores into a “whole of business” view of the profitability. As discussed in Chapter 3, this approach differs to the one we adopted in our draft report.
- B73 We have also updated disaggregated ROACE calculations included within our draft report for the Foodstuffs NI and Foodstuffs SI retail stores and the co-operatives.

Adjustments needed to calculate ROACE for Foodstuffs NI and Foodstuffs SI

- B74 Following our draft report, Foodstuffs NI and Foodstuffs SI provided models of their profitability to us. These models included a number of adjustments that have allowed us to conduct a more robust consolidation process and allow the ‘whole of business’ approach to be adopted. We have therefore adopted the financial modelling of Foodstuffs NI and Foodstuffs SI for our whole of business, retail and co-operative ROACE calculations. We have cross checked the models’ results against our own modelling and have found them to be consistent.

¹³⁴⁹

In particular, we may make an allowance for estimation error when setting the maximum prices a monopoly supplier of services can charge its consumers. This is to protect consumers where we believe the consequences of under-investment are significant enough to justify the cost of a higher WACC to consumers, Commerce Commission “Amendment to the WACC percentile for price-quality regulation for electricity lines services and gas pipeline services” (30 October 2014) at Section 5, available at: https://comcom.govt.nz/_data/assets/pdf_file/0029/88517/Commerce-Commission-Amendment-to-the-WACC-percentile-for-price-quality-regulation-Reasons-Paper-30-October-2014.PDF.

B75 We have made the following adjustments to Foodstuffs NI and Foodstuffs SI models to calculate ROACE:

B75.1 We have adjusted the value of both Foodstuffs co-operative's property investments to reflect their market valuation. These adjustments have been based on valuations that the Foodstuffs co-operatives provided for their property investments. The individual valuation methods used by Foodstuffs NI and Foodstuffs SI differed. We assessed each of these approaches and found them to be sufficiently robust to be relied upon.

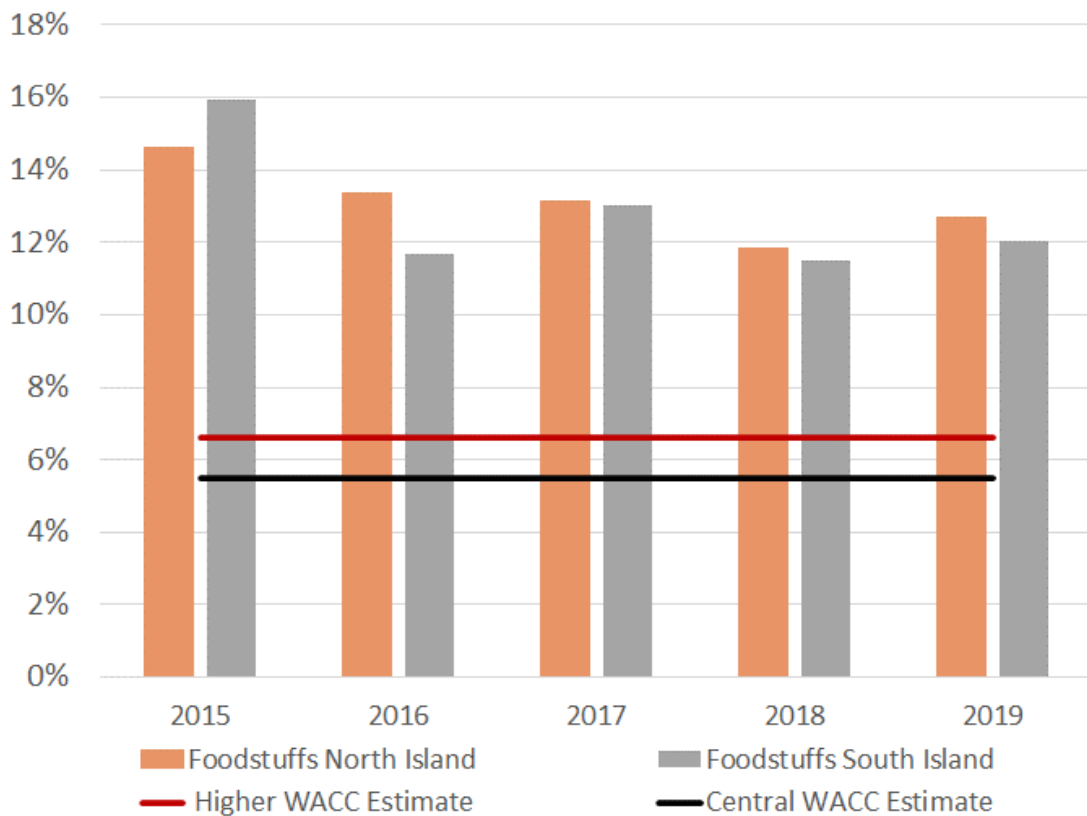
B75.2 We estimated the annualised capital gain that each co-operative has earned between 2015 to 2019 based on the individual market valuations of each property and its original purchase date. We derived each co-operative's annual capital gain as a weighted average of the movement on value of each property held in that year.

B76 We removed certain business activities from the ROACE calculation of the two Foodstuffs co-operatives as they are not strictly grocery retailing or they are not considered a major grocery retailer. These include the removal of Gilmours from Foodstuffs NI, and the removal of Raewards Fresh and Trents from Foodstuffs SI. Other non-grocery activities were also assessed, but these were found to be immaterial.

B77 We also removed development assets from their financial accounts. This includes land and buildings that are being held for future retail grocery development but are currently not being employed in that activity.

ROACE estimates for Foodstuffs NI and Foodstuffs SI

B78 Provided below are the "whole of business" ROACE for Foodstuffs NI and Foodstuffs SI for the five years 2015 to 2019, compared to the higher WACC estimate. This is a consolidation of co-operative, and the retail member stores of each co-operative.

Figure B2 Foodstuffs NI & Foodstuffs SI “whole of business” ROACE vs WACC Estimates

Source: Commerce Commission profitability analysis.¹³⁵⁰

B79 As shown, the average ROACE for the five years from 2015 to 2019 was 13.1% for Foodstuffs NI and 12.8% for Foodstuffs SI. This is well above our higher WACC estimates.

ROACE estimates for the Foodstuffs retail and co-operative businesses

B80 We also present updated disaggregated ROACE results for the Foodstuffs NI and Foodstuffs SI retail stores (using the same approach as in our draft report where capitalised leases were not included) and for the Foodstuffs NI and Foodstuffs SI co-operatives.

B81 The average ROACE for Foodstuffs NI and Foodstuffs SI retail stores for the period from 2015 to 2019 was 21.9% and 21.7% respectively.

B82 We have calculated ROACE for the retail stores using Foodstuffs’ models and including the adjustments described above. Gilmours and Raewards Fresh are not included in the retail stores’ ROACE calculations. Consistent with our draft report approach, these calculations do not include the capitalisation of leases as a right of use asset.

- B83 The average ROACE for Foodstuffs NI and Foodstuffs SI co-operatives for the period from 2015 to 2019 was 7.0% and 2.7% respectively. ROACE for both co-operatives have been calculated in the same way as our calculations for the retail stores.
- B84 The lower levels of profitability observed for the two co-operatives relative to the retail stores' profitability is a function of the relationship between the co-operatives and retail stores, including levels of rent charged and cost recovery for services provided

ROACE for Woolworths NZ

Adjustments needed to calculate Woolworths NZ's ROACE

- B85 We have made the following adjustments when calculating Woolworths NZ's ROACE:
- B85.1 included estimates of the value of capitalised leases in Woolworths NZ's asset base and the interest component on the leases in the profitability calculation of the ROACE;
 - B85.2 removed certain non-grocery-related subsidiaries and assets;
 - B85.3 included Woolworths NZ's brand intangibles at book value;
 - B85.4 adjusted Woolworths NZ's land and property assets to reflect market values; and
 - B85.5 removed all of Woolworths NZ's goodwill from its assets employed.

Including the estimated value of capitalised leases and lease interest expenses

- B86 Our draft report excluded the value of capitalised leases in the assets employed for various reasons. As discussed in Chapter 3, we have included estimated values of capitalised leases and the associated interest expense in our calculations.
- B87 Woolworths NZ provided estimates of its capitalised leases and their associated interest payments from 2015 to 2019. These are only estimates because audited capitalised leases have only been required since 2020 due to the changes in international accounting standards. We have examined Woolworths NZ's estimates and although they are based on a number of simplifying assumptions, their similarity to the audited capitalised leases and interest payments shown in Woolworths 2020 financial accounts suggests they are sufficiently robust to be used in the ROACE.

Removing Woolworths NZ's non-grocery related subsidiaries and assets

- B88 Woolworths NZ owned two significant subsidiaries that were engaged in non-grocery retailing activities. These are Ezibuy and New Zealand Wine Cellars Limited.¹³⁵¹ Given our market study is focused on grocery retailing, Woolworths NZ provided an adjusted set of financial accounts with these two entities removed for the years 2015 to 2019.

¹³⁵¹ Previously known as Cellar Masters Wines Pty Limited.

- B89 Removing these non-grocery activities required the removal of the material loss that Woolworths NZ incurred in its 2016 financial year from the sale of Ezibuy. This caused the write down of \$276 million in goodwill as a result of the sale of the company below its carrying book value.¹³⁵²
- B90 We also removed the development properties owned by Woolworths NZ from its assets employed between 2015 and 2019. This includes land and buildings that are being held for future retail grocery development but are currently not being employed in that activity.

Including Woolworths NZ's brand intangibles

- B91 Woolworths NZ had intangible assets relating to brands of around \$169 million on its balance sheet each year from 2015 to 2019. We have included this asset in Woolworths NZ's asset base when assessing its ROACE. This is a change from our draft report.
- B92 Submissions made by Woolworths NZ proposed that brands should be retained in the assets employed when calculating ROACE.¹³⁵³ To support this, these submissions referred to a report from Oxera, which considered a company's spending on marketing could be capitalised into brand-value assets. This investment is made in the current period in the expectation of making a return in later periods. Woolworths NZ also presented a range of valuations for its brands as a demonstration of what the value could be.
- B93 Based on these submissions we agree that brands have a value that should be recognised in the assets employed. However, we do not agree with the range of values that Woolworths NZ has presented, because it is possible that these valuations could capture some element of economic rents. In addition, if we were to value brands, we would need to determine the annual capital gain and reflect this in the ROACE as well, which could prove to be difficult.
- B94 As such, we have included brands at book value in the asset base, which reflects the price a party was willing to pay for the asset. This approach aligns our estimation of the ROACE for the sample of overseas grocery retailers, which include the value of acquired brands in the asset employed. It is also consistent with the approach in our retail fuel market study.

¹³⁵² Woolworths New Zealand Group Limited "Annual Report 2016" (2016) at 26, available at: <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1686297/documents>.

¹³⁵³ Woolworths NZ "Post conference submission on Market study into grocery sector" (23 November 2021) at [5.4.8]; Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [27.7.5].

Adjusting Woolworths NZ's land and property assets to market values

- B95 We have adjusted Woolworths NZ's land and building assets to reflect their market (or economic) value. The 2019 book value of its land and buildings of \$274 million is based on purchase price, less accumulated depreciation.¹³⁵⁴
- B96 We undertook the following steps to adjust Woolworths NZ's land and building assets from their book value to a market value:
- B96.1 Woolworths NZ provided us with various market valuations it has undertaken between 2018 to 2021 on certain land and buildings it owns. We compared market valuation to the book value of each property. This showed a weighted average valuation uplift.
- B96.2 We applied this valuation uplift to the book value of all of Woolworths NZ's land and buildings as a top-down adjustment to reflect the market value of these assets being employed.
- B97 This adjustment reduces the ROACE estimate for Woolworths NZ. However, we have not reflected the corresponding annual gain in the value of these assets in the ROACE because of a lack of robust data. This means that our final ROACE estimate will understate the true ROACE, but we do not consider this to be material.

Removing Woolworths NZ's goodwill from its assets employed

- B98 We have removed all of the \$2.3 billion of goodwill from Woolworths NZ's asset base when calculating ROACE. This goodwill arose from Woolworths Australia's acquisition of Progressive Enterprises in 2005. It is a material proportion of the total assets in Woolworths NZ's balance sheet (around 57%).
- B99 We have excluded goodwill because it is not an asset employed by Woolworths NZ to generate earnings. Rather it is an asset that reflects the differences in the fair value (market value) of the assets being acquired and their purchase price when the company changed ownership. This difference can reflect a range of factors, including expectations relating to future earnings.
- B100 Woolworths NZ submitted that its goodwill should be retained in its assets employed when calculating the ROACE as it represents the actual cost to Woolworths NZ of entering the New Zealand market that could not be avoided.¹³⁵⁵ It stated that the acquisition meant it could enter the New Zealand market and avoid the full cost of replicating the business it was acquiring, but it was required to pay some measure of economic replacement cost materially above the depreciated book value of the assets.

¹³⁵⁴ Woolworths New Zealand Group Limited "Annual Report 2019" (2019), available at: <https://app.companiesoffice.govt.nz/companies/app/service/services/documents/954FC3EC59E05899BDD120E9A1F733B4>.

¹³⁵⁵ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [27.7.8].

B101 Woolworths NZ has also identified various specific sources of economic value that are not reflected individually in its balance sheet, but rather embedded in the overall goodwill value.¹³⁵⁶ These include:

B101.1 Progressive Enterprises' assets were heavily depreciated at the time of the acquisition, and by inference were recorded at levels well below their replacement value. Evidence for this lies in the difference between the asset book values and Woolworths NZ's estimates of the replacement cost of these assets. For assets where replacement costs are not available, Woolworths NZ submitted that the historic cost is a good proxy. Woolworths NZ estimates the difference between book value and fair replacement value to be worth up to \$698 million based on the replacement cost at the time of acquisition.¹³⁵⁷

B101.2 Woolworths NZ considers the capitalised value of long-term leases is not recognised in the purchase price it paid for Progressive Enterprises, and it should be. The accounting standards at the time did not recognise the value of long-term leases as an asset which Woolworths NZ considers would have factored into the purchase price. Woolworths NZ also notes that the recent changes to the International Accounting Standard IFRS16 now requires all leases to be accounted for as assets on the balance sheet, which aligns with its view. Woolworths NZ bases its estimation of the value of these leases on Progressive Enterprises' external operating lease expense in 2006 being \$85 million. Capitalising this amount at a multiple of between 6.2x and 8.0x provides a value of between \$530 million and \$680 million.

B101.3 Woolworths NZ expected the acquisition of Progressive Enterprises would generate merger synergies.¹³⁵⁸ Woolworths NZ's internal estimates at the time of the acquisition were for increased annual earnings as a result of the acquisition of between \$35 million and \$51 million in year five after the purchase. Capitalising this earnings stream at an Earnings Before Interest, Tax and Amortisation (EBITA) multiple of 13.4x would be worth between \$469 million and \$683 million.

B101.4 Land values were recorded on the balance sheet at an historic cost of \$59 million, which does not reflect the fair market value of this asset. However, accurate records of specific land holdings in 2005 are not available and consequently Woolworths NZ is unable to estimate the market value of the land at the time of acquisition.¹³⁵⁹

¹³⁵⁶ Woolworths NZ "Post conference submission on Market study into grocery sector" (23 November 2021) at [5.7.2.2].

¹³⁵⁷ [].

¹³⁵⁸ [].

¹³⁵⁹ [].

B101.5 Woolworths NZ also considers there are other sources of value in the acquisition that are not reflected on the balance sheet and more difficult to objectively quantify.¹³⁶⁰ These includes items such as licences, brands, customer contracts, supplier relationships, and transport contracts / networks.

Our view on Woolworths NZ's arguments for including goodwill

B102 We recognise that shareholders in Woolworths NZ paid for the goodwill and that this outlay therefore affects the total return on their capital.

B103 However, our focus is different – we are assessing the profitability of Woolworths NZ's grocery business. If Progressive Enterprises was earning economic rents prior to its acquisition by Woolworths NZ, the purchase price would have been above the value of the assets and the difference would be reported as goodwill. Therefore, in our assessment we have removed the goodwill and checked that the underlying assets are recorded at market value.

B104 We have assessed Woolworths NZ's arguments regarding goodwill in this context. We make the following comments:

B104.1 It may be correct that Progressive Enterprises' assets were heavily depreciated at the time of the acquisition, and below their replacement value. However, this was over 16 years ago, and the majority of these assets are likely to have been fully depreciated, scrapped and (where appropriate) replaced with new assets. The expected useful life of plant, equipment and fittings in Woolworths financial accounts is between 2.5 and 10 years.¹³⁶¹

Given we wish to understand the actual cost of the assets that were employed to generate the earnings, any under-valuation of these shorter-lived assets at the acquisition date will by now have little or no effect on book values.

B104.2 We also note that Progressive Enterprises' assets were revalued at the time of acquisition to fair market value, so they would have reflected their market value.¹³⁶²

¹³⁶⁰ []

¹³⁶¹ Woolworths New Zealand Group Limited, 2015 – 2019 Annual Reports, available at: <https://app.companiesoffice.govt.nz/companies/app/ui/pages/companies/1686297/documents>.

¹³⁶² Woolworths Limited "Annual Report 2006" at 145, Note 30, available at: https://www.annualreports.com/HostedData/AnnualReportArchive/W/ASX_WOW_2006.pdf.

- B104.3 The leases that Woolworths NZ obtained through its acquisition of Progressive Enterprises should be viewed similarly to the replacement value of the fixed assets. We assume the majority of these leases would have expired or be largely expired by 2015, which is the starting point of our profitability assessment. Once again, we wish to understand the actual cost of the assets that were employed to generate the earnings. Those assets that are no longer part of the asset base should be excluded from the asset base in our profitability assessment.
- B104.4 The synergies that were expected from the acquisition of Progressive Enterprises are relevant for determining what an acquiring firm will pay for a target firm because they are part of the value of future expected profits. However, for our purposes we want to understand the market valued cost of the assets that were employed to generate the profits, rather than capturing any value of future expected profits.
- B104.5 In addition, a competitive market would have seen any merger synergies gradually reduced over time as the forces of competition eroded any competitive advantage a single firm would have. Our ROACE analysis starts in 2015, 10 years after the merger.¹³⁶³
- B104.6 We agree with Woolworths NZ's argument that land and property values did not reflect the true market value. However, these assets would have been revalued in 2005 to reflect fair market value. We also note that we have adjusted the value of Woolworths NZ's entire land and property assets to reflect the market value of these assets. This has resulted in an increase in total assets employed in each year from 2015 to 2019.
- B104.7 We also agree with Woolworths NZ's argument that some elements of goodwill might have reflected items such as set-up costs for customer contracts, supplier relationships, staff contracts, and transport contracts / networks. However, like leases and other depreciable assets, we consider this asset would have also depreciated since the Woolworths NZ acquisition. In addition, any expenditure by Woolworths NZ to maintain the value of organisational capacity (such as staff training and IT spending) would be reflected in the ROACE through NPAT.
- B105 Based on our review of Woolworths NZ's submission, we continue to remove all of Woolworths NZ's goodwill from its assets employed.

¹³⁶³ Our regulatory regime for electricity distribution businesses, under Part 4 of the Commerce Act, assumes a five-year time frame for such synergies to be competed away.

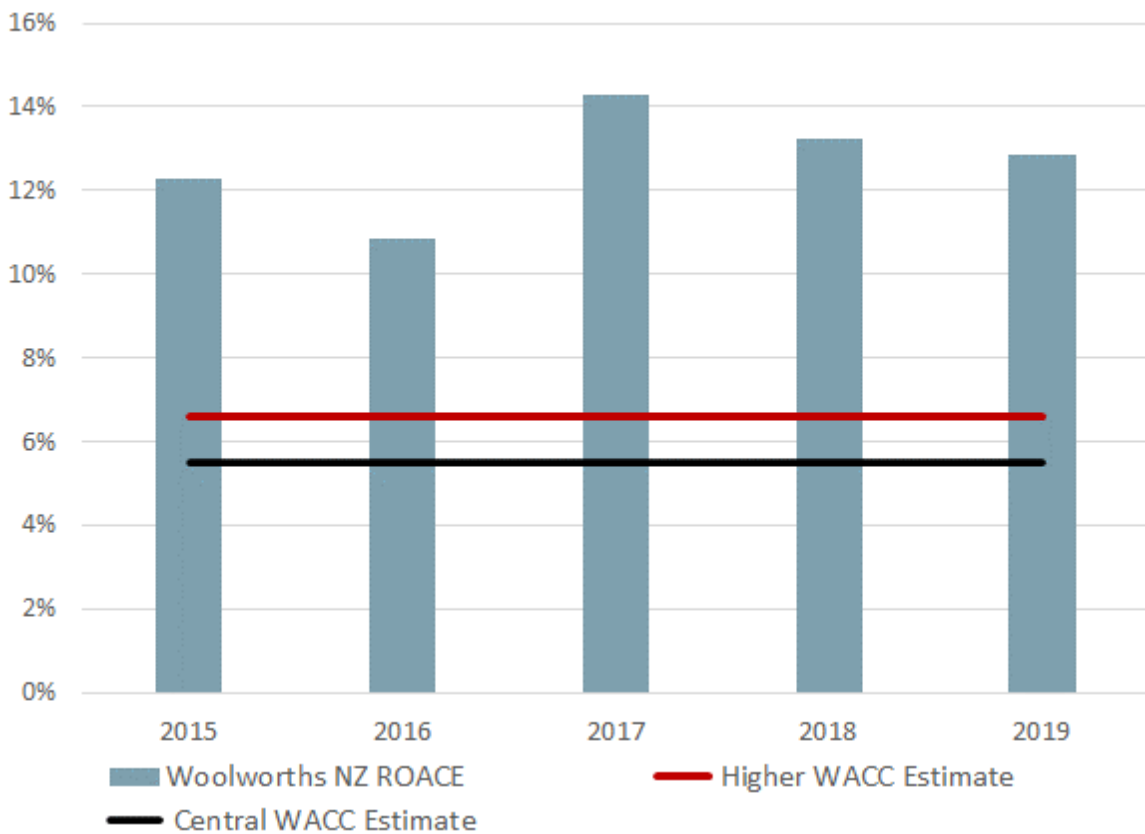
B106 The draft report included a sensitivity test to understand the impact of a material underestimation of the total value of assets. For this we included an additional value of \$300 million in the assets employed. However, given we have not seen any evidence that we have underestimated the value of assets employed, we consider this test is no longer required. Moreover, we do not wish to include an amount of assets that could reflect market rents.

Woolworths NZ's ROACE after adjustments

B107 Following these adjustments, we have determined the average ROACE for Woolworths NZ was 12.7% from 2015 to 2019. This ranged between 10.9% and 14.3%. Figure B3 shows Woolworths NZ's ROACE for 2015 to 2019, including our central and higher WACC estimate of 5.5% and 6.6% for the years 2015 to 2019.

B108 As shown, Woolworths NZ's ROACE has been consistently above our higher WACC estimate. This conclusion would also apply if we compared ROACE to the slightly higher WACC range that Woolworths NZ submitted.

Figure B3 Woolworths NZ's ROACE: Post adjustments



Source: Commerce Commission profitability analysis.¹³⁶⁴

B109 We note that these ROACE estimates are lower than shown in our draft report (which averaged 21.6% for the 2015 to 2019 period). This reduction is primarily due to including capitalised leases and lease interest expenses in the calculation of ROACE. If this adjustment were not made, the average ROACE from 2015 to 2019 would be 21.0%.

Attachment C International price comparison

Introduction

- C1 This attachment provides further details about the analysis we have conducted to compare the prices of groceries in New Zealand with prices internationally. The findings of this analysis are described in Chapter 3.
- C2 The sections in this attachment are:
- C2.1 datasets used to compare grocery prices;
- C2.2 methods used in interpreting datasets; and
- C2.3 further analysis and sensitivity testing.

Datasets used to compare grocery prices

- C3 In this section, we discuss the datasets we have used and explain how they produce price level and expenditure statistics.

Price-level datasets

- C4 We used three datasets of prices for our international comparisons. These are compiled by the ICP, the OECD and Numbeo.^{1365, 1366, 1367}
- C5 The ICP and OECD collect “national annual average prices” on a regionally determined product list to produce their price datasets. The prices used are the final prices paid by the consumer and are therefore tax inclusive. They present averaged and normalised (to the World or OECD) prices at the “class” level, which are sets of goods such as bread and cereals. These datasets are produced every three (OECD) and six (ICP) years. The OECD dataset contains data for OECD countries while the latest ICP dataset includes data for 176 economies.¹³⁶⁸
- C6 Numbeo collects crowd-sourced prices on a product list that it determines. This data is presented as both an average price for each product and an aggregated (average) grocery price index. Prices and indices are available for most countries.

¹³⁶⁵ Frederic A. Vogel “Executive Summary” in *World Bank Measuring the Real Size of the World Economy: The Framework, Methodology and Results of the International Comparison Program* (World Bank, Washington DC, 2013) at xviii, available at:

<https://openknowledge.worldbank.org/bitstream/handle/10986/13329/9780821397282.pdf?sequence=5>.

¹³⁶⁶ Eurostat, OECD “Eurostat-OECD Methodological Manual on Purchasing Power Parities” (2012) at [5.8.1], available at: <https://www.oecd.org/sdd/prices-ppp/PPP%20manual%20revised%202012.pdf>.

¹³⁶⁷ Numbeo “Methodology and motivation for Numbeo.com”
https://www.numbeo.com/common/motivation_and_methodology.jsp.

¹³⁶⁸ World Bank Group “Purchasing Power Parities and the Size of World Economies: Results from the 2017 International Comparison Program” (2020), available at:
<https://openknowledge.worldbank.org/bitstream/handle/10986/33623/9781464815300.pdf>.

- C7 The EIU also compiles a dataset of prices in selected cities. The EIU collects data twice annually on a product list that is the same for all cities in its survey. We understand that the EIU presents an average of these two prices in its price data. NERA (on behalf of Woolworths NZ) used the EIU in its comparison of international prices. NERA excluded all products that were not priced in every city in its city list as not all cities had prices for every product.

Expenditure datasets

- C8 We also compared New Zealand's expenditure on groceries with a number of different countries using three different expenditure datasets compiled by the OECD, ICP and the USDA.¹³⁶⁹
- C9 The USDA sources its expenditure statistics from a market research firm, Euromonitor. This data is reported annually, broken down for food and non-alcoholic beverages, alcoholic beverages, and tobacco. The most recent data is available for 2018.
- C10 The OECD and ICP report expenditure statistics for all "classes" at the same time as prices.

Income datasets

- C11 We also used four different measures of income to compare New Zealand's average proportion of total income spent on groceries to other OECD countries. All measures are in USD, converted using the market exchange rate unless otherwise stated. These measures are:
- C11.1 Gross National Income (GNI), per capita;¹³⁷⁰
- C11.2 Net National Income (NNI), per capita;¹³⁷¹
- C11.3 Adjusted Net National Income (Adjusted NNI), per capita;¹³⁷² and
- C11.4 Average Wage, per capita.¹³⁷³

¹³⁶⁹ USDA "Data on expenditures on food and alcoholic beverages in selected countries: 2013-2018" (2019), available at: https://www.ers.usda.gov/media/10271/2013-2018-food-spending_update-april-2019.xls.

¹³⁷⁰ OECD "Gross National Income (USD, per capita)", available at: <https://data.oecd.org/natincome/gross-national-income.htm>.

¹³⁷¹ OECD "Net National Income (USD, per capita)", available at: <https://data.oecd.org/natincome/net-national-income.htm>.

¹³⁷² World Bank Group "Adjusted Net National Income (USD, per capita)", available at: <https://data.worldbank.org/indicator/NY.ADJ.NNTY.PC.CD>.

¹³⁷³ OECD "Average Wages" available at: <https://data.oecd.org/earnwage/average-wages.htm>.

- C12 The income measures that we use are calculated in the following ways:
- C12.1 GNI reflects the total incomes of the residents of an economy, which is calculated by adding Net Income from Abroad to GDP;¹³⁷⁴
 - C12.2 NNI is calculated by subtracting depreciation of fixed capital from GNI;¹³⁷⁵
 - C12.3 Adjusted NNI is calculated by subtracting natural resources depletion from NNI;¹³⁷⁶ and
 - C12.4 Average Wage measures the average annual earnings of an employee that works the average number of hours for a given country.¹³⁷⁷
- C13 Data for GNI and NNI is available as recently as 2017 for all OECD countries, whereas data for Adj NNI is available as recently as 2018 for all OECD countries.
- C14 For the purposes of this analysis, we chose to use income measures that:
- C14.1 are measured in USD and converted using annual average exchange rates;^{1378, 1379} and
 - C14.2 measure income based on current prices.
- C15 We opted not to use measures of average household income for two reasons:
- C15.1 our expenditure statistics are measured per person, whereas, household income statistics are measured as the income of multiple people. This means that it would be inappropriate to divide expenditure statistics by household income statistics to find the share of income spent on food, as it would return to us the share of household income that is spent on one person's groceries, as opposed to the entire household; and
 - C15.2 we expect that the number of individuals in a household varies significantly from country to country, which means that the results would be difficult to compare between countries.

¹³⁷⁴ Eurostat "European System of National and Regional Accounts" (2010) at [8.94], available at: <https://ec.europa.eu/eurostat/documents/3859598/5925693/KS-02-13-269-EN.PDF/44cd9d01-bc64-40e5-bd40-d17df0c69334>.

¹³⁷⁵ OECD "Net National Income (USD, per capita)", available at: <https://data.oecd.org/natincome/net-national-income.htm>.

¹³⁷⁶ World Bank Group "Adjusted Net National Income (USD, per capita)" <https://data.worldbank.org/indicator/NY.ADJ.NNTY.PC.CD>.

¹³⁷⁷ OECD "Average Wages" available at: <https://data.oecd.org/earnwage/average-wages.htm>.

¹³⁷⁸ Income measures need to be measured in USD as our raw expenditure data is in USD. This means that we can ensure that our proportions are measured using the same units. Similarly, income measures need to be based on current prices, as expenditures are measured using current prices.

¹³⁷⁹ Average wage data is only available converted with PPPs, or in local currency units. We obtained data in local currency units for 2017, and converted them with annual average exchange rates provided by the OECD to USD. Further details on this process can be found in paragraph C45.

C16 Data was collected from the OECD, and the World Bank when the data is unavailable from the OECD.¹³⁸⁰

The OECD and ICP price datasets are likely to be the most suitable for our analysis

C17 Our view is that, for the purposes of our study, the OECD and ICP datasets are likely to be more suitable for analysis of price levels between countries than the Numbeo or EIU datasets. This is because the OECD and ICP:

C17.1 provide extensive documentation detailing their process for collecting prices and averaging them to produce a price level;

C17.2 source prices from national statistical offices, and report these as a national annual average price.^{1381, 1382} Therefore, we expect that these prices may be better at smoothing seasonal effects and promotions, which affect price; and

C17.3 average prices using processes that preserve the representativity and comparability of products across countries.

C18 Due to the nature of user-reported data, we consider the Numbeo and EIU data to be less robust than the OECD and ICP. However, we have used the Numbeo dataset to compare international prices as a cross-check to the results of our analysis using the OECD and ICP datasets. We have also conducted some sensitivity testing of the analysis submitted by NERA using the EIU data (more details on this are provided in paragraphs C80 to C83 below).

C19 Although NERA told us that they conducted internal checks to verify the accuracy of the EIU dataset, we note that NERA does not explain how these checks have been conducted, or how accurate they believe the data is.¹³⁸³ Therefore, our view remains that the EIU dataset is not as suitable as the OECD and ICP datasets for comparing New Zealand's grocery prices to other countries.

Products analysed in datasets

C20 To identify the price level for grocery products, we ensured that datasets of price levels use a product that would be expected to be found at a supermarket.

¹³⁸⁰ GNI, NNI and Average Wage statistics were collected from the OECD, and Adjusted NNI statistics were collected from the World Bank as they are not available from the OECD.

¹³⁸¹ Prasada Rao "The Framework of the International Comparison Program" in *World Bank Measuring the Real Size of the World Economy: The Framework, Methodology and Results of the International Comparison Program* (World Bank, Washington DC, 2013) at 29, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/13329/9780821397282.pdf?sequence=5>.

¹³⁸² Eurostat, OECD "Eurostat-OECD Methodological Manual on Purchasing Power Parities" (2012) at [5.8.1], available at: <https://www.oecd.org/sdd/prices-ppp/PPP%20manual%20revised%202012.pdf>.

¹³⁸³ Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-Conference report" (25 November 2021) at Appendix C.

C21 The OECD and ICP datasets present price levels down to the “class” level. In Table C1 we present the product classes that are included in each category that we used for this analysis.

Table C1 Product categories included in the OECD and ICP price indices and expenditure statistics

OECD	ICP
<ul style="list-style-type: none"> • Food and non-alcoholic beverages (category) <ul style="list-style-type: none"> ○ Bread and cereals (class) ○ Meat (class) ○ Fish and seafood (class) ○ Milk, cheese and eggs (class) ○ Oils and fats (class) ○ Fruit, vegetables, potatoes (class) ○ Other food (class) ○ Non-alcoholic beverages (class) • Alcoholic beverages (class) • Tobacco (class) 	<ul style="list-style-type: none"> • Food and non-alcoholic beverages (category) <ul style="list-style-type: none"> ○ Bread and cereals (class) ○ Meat (class) ○ Fish (class) ○ Milk, cheese and eggs (class) ○ Oils and fats (class) ○ Fruit (class) ○ Vegetables (class) ○ Sugar, jam, honey, chocolate and confectionery (class) ○ Food products n.e.c. (class) ○ Non-alcoholic beverages (class) • Alcoholic beverages (class) • Tobacco (class)

Source: OECD and ICP datasets.^{1384, 1385}

C22 Numbeo uses a product list with weights to calculate prices.¹³⁸⁶ Given that these prices are crowd sourced, we do not know what type of outlets these prices came from.

¹³⁸⁴ Eurostat, OECD “Eurostat-OECD Methodological Manual on Purchasing Power Parities” (2012) at [Box 13.3], available at: <https://www.oecd.org/sdd/prices-ppp/PPP%20manual%20revised%202012.pdf>.

¹³⁸⁵ Paul McCarthy “National Accounts Framework for International Comparisons: GDP Compilation and Breakdown Process” in *World Bank Measuring the Real Size of the World Economy: The Framework, Methodology and Results of the International Comparison Program* (World Bank, Washington DC, 2013) at 82-83, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/13329/9780821397282.pdf?sequence=5>.

¹³⁸⁶ Numbeo “Methodology and motivation for Numbeo.com” available at: https://www.numbeo.com/common/motivation_and_methodology.jsp.

- C23 We understand that the OECD, ICP, and USDA datasets only consider products that are purchased for consumption at home. To support this, we obtained the following evidence describing what types of products are included in the lists above.
- C23.1 The OECD specifies that its food, non-alcoholic beverages, and alcoholic beverages categories include those items when purchased for consumption at home. They specifically exclude products:¹³⁸⁷
- ...sold for immediate consumption away from the home by hotels, restaurants, cafes, bars, kiosks, street vendors, automatic vending machines, etc.
- C23.2 The ICP has a separate category for restaurants and hotels, implying that grocery items consumed at these locations are not included in the calculation of price indices for food and (alcoholic and non-alcoholic) beverages.¹³⁸⁸
- C23.3 The USDA specifies that they calculate expenditures of products consumed at home.¹³⁸⁹
- C24 As noted in Chapter 3, the indices that we have used include food, non-alcoholic beverages, alcoholic beverages and tobacco bought at retail stores. As such, not all products sold by supermarkets are captured in the indices. These are items such as household cleaning supplies, which were included in other indices. These other indices were not included in our analysis, because they also contained items that would not likely be purchased at a supermarket.
- C25 For example, for the ICP dataset, non-durable household goods is included in the “furnishings, household equipment, and routine household maintenance” index which also includes: “household textiles”, and “repair of furniture”. We consider these items unlikely to be purchased at a grocery store, and therefore did not choose to include that index.¹³⁹⁰

¹³⁸⁷ Eurostat, OECD “Eurostat-OECD Methodological Manual on Purchasing Power Parities” (2012) at [11.01.10.0], [11.01.20.0], [11.02.10.0], available at: <https://www.oecd.org/sdd/prices-ppp/PPP%20manual%20revised%202012.pdf>.

¹³⁸⁸ Paul McCarthy “National Accounts Framework for International Comparisons: GDP Compilation and Breakdown Process” in *World Bank Measuring the Real Size of the World Economy: The Framework, Methodology and Results of the International Comparison Program* (World Bank, Washington DC, 2013) at 87, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/13329/9780821397282.pdf?sequence=5>.

¹³⁸⁹ USDA “Data on expenditures on food and alcoholic beverages in selected countries: 2013-2018” (2019), available at: https://www.ers.usda.gov/media/10271/2013-2018-food-spending_update-april-2019.xls.

¹³⁹⁰ Paul McCarthy “National Accounts Framework for International Comparisons: GDP Compilation and Breakdown Process” in *World Bank Measuring the Real Size of the World Economy: The Framework, Methodology and Results of the International Comparison Program* (World Bank, Washington DC, 2013) at 84-85, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/13329/9780821397282.pdf?sequence=5>.

Methods used in interpreting datasets

- C26 In this report, we used three methods that allowed us to use datasets to attempt to find the price level of groceries in New Zealand’s grocery stores.
- C27 First, we explain how we converted prices in local currency units to a standardised unit.
- C28 Second, we combined price levels for several product groups to create price indices for grocery products using the OECD and ICP datasets.
- C29 Third, we choose a selection of countries that we will use to compare New Zealand’s price level to which we think have similar determinants of price other than competition to New Zealand.

Conversion methods

- C30 To create price-level indices and compare expenditures, prices must be converted to a common unit.
- C31 In this section, we assess submissions received from NERA and HoustonKemp (on behalf of Foodstuffs) and explain our process for converting currency to a single unit, known as the “blended approach”. We also explain how we sourced exchange rate and PPP data for use in our analysis.

NERA and HoustonKemp submissions on conversion methods

- C32 In our draft report we considered that the market exchange rate is the most appropriate method of conversion between grocery prices in different countries.¹³⁹¹ We came to this view for two reasons:
- C32.1 the market exchange rate is the appropriate method of conversion when products are tradable. As grocery products are tradable, the market exchange rate is the most appropriate means of conversion; and
- C32.2 the datasets we used for price comparison purposes use price indexes to construct PPP rates, so converting prices using PPP would strip out the difference we are investigating.
- C33 NERA and HoustonKemp later told us that PPP is the most appropriate method of converting grocery prices, because grocery retailing, and costs associated with it, is not tradable.^{1392, 1393}

¹³⁹¹ Commerce Commission “Market Study into the retail grocery sector – Draft report” (29 July 2021) at [3.89].

¹³⁹² Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of NZCC Draft Report” (10 September 2021) at [124].

¹³⁹³ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix C - HoustonKemp - International comparisons of grocery prices” (9 September 2021) at [57].

- C34 Although we agree with NERA and HoustonKemp that the grocery retailing component of price is not tradable, we remain of the view that the component of price associated with grocery products is tradable.
- C35 Therefore, to reconcile these facts, we sought to convert each grocery price component (tradable and non-tradable) using their appropriate conversion rate. We also converted expenditures in the same way. We discuss our process for conducting these conversions in the next section.

Blended approach

- C36 As discussed above, we agree with NERA and HoustonKemp that the costs involved with grocery retailing (eg, labour, freight, store rents) are not tradable and that this should be accounted for in our price comparison methodology. Therefore, we sought to split the price of grocery products by their tradable and non-tradable components and converted each share individually using PPP and market exchange rates respectively.
- C37 To use this method, we first had to determine the share of grocery prices that is tradable and non-tradable. As a starting point, we used the average share of revenues paid to suppliers by each of the major grocery retailers as a proxy for the share of grocery prices that is tradable. We are of the view that these revenues provide us with a reasonable proxy for the tradable component of grocery prices as these figures represent the revenues that are paid to suppliers in exchange for products and thereby excludes the grocery retailing component of final grocery prices.
- C38 Table C2 shows the share of revenue paid to suppliers by the major grocery retailers. We find that the average share paid is 66%. Using this figure, we are of the view that it is appropriate for purposes of our analysis to consider that 66% of grocery prices are tradable, and 34% of grocery prices as non-tradable.

Table C2 Share of revenues paid to suppliers

	WWNZ ¹³⁹⁴	FSNI ¹³⁹⁵	FSSI ¹³⁹⁶	Average
Share of revenues paid to suppliers	63.1%	68.0%	67.0%	66.0%

¹³⁹⁴ Woolworths NZ “Submission on Market study into grocery sector draft report” (10 September 2021) at 69.

¹³⁹⁵ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [21].

¹³⁹⁶ Foodstuffs SI “Submission on Market study into grocery sector draft report” (10 September 2021) at [8.2].

C39 We invited comment on whether the blended approach would be appropriate at the consultation conference. Parties made the following comments:

C39.1 HoustonKemp and Foodstuffs NI generally agreed that this method would be appropriate but considered that the share converted at market exchange rates should contain traded products only.¹³⁹⁷ Foodstuffs NI also estimated that only 50% of grocery products may be traded.¹³⁹⁸ They were of the view that the overall share converted at market exchange rates should be 33%, and the non-tradable share should be 67% instead.^{1399, 1400}

C39.2 NERA told us that although the Commission used a blended approach for telecommunications in the past, it is unlikely to further inform us on the level of competition in the grocery retail market.¹⁴⁰¹

Limitations of the blended approach

C40 Aside from the general issues with conducting price comparisons, we consider that the main limitation of the blended approach is that our choice of tradable share may not accurately reflect the proportion of grocery expenditure that is tradable.

C41 For example, NERA told us that the proportion of grocery products that is tradable (or traded) is unknown, and therefore the blended approach cannot be applied in a robust way.¹⁴⁰²

C42 To address this issue, we sought to understand how New Zealand's grocery price rank changes as the proportion of grocery price that is tradable changes.

C43 Figure C1 shows New Zealand's grocery price ranking compared to the share that we consider as tradable. This figure was created using OECD data on food, non-alcoholic beverage, alcohol and tobacco prices for 2017.

¹³⁹⁷ Comments by Greg Houston, Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 6 (lines 12-22).

¹³⁹⁸ Comments by Jo Allan, Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 14 (lines 1-5).

¹³⁹⁹ Comments by Greg Houston, Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 7 (lines 29-36).

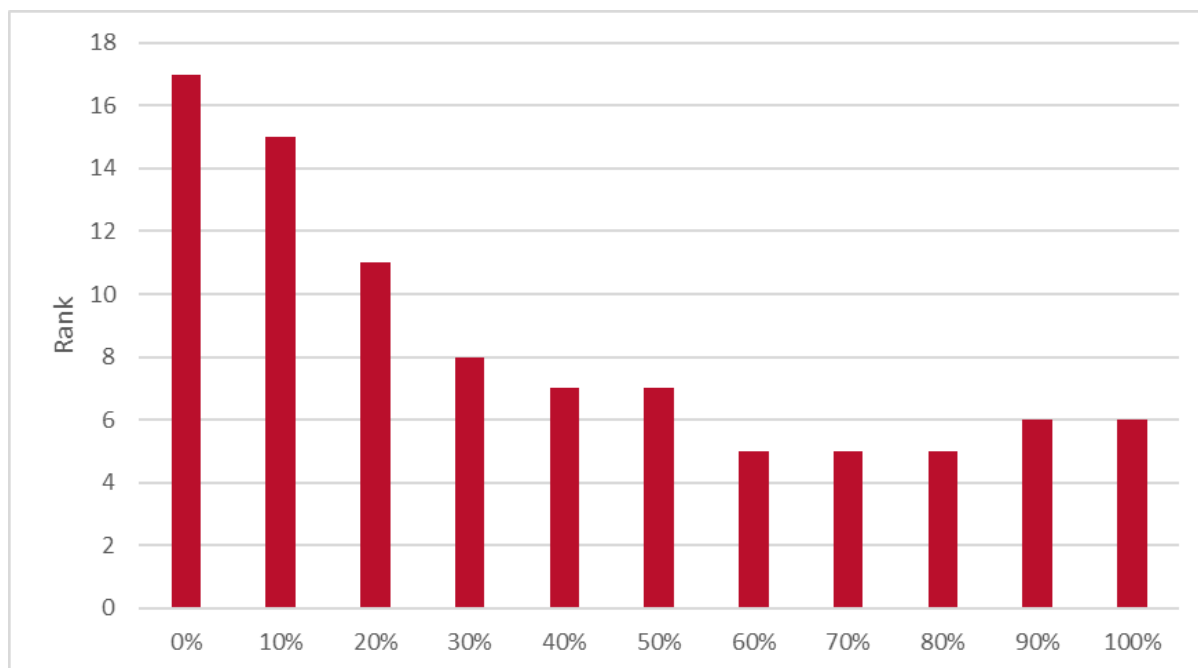
¹⁴⁰⁰ Comments by Jo Allan, Transcript Grocery Market Study Conference – Day 4 (27 October 2021) at 14 (lines 1-5).

¹⁴⁰¹ Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-Conference report" (25 November 2021) at [43]; Comments by James Mellsop, Transcript of Grocery Market Study Conference – Day 4 (27 October 2021) at 8 line (1-14).

¹⁴⁰² Woolworths NZ "Post conference submission on Market study into grocery sector: Attachment 5 - NERA - Grocery Market Study: Post-Conference report" (25 November 2021) at [45].

- C44 It is evident from Figure C1 that only when the tradable share is 20% or less, does New Zealand fall out of the top 10 most expensive grocery markets in the OECD. Therefore, even if we were to take on Foodstuffs NI's suggestion that 33% of grocery price should be converted using the market exchange rate, grocery prices remain high in New Zealand by international standards. In Figure C1, 0% tradable represents a conversion only with PPP, and 100% represents a conversion only with the market exchange rate.

Figure C1 New Zealand's grocery price rank as a function of the share of tradables (OECD dataset, 2017)¹⁴⁰³



Source: Commission analysis of the OECD dataset.¹⁴⁰⁴

Conversion to a common currency (USD)

- C45 Price-level indices produced by the OECD and ICP use an annual average exchange rate.¹⁴⁰⁵ For expenditure statistics produced by the same datasets, we used the annual average exchange rates that the datasets provided to convert expenditure to expenditure in USD.
- C46 Numbeo uses a mid-year exchange rate to convert exchange rates.¹⁴⁰⁶ We do not consider this to be the most appropriate exchange rate to use, and therefore believe this is an additional reason to place limited weight on analysis on the Numbeo data.

¹⁴⁰³ Commerce Commission Analysis, [].

¹⁴⁰⁴ [].

¹⁴⁰⁵ Eurostat, OECD "Eurostat-OECD Methodological Manual on Purchasing Power Parities" (2012) at [2.4], available at: <https://www.oecd.org/sdd/prices-ppp/PPP%20manual%20revised%202012.pdf>; World Bank "ICP 2017" (2017) at Market exchange rate (US\$ = 1), Classification <https://databank.worldbank.org/source/icp-2017>.

¹⁴⁰⁶ Numbeo "Methodology and motivation for Numbeo.com" https://www.numbeo.com/common/motivation_and_methodology.jsp.

- C47 The USDA converts expenditure data in current US dollars, for the year in question.¹⁴⁰⁷ The USDA does not provide further detail as to which exchange rate is used beyond this.

Methods used in combining indices

- C48 To compare prices across a range of products, we had to create a combined index of:
- C48.1 the separate index for food and non-alcoholic beverages;
 - C48.2 the index for alcohol; and
 - C48.3 the index for tobacco.
- C49 To do this, we took an average of the indices for each category, weighted by their share of expenditure, to obtain a combined price level for all products.
- C50 For the expenditure comparisons, we added together the per capita expenditure indices for the food and non-alcoholic beverages, alcohol, and tobacco categories.

Submissions on methods used in combining indices

- C51 Following the publication of our draft report, NERA told us that alcohol and tobacco should be excluded from comparisons, and that our methodology for combining indices understates the importance of alcohol and tobacco.
- C52 NERA argued that alcohol and tobacco should be excluded from comparisons on the following grounds:¹⁴⁰⁸
- C52.1 alcohol and tobacco are highly taxed in New Zealand compared to other countries; and
 - C52.2 alcohol and tobacco are not sold at supermarkets in some other countries, so including these products in our analysis would not be a fair comparison of New Zealand's international grocery prices.
- C53 We acknowledged in our draft report that tax on grocery products, which can vary from country to country and from product to product, can make comparisons difficult.¹⁴⁰⁹

¹⁴⁰⁷ USDA "Overview: International consumer and food industry trends"
<https://www.ers.usda.gov/topics/international-markets-us-trade/international-consumer-and-food-industry-trends/>.

¹⁴⁰⁸ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of NZCC Draft Report" (10 September 2021) at [118].

¹⁴⁰⁹ Commerce Commission "Market Study into the retail grocery sector – Draft report" (29 July 2021) at [3.85.4].

- C54 However, we do not agree with NERA that we should exclude alcohol and tobacco products from our analysis because they are not sold at supermarkets in some countries. We expect that the range of products in supermarkets around the world varies from country to country and that only including similar products sold in supermarkets in every country would result in a list too small to make meaningful comparisons from.
- C55 Given that New Zealanders frequently purchase alcohol at supermarkets, we are of the view that it still constitutes part of the overall grocery price level and that it is appropriate to include it for comparison purposes. Even if we removed alcohol and tobacco from comparisons, as we did in Figure 3.11, we still find that New Zealand continues to rank as the seventh most expensive grocery market in the OECD.
- C56 NERA also submitted that our weighing of alcohol and tobacco products understated the importance of alcohol and tobacco in our analysis for two reasons:
- C56.1 Our conversion methodology removed the effect of New Zealand’s weighting;¹⁴¹⁰ and
- C56.2 The choice of New Zealand as a base country understates the importance of goods where New Zealand is relatively expensive.
- C57 On these issues, we are of the view that neither methodology is necessarily better than the other as:
- C57.1 weighting only by other countries’ expenditure shares limits the influence of products not commonly purchased in those countries, which may not be representative of consumers’ purchasing habits in those countries; and
- C57.2 a choice of a different base country would cause similar distortions, as this property holds with all choices of base.
- C58 However, even if we adjusted for these issues, our findings on grocery prices would not substantially change. As NERA submits, our grocery price ranking increases to third, if their methodology is adopted, meaning that grocery prices remain relatively expensive.¹⁴¹¹ Moreover, Figure 3.11 shows us that New Zealand’s prices are high, even when alcohol and tobacco are not included, showing that our weighting methodology does not drive our findings on price.

Comparator countries

- C59 As explained in Chapter 3, we identified some countries that appeared to represent price determinants more similar to New Zealand than others.

¹⁴¹⁰ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of NZCC Draft Report” (10 September 2021) at [A1]-[A5].

¹⁴¹¹ Woolworths NZ “Submission on Market study into grocery sector draft report: Attachment 1 – NERA – Grocery Market Study: Review of NZCC Draft Report” (10 September 2021) at [A1]-[A5].

- C60 These comparisons are for illustrative purposes and we acknowledge that caution must be exercised when comparing prices between any two particular countries. The determinants of price are complex and different factors will determine grocery prices in every country; no country will perfectly mimic New Zealand’s determinants of price.
- C61 Nonetheless, we sought to identify countries that appeared more similar to New Zealand in terms of the factors we considered most likely to affect price:
- C61.1 Supply factors such as the cost of production. For example, access to economies of scale and shipping networks.
- C61.2 Demand factors such as tastes, preferences and income effects. In addition, countries with similar tastes and preferences are likely to allow for more comparisons between a more similar set of goods.
- C62 To act as a proxy for some of the above factors, we consider the closeness of New Zealand to other countries in terms of output per capita, population, and population density. This was because:
- C62.1 output per capita is likely to capture some of the differences between countries in their demand for grocery products – this is because we would expect income levels to be one determinant of prices;¹⁴¹² and
- C62.2 population and population density were selected as this may affect the economies of scale available for grocery retailers.
- C63 Table C3 summarises these statistics for the countries that we selected as comparators to New Zealand.
- C64 We chose to look at five countries in more detail for illustrative comparisons. These were Australia, Finland, Iceland, Ireland and Israel. We chose to focus on these for our illustrative comparisons for the following reasons:
- C64.1 Australia shares a common market with New Zealand through the Closer Economic Relations regime, which may equalise some commodity prices that are inputs to the grocery market. However, we note that the population of Australia is five times that of New Zealand, the population density is significantly lower overall, that population is more clustered in urban areas, and the climate and landscapes are different. It is unclear how these factors will affect comparisons between New Zealand and Australia.

¹⁴¹² Countries with higher productivity (and therefore higher per capita output) tend to have higher prices, known as the Penn effect (also known as the Balassa-Samuelson effect), Paul A. Samuelson “Facets of Balassa-Samuelson Thirty Years Later” *Review of International Economics*, 1994, Vol.2, No.3, at 205, [].

- C64.2 Finland has a similar level of output, population, and population density to New Zealand, meaning that input costs for labour and distribution costs may be similar. However, Finland is a member of the European Union (EU) common market, and is geographically close to its neighbours meaning that barriers to trade are likely to be lower.
- C64.3 Iceland, being an island in the middle of the Atlantic, may emulate some of the geographic isolation that New Zealand experiences, which act as a barrier to trade. On the other hand, Iceland's high per capita output, significantly smaller size, and membership to the European Economic Area (EEA) are likely to affect grocery prices in ways that differ from New Zealand.
- C64.4 Ireland has similar output and production size to New Zealand. However, their proximity to the UK, population density and membership in the EU mean they are likely to face a significantly different environment for retail grocery than New Zealand.
- C64.5 Israel has a similar population and output level to New Zealand but is more densely populated. Israel also faces a number of unique geopolitical circumstances but it is unclear whether these make it more or less comparable to New Zealand in terms of distance from trading partners and costs for grocery retailers.

Table C3 Comparator summary statistics

Country	GNI/capita (2017) PPP constant international dollars ¹⁴¹³	Population (2017) ¹⁴¹⁴	Population density (2017) ¹⁴¹⁵
New Zealand	40,700.5	4,813,600	18.281
Australia	47,163.2	24,601,860	3.198
Iceland	53,923.2	343,400	3.425
Ireland	41,407.4 ^{1416, 1417}	4,807,388	69.784
Israel	38,637.0	8,713,300	402.648
Finland	47,593.9	5,508,214	18.124

Source: Commission analysis of World Bank dataset.¹⁴¹⁸

Further analysis and sensitivity testing

C65 In order to better understand New Zealand’s relative grocery prices, we sought to:

- C65.1 compare our analysis for 2017 to more recent years;
- C65.2 present price index data from the OECD, split by alcohol and tobacco;
- C65.3 present data on the proportion of income spent on groceries using other datasets and methods; and
- C65.4 conduct sensitivity analysis of data submitted by NERA.

Analysis using more recent datasets

C66 The analysis that we presented in Chapter 3 used data from 2017 as this was the year with data available from a number of countries. To understand how findings from 2017 are likely to be helpful in understanding prices today, we considered results from datasets that had more recently available data available.

¹⁴¹³ World Bank “Gross National Income (GNI) per capita PPP (constant 2017 international dollars)” https://data.worldbank.org/indicator/NY.GNP.PCAP.PP.KD?locations=AU-NZ-IL-IE-FI-IS&year_high_desc=true. Gross National Incomes are converted to a single unit, called the international dollar. One international dollar has the same purchasing power as one US Dollar in 2017.

¹⁴¹⁴ World Bank “Population, total” https://data.worldbank.org/indicator/SP.POP.TOTL?end=2017&locations=AU-NZ-IL-IE-FI-IS&start=2017&year_high_desc=true.

¹⁴¹⁵ World Bank “Population density (people per sq. km of land area)” https://data.worldbank.org/indicator/EN.POP.DNST?end=2017&locations=AU-NZ-IL-IE-FI-IS&start=2017&year_high_desc=true.

¹⁴¹⁶ Ireland uses modified Gross National Income to discount for the effect of tax havens. This data is available from the Central Statistics Office. A PPP of 0.913 was used to convert to int’l \$, which comes from the ICP dataset.

¹⁴¹⁷ Central Statistics Office “Measuring Ireland’s Progress 2017” <https://www.cso.ie/en/releasesandpublications/ep/p-mip/measuringirelandsprogress2017/ef/>.

¹⁴¹⁸ [].

C67 This sensitivity analysis suggests that there is unlikely to have been a material change in New Zealand’s relative ranking regarding grocery prices in recent years.

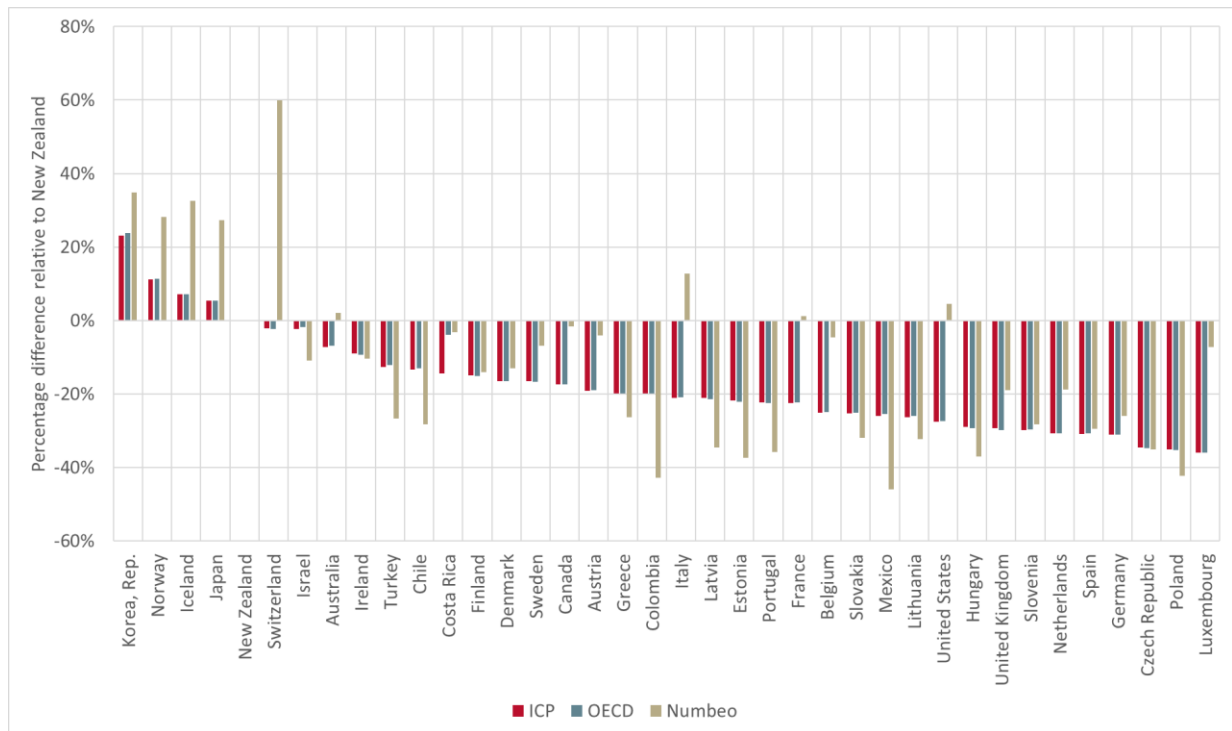
Sensitivity analysis using Numbeo data

C68 Data from Numbeo is available as recently as 2021, produced on a half-yearly basis. Although we consider limited weight can be placed on the Numbeo data, we still consider there to be some value in looking at more recent data from this source.

C69 Figure C2 below shows the price levels for OECD countries using the Numbeo, ICP and OECD datasets for 2017 as a percentage difference relative to New Zealand’s price level. This graph supports our preliminary finding in Chapter 3 that datasets are consistent in their relative ranking of prices.

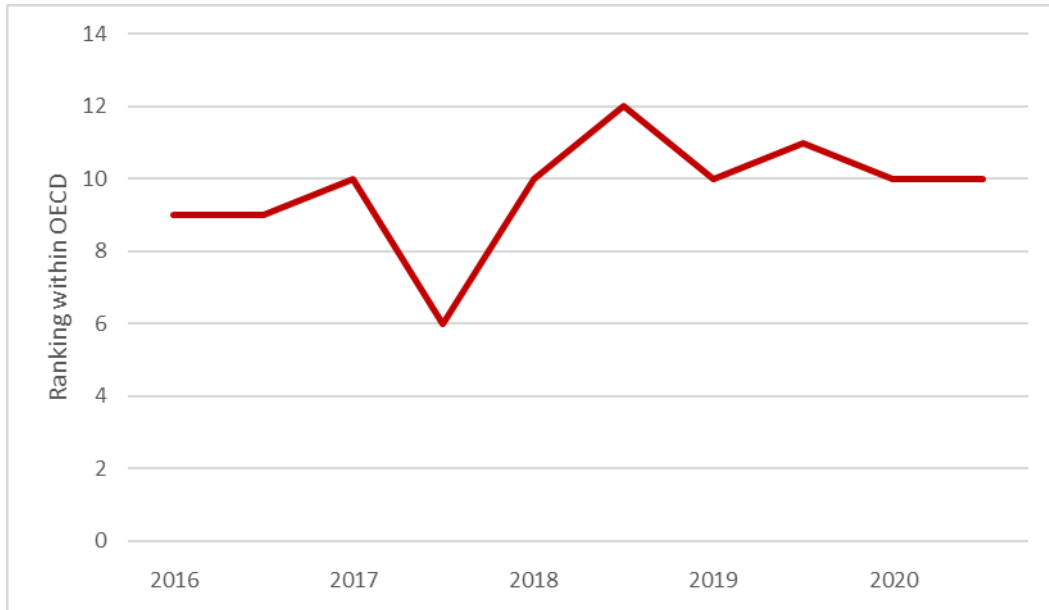
C70 Figure C3 below shows New Zealand’s ranking for grocery prices out of countries in the OECD, calculated by Numbeo, between 2016 and 2021. It shows that New Zealand’s relative ranking does not vary substantially from year to year. From this, we consider that it is unlikely that New Zealand’s relative grocery price ranking has changed significantly since 2017.

Figure C2 Percentage difference in food, beverages (alcoholic and non-alcoholic) and tobacco prices compared to New Zealand (NZ = 0, blended approach, 2017)



Source: Commission analysis of ICP, OECD and Numbeo datasets.¹⁴¹⁹

Figure C3 Ranking of New Zealand grocery prices within OECD countries (Numbeo, 2016-2021)



Source: Commission analysis of Numbeo dataset.¹⁴²⁰

Sensitivity analysis using EIU data

C71 Although we have reservations about using the EIU dataset, we recognise that it was more recent than what we consider to be our most useful data sources. Therefore, we replicated NERA’s analysis using the EIU data for 2017 and 2018. We then compared the results to the analysis presented in the NERA report for 2019 and 2020.¹⁴²¹

C72 For both Auckland and Wellington, the relative rankings are similar for every year from 2017 through 2020. In all years, Auckland is ranked between the fifth and 10th cheapest city out of the “metro cities” category in the EIU dataset using NERA’s approach. A similar result can be found for Wellington in the categories of non-metro cities. When a blended approach is applied, Auckland’s grocery price ranking increases.¹⁴²²

C73 In addition, we considered expenditure data from the OECD. The OECD compiles expenditure statistics for food and non-alcoholic beverages annually, which is available as recently as 2019 for many OECD countries.

C74 Figure C4 below shows expenditure per capita on grocery items (alcohol and tobacco exclusive) for OECD countries between 2008 and 2019. New Zealand is shown as the red line, while other countries are in grey. We note that 2017 is the most recent year where all countries in the OECD had submitted an expenditure statistic for food and non-alcoholic beverages.

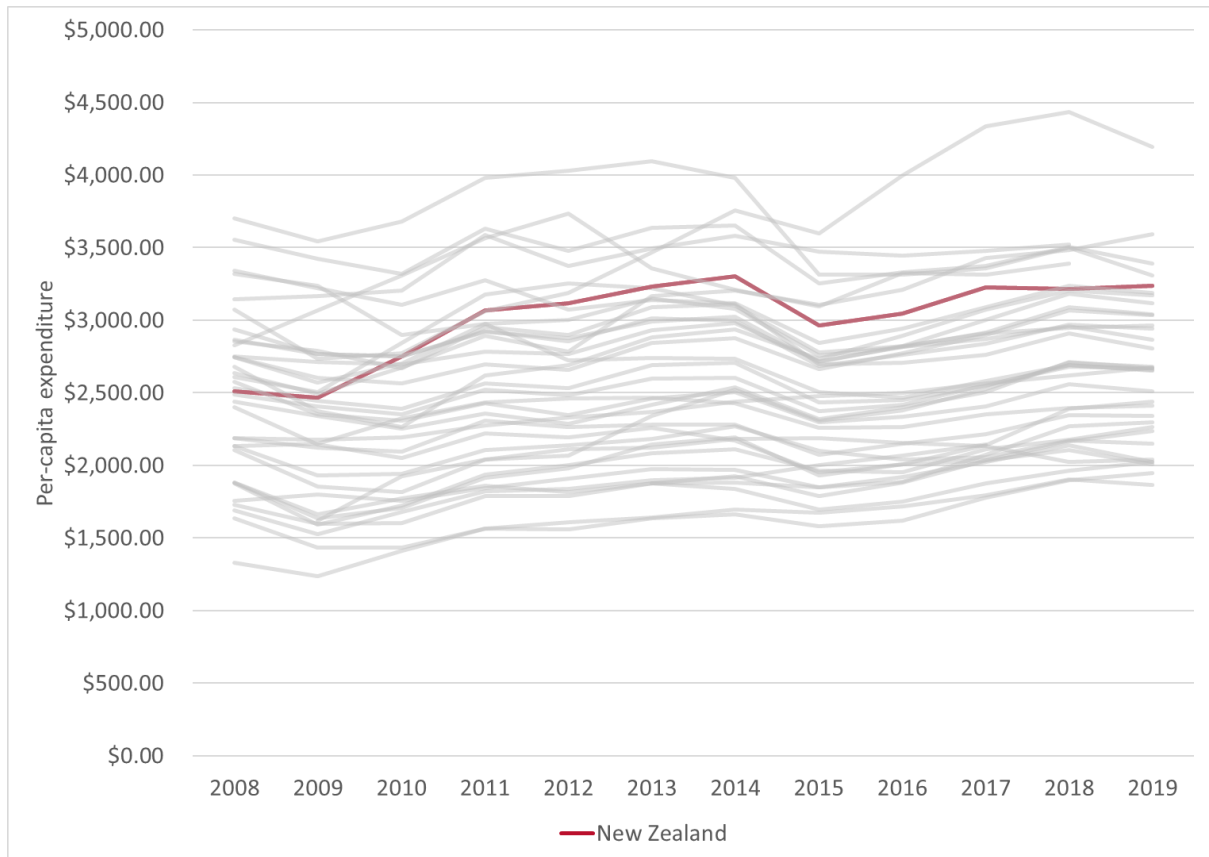
¹⁴²⁰ [].

¹⁴²¹ [].

¹⁴²² [].

C75 Out of 35 OECD countries that submitted expenditure statistics for 2019, Figure C4 shows New Zealand ranks as fifth in terms of grocery item expenditure.¹⁴²³

Figure C4 Per capita expenditures on food and non-alcoholic beverages for OECD countries (Blended Rate, 2008-2019)



Source: Commission analysis of OECD dataset.¹⁴²⁴

Grocery prices inclusive and exclusive of alcohol

C76 In Chapter 3, we used data from the ICP dataset to show that grocery prices in New Zealand are unlikely to be primarily driven by higher alcohol and tobacco prices. Below, we show that the OECD dataset shows the same results as the ICP dataset.

C77 Figure C5 below shows a price level for groceries calculated with and without alcohol and tobacco using the OECD dataset.

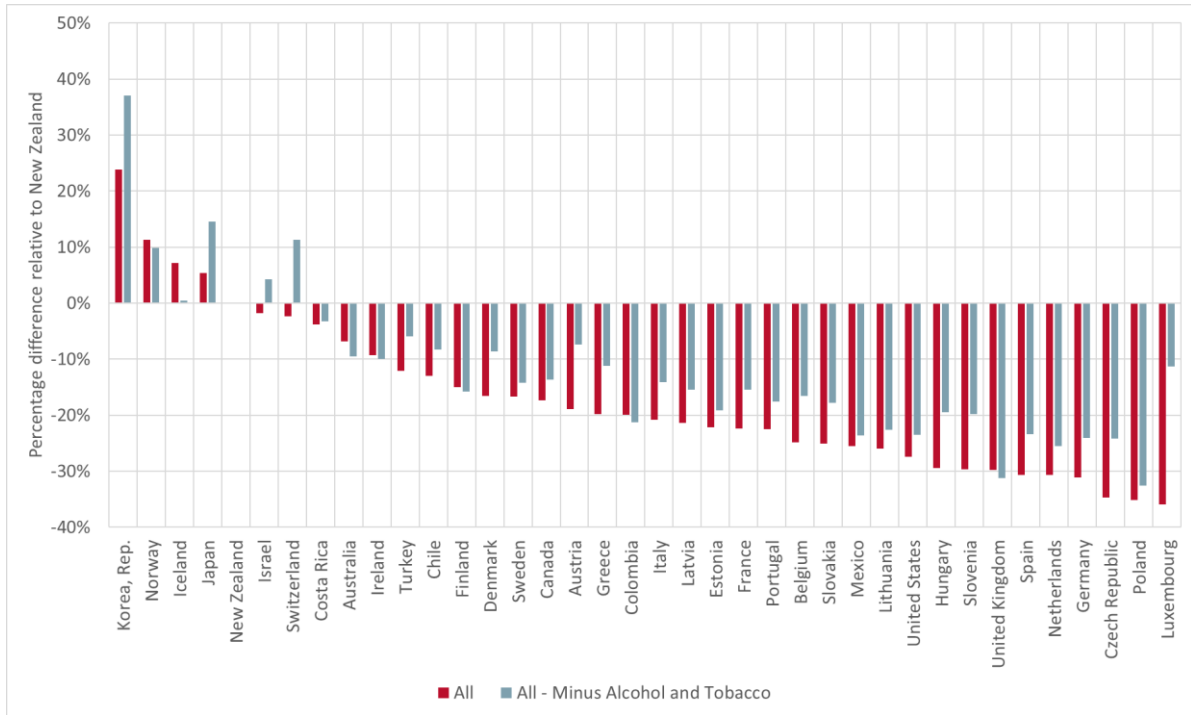
C78 Figure C6 below shows per capita grocery expenditures, calculated with and without alcohol and tobacco using the OECD dataset.

¹⁴²³ Switzerland, Japan, and Costa Rica have not submitted food and non-alcoholic beverage expenditure statistics for 2019.

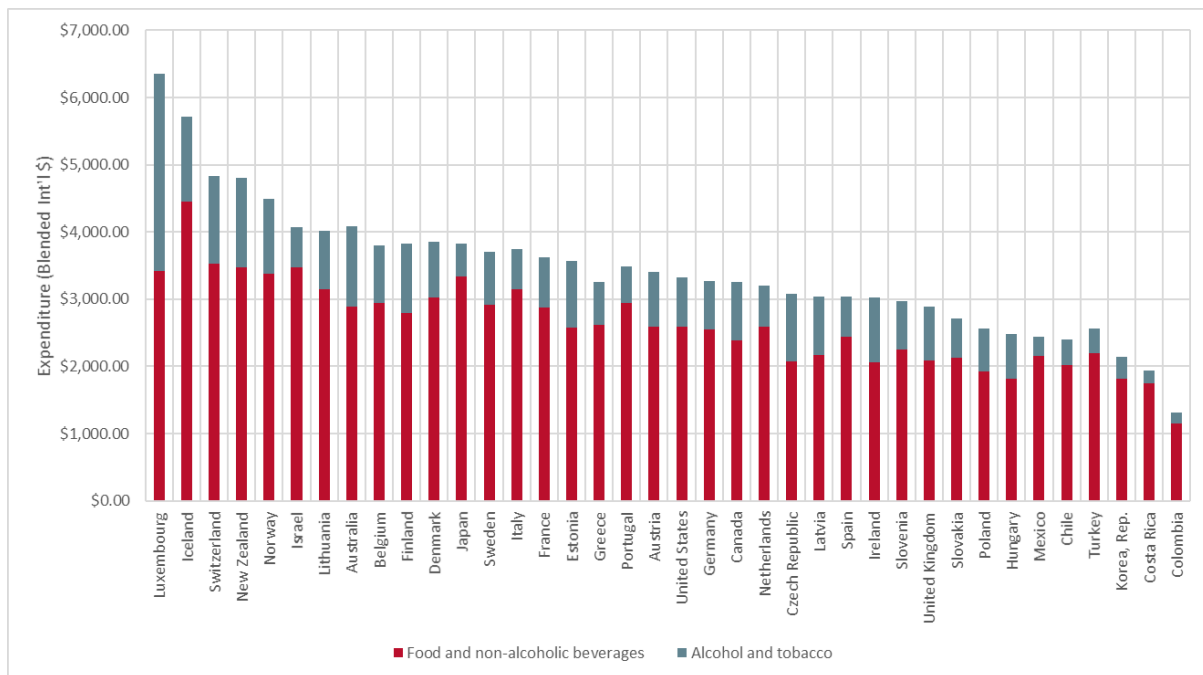
¹⁴²⁴ [].

C79 Both Figure C5 and Figure C6 are the same as the graphs produced in Chapter 3 for the ICP datasets. Analysis using data from the OECD shown below supports our finding that grocery prices remain high when alcohol and tobacco are removed.

Figure C5 Percentage difference in grocery prices, inclusive and exclusive of alcohol (NZ = 0, blended, 2017)



Source: Commission analysis of OECD dataset.¹⁴²⁵

Figure C6 Per capita grocery expenditure, inclusive and exclusive of alcohol (USD, 2017)

Source: Commission analysis of OECD dataset.¹⁴²⁶

Sensitivity testing of analysis submitted by NERA

- C80 To understand how the use of a ranking mechanism could affect the results obtained by NERA, we took the mean of prices for each city, and compared those results to NERA's analysis.
- C81 We observed that when prices were averaged by taking a mean of prices, we see an increase in the ranking of Auckland and Wellington.
- C82 In Table C4 below, we demonstrate with an example how using a median ranking system and mean can result in different price levels being measured. We calculate the mean and median for three products in three cities using the prices given below.

Table C4 Example calculation of a mean and median price with for three products

	Product X	Product Y	Product Z	Mean	Median
City A	\$4	\$4	\$1	\$3	\$4
City B	\$3	\$3	\$6	\$4	\$3
City C	\$12	\$2	\$1	\$5	\$2

Source: Commission analysis of EIU dataset.¹⁴²⁷

1426 [].

1427 [].

C83 In the example given, we see that using a mean to calculate an average, City C is the most expensive city, while City A is the least expensive. On the other hand, when a median is used to calculate the average, City A ranks the highest, while City C ranks the lowest. This demonstrates that using different methods to calculate the mean and median can affect the relative rankings of these three cities.

Grocery prices as a proportion of income

C84 In our draft report we made comments about the proportion of grocery expenditure being relatively high in New Zealand. NERA considered that we do not back up this claim with empirical analysis.¹⁴²⁸

C85 In this section, we conduct further sensitivity testing of our findings on the average proportion of income spent on groceries.

C86 Table C5 shows New Zealand's grocery expenditure measured as a proportion of income compared to OECD countries, using several different income measures. We find that when using either GNI, or NNI, New Zealanders appear to spend a relatively large share of income on groceries relative to other OECD countries.

C87 Even when the measure of Average Wage is used, we find that New Zealand still ranks within the top half of OECD countries in terms of the proportion of income spent on groceries.

C88 However, when the adjusted NNI measure is used, it appears that New Zealanders does not spend a relatively large share of income on groceries as compared to other OECD countries. Therefore, we recognise that this analysis may be sensitive to the measure of income used.

Table C5 New Zealand's proportion of income spent on groceries ranking using different measures of income

		Gross National Income	Net National Income	Adjusted Net National Income	Average Wage
OECD	Food	2	2	19	15
	Alcohol/Tobacco	2	2	8	10
	Combined	1	1	15	12
ICP	Food	2	3	19	15
	Alcohol/Tobacco	2	2	8	10
	Combined	1	1	15	13

Source: Commission analysis of EIU dataset.¹⁴²⁹

¹⁴²⁸ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of NZCC Draft Report" (10 September 2021) at [139].

¹⁴²⁹ [].

- C89 We note that our assessment of New Zealand's ranking in terms of the proportion of income spent differs from the analysis undertaken by NERA.¹⁴³⁰ We suspect this difference arises from differences in the specific income measures used.
- C90 We note that NERA conducted their analysis for both PPP and market exchange rates. However, when creating proportions, it is important to ensure that both figures have the same units to ensure consistency in the methodologies used. As expenditure statistics are reported in USD and converted with market exchange rates, we are of the view that it is appropriate to convert income measures in the same manner.

¹⁴³⁰ Woolworths NZ "Submission on Market study into grocery sector draft report: Attachment 1 - NERA - Grocery Market Study: Review of NZCC Draft Report" (10 September 2021) at [141].

Attachment D Promotions and pricing data analysis

Introduction

- D1 This attachment provides details of our analysis of pricing and promotion data that has been provided by the major grocery retailers.
- D2 The sections in this attachment are:
- D2.1 description of data provided;
 - D2.2 initial data cleaning;
 - D2.3 data limitations;
 - D2.4 analysis of promotions; and
 - D2.5 analysis of pricing behaviour.
- D3 The results of our analysis are also described in the main body of our report, in particular, in Chapter 5, Chapter 7, and Chapter 8.

Description of data provided

- D4 The analysis was based on detailed sales data provided by the three major grocery retailers, Foodstuffs NI, Foodstuffs SI and Woolworths NZ, for their four main retail banners: Four Square, New World, PAK'nSAVE, and Countdown.¹⁴³¹ Sales data for calendar year 2019 was provided for all individual products sold in any store of each of these retail banners. Foodstuffs NI and Woolworths NZ provided weekly data and Foodstuffs SI provided daily data.¹⁴³² After converting the Foodstuffs SI data to weekly (see below), the combined dataset consisted of approximately 430 million records.

Variables

- D5 For every combination of store, product, and week (for Foodstuffs NI and Woolworths NZ) or day (for Foodstuffs SI), the following key variables were provided by all three major retail chains:¹⁴³³
- D5.1 Product identifiers: SKU (article) number and description, and barcode (if applicable).

¹⁴³¹ We were also provided with data on other retail banners but chose to focus this analysis on these four retail banners. Foodstuffs NI also provided data for one Fresh Collective store. This was grouped with Foodstuffs NI New World stores in the analysis.

¹⁴³² The data provided spans 53 calendar weeks and includes the last few days of 2018 and the first few days of 2020. All weeks were retained in the analysis, including those that partially fell outside calendar 2019.

¹⁴³³ Various additional variables were provided by some of the three major grocery retailers and some of these were used to augment the analysis in ways that are described below, however most of the analysis is based on the variables above that are common to the data provided by all of the major grocery retailers.

- D5.2 Product characteristics: Descriptors of the product (eg, sales department or category) and sales units (see below).
- D5.3 Promotion label: The type(s) of promotion(s) that applied to the product in the given store and week, if any.
- D5.4 Total revenue: The revenue from sales of the product (including GST).
- D5.5 Total quantity: The amount of the product sold, in appropriate units (see below).
- D5.6 Total cost of goods sold (COGS): The total cost of the product sold (excluding GST).
- D6 The variables above were used to calculate the quantity-weighted weekly average price (total revenue/total quantity) and average COGS (total COGS/total quantity) for each combination of store, product, promotion label, and week.

Sales quantities and units

- D7 Quantities of products sold were provided separately for in-store and online sales. Online sales were associated with a store in the dataset, so in-store and online sales were added together to calculate the total weekly sales of each product in each store.
- D8 Some products are sold in different units. For example, an item of wine may be sold as individual bottles or as cases of multiple bottles, with sales units of bottles (denoted 'each') and cases of multiple bottles as a single unit. Our analysis was based on the sales units provided since prices and revenues correspond to sales units.¹⁴³⁴
- D9 When a product was signalled as on promotion for a given week there may be both promotional and non-promotional sales of the product in a store that a week. This can occur for promotions that last for less than a week, or for multi-buy or loyalty card promotions that may not apply to all sales. The data provided by Foodstuffs NI and Foodstuffs SI separated quantities of products sold on promotion and not on promotion in a store in the same week, where this occurred.
- D10 The data provided by Woolworths NZ did not separate weekly quantities into promotional and non-promotional sales, but promotional and non-promotional unit prices provided by Woolworths NZ were used to calculate the implied promotional and non-promotional quantities where necessary.¹⁴³⁵

¹⁴³⁴ Foodstuffs NI and Woolworths NZ provided quantities in sales units while Foodstuffs SI provided quantities in 'base' units ('kg' or 'each').

¹⁴³⁵ If p_p and p_{NP} are the promotional and non-promotional prices of a product in a store in a week, q_p and q_{NP} are the corresponding (unknown) quantities, $R = p_p q_p + p_{NP} q_{NP}$ is the total revenue, and $Q = q_p + q_{NP}$ is the total quantity, then $q_p = (Q p_{NP} - R) / (p_{NP} - p_p)$ and $q_{NP} = Q - q_p$.

Additional datasets

- D11 Separate datasets were also provided by each major grocery retailer that were linked to the sales data using product identifiers:
- D11.1 KVIs: lists of products that the major grocery retailers use to monitor their competitors' pricing.
 - D11.2 Basket penetration: For each product sold in 2019, the proportion of total shopping baskets in which that product appeared, across all stores of each retail banner.

Initial data cleaning

Conversion of Foodstuffs SI daily data to weekly

- D12 The daily data provided by Foodstuffs SI was aggregated to weekly summaries to be consistent with the weekly data provided by Foodstuffs NI and Woolworths NZ. This was done by summing revenues, COGS, and quantities for each combination of store, product, promotion label, and calendar week in the Foodstuffs SI daily data.
- D13 The minimum, mean, and maximum of the daily unit prices were also calculated for each combination, to capture any variation of prices within a week.

Removing stores without a full year of data

- D14 The data provided included 630 stores in total and the analysis was based on data from 594 stores where data was provided for all of calendar 2019. Data was not used from 36 stores that opened or closed during calendar 2019, or which otherwise had missing sales data for any weeks in 2019.

Validating barcodes

- D15 Some data provided in the 'barcode' field for products were not valid barcodes, such as four-digit codes for fresh produce or products sold in bulk. An algorithm was used to identify the valid barcodes for products.¹⁴³⁶

Identifying individual products

- D16 Individual products were identified in the data using the combination of SKU number and sales units (as described above) where sales units were provided. This enabled products that have the same SKU number but different sales units to be distinguished as separate products (eg, bottles and cases of wine). The combination of SKU number and sales unit for a product is referred to as 'product identifier' below.

¹⁴³⁶ Barcode entries were assumed to be invalid if they included any non-numeric characters or were shorter than eight digits or longer than 14 digits. For numeric entries between eight and 14 digits, a checksum was computed to test if these were valid, Wikipedia "Check digit" https://en.wikipedia.org/wiki/Check_digit.

Identifying common products sold by different major retail grocery chains

- D17 Some of the analysis focused on a set of common products that are sold in at least some stores of all major grocery retailers. These common products were identified using product barcodes and product identifiers. To accommodate the possibility of a product being sold under multiple barcodes, common products were identified by grouping any products that had either the same barcode or the same product identifier. This enabled some identical products that were sold using different barcodes and/or different product identifiers to be grouped for analysis.¹⁴³⁷
- D18 In the context of validating barcodes, United Fresh noted that PLU codes are available and can be accessed free of charge.¹⁴³⁸
- D19 Products without barcodes (ie, most fresh produce) have been excluded from parts of the promotions analysis which required identifying identical products sold by different banners.¹⁴³⁹ These products are otherwise included in the rest of the analysis of promotions. Only a very small proportion of products in the data provided appear to use PLU codes, so including these seems unlikely to have a significant effect on the results.

Data limitations

- D20 The data has some limitations that affect the analysis and interpretation of results:
- D20.1 The data provided by all three major grocery retailers does not contain records for products that were not sold in a store in a week. This could occur if the product was introduced or deleted at some point in 2019, was temporarily out of stock (or out of season) in some weeks, or if it was in stock but was not bought by any customers. This missing data has the following implications.
- D20.1.1 It is not possible to know why no sales were recorded for a product in a store in a week. For a product without sales recorded in every week, an assumption must be made about whether it was available for sale or not.
- D20.1.2 In any cases where products were in stock but were not bought by any customers in a store in a week, the price at which these products were offered for sale is not known.

¹⁴³⁷ For example, suppose that a product is sold by retail chain A under SKU numbers A1 and A2 using barcode 1234 and is sold by retail chain B using SKU number B1 using barcodes 1234 and 4567. These four different cases can all be linked to a single product group as they have either the same SKU number or the same barcode as another product in the group.

¹⁴³⁸ United Fresh “Submission on Market study into grocery sector draft report” (24 August 2021) at 8.

¹⁴³⁹ In particular, the leader-follower pricing analysis and analysis of asymmetric cost changes across retailers.

- D20.1.3 If all sales of a product are recorded as promotional sales, this does not necessarily mean it was always on promotion, as it may have been available for sale but was unsold whenever it was not on promotion.
- D21 The data provided by Foodstuffs NI and Foodstuffs SI does not include information about non-promotional prices for products in weeks where the only sales were at promotional prices. This affects promotions that apply to all sales of a product in a store in a week (eg, New World's 'Saver' and PAK'nSAVE's 'Extra Low' promotions, if these lasted for a full week), and may also affect loyalty card and multi-buy promotions if all sales in a store in a week were at the promotional price. This affects the comparison of promotional and non-promotional pricing for Foodstuffs NI and Foodstuffs SI.
- D22 Analysis of pricing behaviour that involves looking at changes in prices over time is limited by the weekly frequency of the data. In practice, retailers may change their prices more quickly in response to changes in external factors such as costs, demand, and competitors' pricing.

Analysis of promotions

- D23 The main types of promotions used by the major grocery retailers in 2019 were examined in the following ways:
- D23.1 *Proportion of revenue from products on promotion:* Analysis of the proportion of total revenues in 2019 which came from sales of products on promotion.
- D23.2 *Prevalence of each type of promotion:* Analysis of the overall extent to which each promotion was used by each major grocery retailer in its stores. This reflects the number of products that are on promotion as well as how often during the year products were on promotion in each store.
- D23.3 *Prevalence of multiple promotions:* How common it was for products to be sold under more than one type of promotion in a store in a week.
- D23.4 *Frequency of promotions:* For products that were sold on promotion at some time during 2019, how often this occurred, ie, for how many weeks of the year the product was on promotion in a retailer's store.
- D23.5 *Pricing:* Comparisons of promotional versus non-promotional prices for products that were sold on promotion in at least some stores and weeks.

Revenue from promotions

D24 Across all major grocery retailers in 2019, around half of revenues came from sales of products on promotion. The largest category of promotional sales was all other promotions, with multi-buy and loyalty card promotions each accounting for less than 8% of revenues (Table D1).¹⁴⁴⁰

Table D1 Proportion of total revenues from products on promotion by type of promotion

Promotion type	Proportion of total revenues
Multi-buy	1-7%
Loyalty card	3-8%
All other promotions	35-40%
Not on promotion	50-55 %

Source: Commission analysis of pricing and promotional data.¹⁴⁴¹

D25 The overall proportion of revenues from sales of products on promotion varies across retail banners, from around a quarter to around two thirds of revenues (Table D2).

Table D2 Proportion of total revenues in 2019 from sales of products on promotion

Retail banner	Proportion of total revenues
FSNI: PAK'nSAVE	65 – 75%
FSSI: PAK'nSAVE	50 – 60%
FSNI: New World	45 - 55%
FSSI: New World	40 – 50%
Woolworths: Countdown	35 – 45%
FSSI: Four Square	30 – 40%
FSNI: Four Square	25 – 35%

Source: Commission analysis of pricing and promotional data.¹⁴⁴²

¹⁴⁴⁰ The vast majority of all other promotions are fixed discount promotions and very small proportion are in-store specials.

¹⁴⁴¹ [].

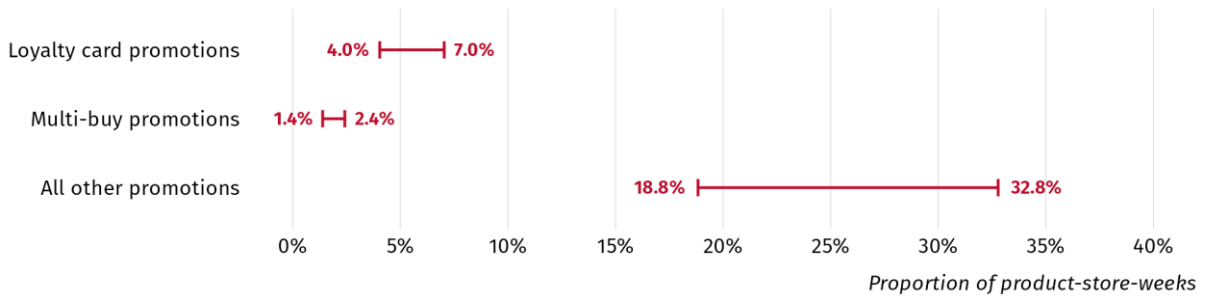
¹⁴⁴² [].

Prevalence of promotions

- D26 For each major grocery retailer, the total set of ‘sales opportunities’ in 2019 is all feasible combinations of products, stores, and weeks (PSW). Prevalence of promotions seeks to measure the proportion of PSW that are accounted for by promotions, which reflects how many products were available for sale on promotion, and in which stores and weeks these products were available for sale.
- D27 For each store, the total number of product-weeks (PW) was calculated in two different ways that reflect the limitations of the data discussed above and help to assess the potential impact of missing information about availability of products in weeks when they were not sold:
- D27.1 *Weeks sold method:* PW for a store reflects the number of weeks in which sales of the product were actually recorded in the store.
- D27.2 *Full year method:* PW for a store assumes that every product sold in the store at some point during the year was available for sale in all weeks of the year.
- D28 These two methods can be thought of as upper and lower limits respectively for estimating the true PSW for each retailer. For each major grocery retailer, total PSW was calculated as the sum of PW across all its stores. Thus, the PSW for a retailer reflects the combinations of products and stores that were observed in the sales data for 2019 and incorporates the fact that not all products are sold by all stores.
- D29 The prevalence of each type of promotion used by each major grocery retailer was calculated as the ratio of PSW for which sales were recorded under that promotion to the total PSW for the retailer (using the two alternative definitions of total PSW above).¹⁴⁴³ This reflects the proportion of total ‘sales opportunities’ of that retailer for which sales were recorded under each type of promotion. The prevalence of multiple weekly promotions was also examined by looking at the proportion of total PSW for which products were on more than one different type of promotion in a store in a single week.
- D30 Across all retail banners, the most prevalent type of promotion was fixed discount promotions that apply to all sales of a product in a store for a given period (Figure D1). Loyalty card and multi-buy promotions were less common overall, but the prevalence of these types of promotions does vary somewhat by retail banner.

¹⁴⁴³ For example, if a retailer recorded sales of 50 products on ‘special’ promotion in 10 stores for 20 weeks and the retailer sells a total of 100 products in 25 stores for 52 weeks then the overall prevalence of the ‘special’ promotion is $50 \times 10 \times 20 / (100 \times 25 \times 52) = 8\%$ of total product-store-weeks.

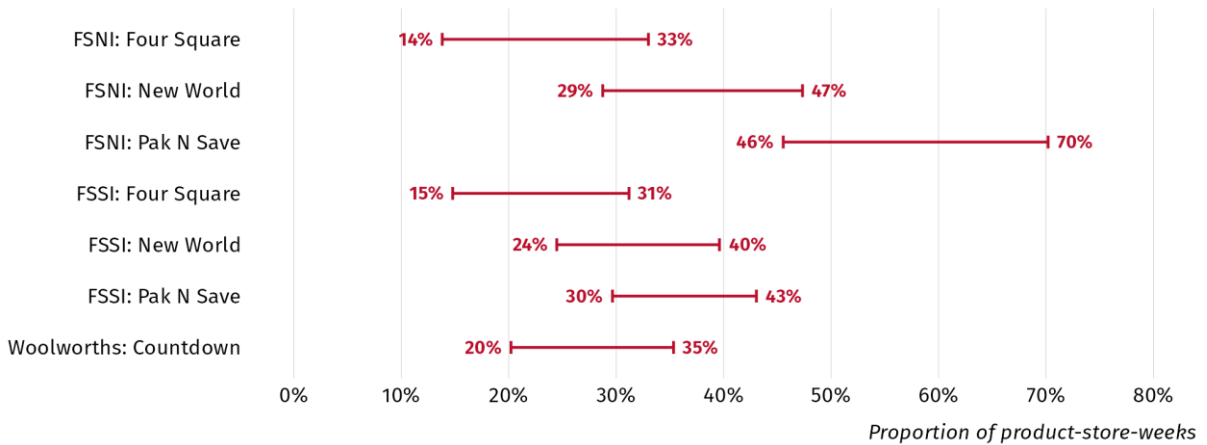
Figure D1 Overall prevalence of promotions by type of promotion across all retail banners combined – the lower and upper limits respectively reflect the ‘full year’ and ‘weeks sold’ methods described above



Source: Commission analysis of pricing and promotional data.¹⁴⁴⁴

D31 This analysis indicated that the overall prevalence of promotions in 2019 varied across retail banners from around 14% to 46% of PSW using the ‘full year’ method or from 31% to 70% of PSW using the ‘weeks sold’ method (Figure D2). Prevalence of promotions also varies across stores within each retail banner, with more variation across stores observed for retail banners where individual stores have more ability to price independently.

Figure D2 Overall prevalence of all promotions by retail banner – the lower and upper limits respectively reflect the ‘full year’ and ‘weeks sold’ methods described above



Source: Commission analysis of pricing and promotional data.¹⁴⁴⁵

1444 [].
 1445 [].

D32 Figure D3 breaks down prevalence of individual promotion types used by each retail banner. Loyalty card promotions were more common in Foodstuffs SI New World stores (Club Deals) compared to Foodstuffs NI New World (also Club Deals) and Countdown stores (Onecard). Multi-buy promotions were relatively uncommon across all retail banners. Fixed discount promotions are most common across all retail banners, and are particularly prevalent in Foodstuffs NI PAK’nSAVE stores.

Figure D3 Prevalence of promotions by retail banner and promotion type – the lower and upper limits respectively reflect the ‘full year’ and ‘weeks sold’ methods described above



Source: Commission analysis of pricing and promotional data.¹⁴⁴⁶

D33 Promotions (of any kind) were found to be relatively common for products in alcohol, dairy, meat, frozen products, and general grocery categories. Promotions were relatively uncommon for speciality categories such as fresh flowers, tobacco, pharmaceuticals, café, and other services. It was also relatively uncommon for products to be on more than one type of promotion in a store in a single week. The prevalence of multiple promotions was estimated to be rare for each of the retail banners.

Frequency of promotions

D34 Frequency of promotions was analysed by looking at products that were sold on promotion at some time during 2019. For these products, the proportion of total store-weeks for which the product was sold on promotion was calculated (across all stores of the retailer where that product was sold).¹⁴⁴⁷ Again, total store-weeks for each product were calculated using the weeks sold and full year methods described above.

D35 Findings from this analysis include the following (Figure D4):

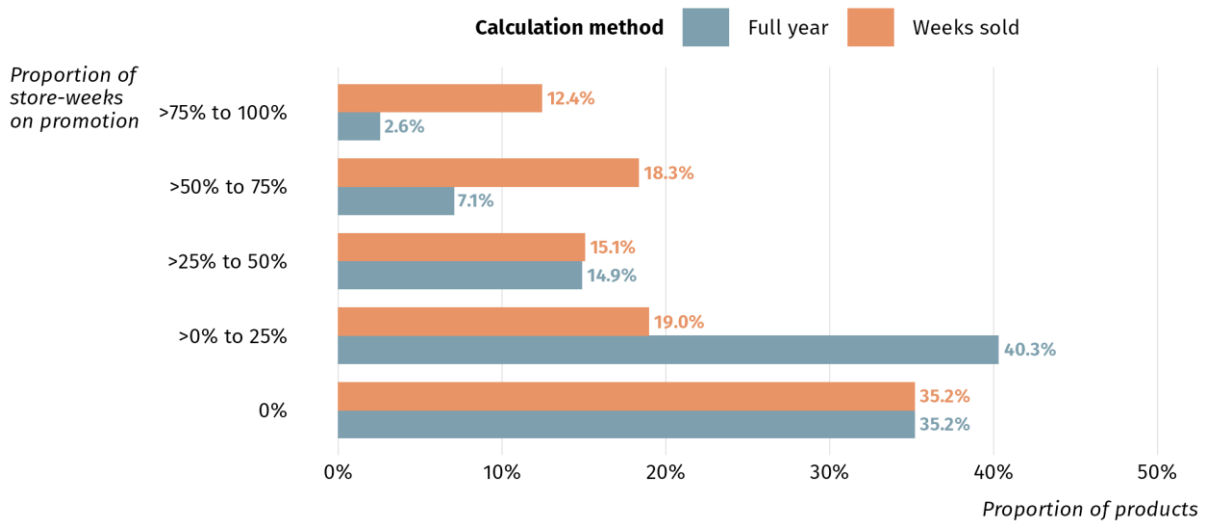
D35.1 Overall, around 35% of products were never on promotion in any of the stores in which they were sold during 2019. Across retail banners, this proportion varied from 19% to 59% of products.

D35.2 Between 2.6% and 12.4% of products (depending on calculation method) were on promotion in more than three quarters of the combinations of stores and weeks in which they were sold. Across retail banners, this proportion varied from between 0.1% and 3.5% to between 13% and 43%. This indicates that, for some retail banners, a significant proportion of products were on promotion in almost all combinations of stores and weeks in which they were sold.

¹⁴⁴⁷

For example, if a product was sold on promotion in 10 stores for five weeks and in total it was sold in 20 stores for 52 weeks, it was on promotion for $10 \times 5 / (20 \times 52) = 5\%$ of store-weeks.

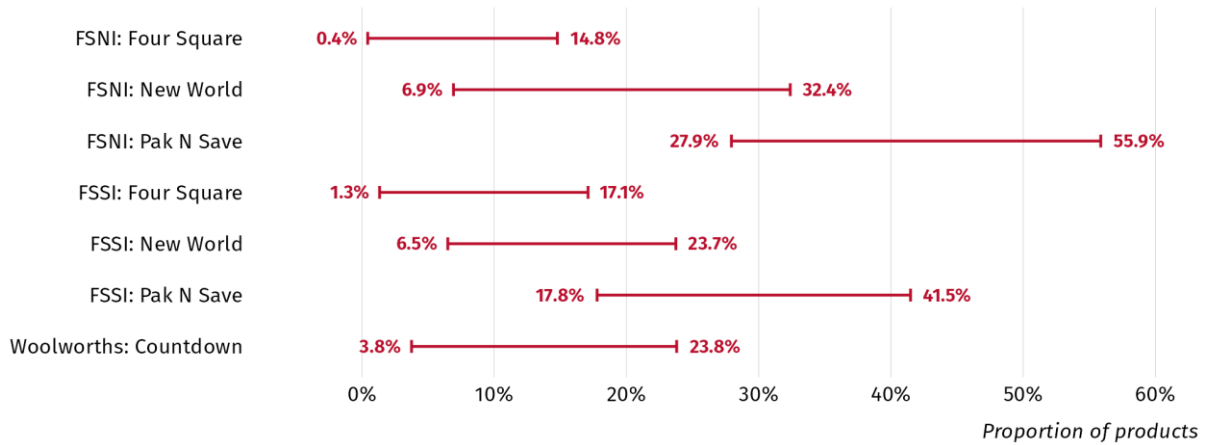
Figure D4 Frequency of all types of promotions across all retail banners



Source: Commission analysis of pricing and promotional data.¹⁴⁴⁸

D36 Figure D5 shows the proportion of products that were on promotion in more than half of store-weeks in which they were sold, by retail banner. This proportion is relatively high for PAK’nSAVE stores compared to other retail banners.

Figure D5 Proportion of products that were on promotion in more than 50% of store-weeks – the lower and upper limits respectively reflect the ‘full year’ and ‘weeks sold’ methods described above



Source: Commission analysis of pricing and promotional data.¹⁴⁴⁹

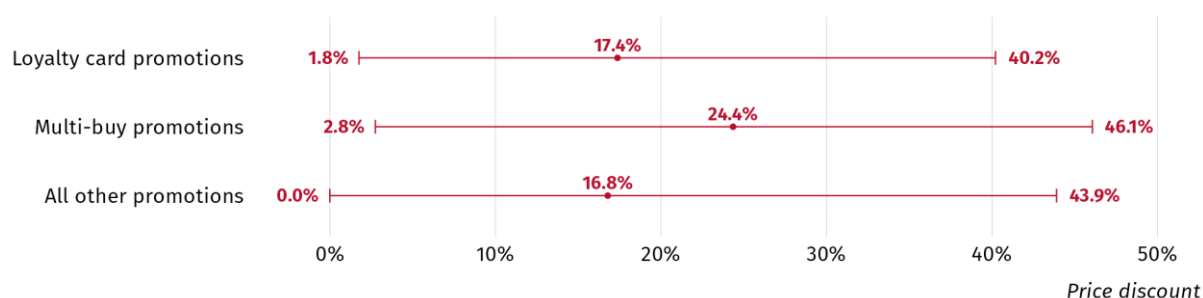
1448 [].
 1449 [].

Promotional vs non-promotional pricing

- D37 For each product sold in each store of each major grocery retailer that was sold on promotion at some point in 2019, the overall quantity-weighted average non-promotional and promotional prices were calculated by dividing total revenues by total quantity sold, for each type of promotion and for all non-promotional sales.¹⁴⁵⁰ For some products in some stores, the average non-promotional price could not be calculated as no non-promotional sales were recorded during the year. For those product-store combinations where average non-promotional prices could be calculated, the average discount offered by each applicable type of promotion was calculated by comparing the weighted average promotional and non-promotional prices across the year.
- D38 Weighted average promotional prices were also compared to some other pricing metrics:
- D38.1 The overall unweighted average of all selling prices observed for each product in each store over the year (both promotional and non-promotional prices). The difference between this average and the weighted average promotional price gives an indication of the volume of promotional versus non-promotional sales.
- D38.2 The maximum and minimum weekly weighted average price (ie, weekly total revenue/total quantity) observed for each product in each store over the whole year. This gives an indication of how the average promotional price compares to the highest and lowest prices seen for a product in a store over the year.
- D39 Across all combinations of products and stores for which weighted average promotional and non-promotional prices could be calculated, Figure D6 shows the median and 2.5th / 97.5th percentiles of the promotional price discount, by type of promotion. Multi-buy promotions tend to offer slightly greater discounts than loyalty card or other promotions (ie, fixed price discounts). Across retail banners, the median discount ranges from around 10% to 30% depending on the retail banner and type of promotion.

¹⁴⁵⁰ This was done for each product in each store separately to allow for differences in pricing of a product across stores.

Figure D6 Median and 2.5th / 97.5th percentiles of weighted average promotional prices vs non-promotional prices across all retail banners, by type of promotion



Source: Commission analysis of pricing and promotional data.¹⁴⁵¹

D40 This analysis also found that:

- D40.1 Discounts calculated by comparing promotional prices versus unweighted average prices are substantially smaller than discounts versus weighted average non-promotional prices, indicating that promotions do have a noticeable impact on customers' purchasing patterns.
- D40.2 In most cases, average promotional prices are greater than the lowest price that a product sold for in a store during the year.
- D40.3 Depending on retail banner and promotion type, between 0.5% and 24% of combinations of products and stores had no sales recorded at non-promotional prices in 2019. This is due to the combined impact of some products being on promotion very often (see Figure D4 above), and the effect of promotions on customer purchasing behaviour such that some products are less likely to be bought when they are not on promotion.
- D40.4 Small discounts were relatively common. Depending on retail banner and promotion type, the average promotional price was less than a 10% discount off the average non-promotional price for between 5% and 44% of combinations of products and stores for which average promotional and non-promotional prices could be calculated.

Response to submissions on our analysis of promotions

D41 HoustonKemp (for Foodstuffs NI and Foodstuffs SI) submitted that promotions are a sign of intense price-based competition. They stated:¹⁴⁵²

- D41.1 it is difficult to imagine that consumers can be confused by the existence of promotions;

¹⁴⁵¹ [].

¹⁴⁵² Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition" (10 September 2021) at [124]-[129].

- D41.2 if competition was very weak, we would not see as many promotions as we do in practice; and
- D41.3 frequent and varied use of promotions is inconsistent with coordination or accommodation between retailers.
- D42 We disagree that the prevalence, size and variation of promotions suggests competition in the retail grocery market is effective. An alternative explanation is that retailers use promotions as a price discrimination strategy, and price discrimination is only possible when firms have market power. In addition:
- D42.1 Promotions may make it harder for customers to compare prices for shopping baskets across stores. Promotions could reduce the information content of prices by adding noise. Some products that are on promotion very often may confuse consumers as to what the normal price is, if they do not pay close attention when shopping (and alter the purchasing decisions accordingly).
- D42.2 If competition was very strong, we would expect prices to be close to costs and limited scope for price discrimination via promotions.
- D42.3 Our analysis focused on promotions for individual products in individual stores. This analysis did not seek to test whether there is coordination at higher strategic levels (for example, across product categories or types of promotions).

Analysis of pricing behaviour

- D43 The data was used to examine some aspects of pricing behaviour by individual stores and by retail banners. This was done by looking at changes in prices over time during 2019 across stores and analysing relationships between prices and COGS.

Analysis of pricing correlations

- D44 The data provided was used to calculate the weighted average weekly retail price for each product in each store by dividing weekly total revenue by quantity sold. These averages reflect both promotional and non-promotional pricing, where these occurred. Correlations of week-to-week changes in these average prices were calculated for the set of common products across stores of different retail banners in five selected geographically defined clusters (Table D3). The clusters were selected for this analysis based on having two or more stores from different retail banners in relatively close proximity to each other.

Table D3 Geographic clusters used for analysis of price correlations across stores

Cluster	Stores	No. of common products
Milford (Auckland)	Milford Countdown New World Milford PAK'nSAVE Wairau Road	500 – 1,000
Hamilton Central	Hamilton Countdown PAK'nSAVE Clarence Street PAK'nSAVE Mill Street	500 – 1,000
Newtown (Wellington)	Newtown Countdown New World Newtown	1,000 – 1,500
Oamaru	Oamaru Countdown New World Oamaru	1,000 – 1,500
Fendalton (Christchurch)	Church Corner Countdown New World Ilam Riccarton PAK'nSAVE	1,500 – 2,000

Source: Commission analysis of pricing and promotional data.¹⁴⁵³

- D45 Contemporaneous correlations (ie, pricing in the same week), as well as correlations with lags of one and two weeks were calculated, to analyse whether stores in these clusters appear to change their pricing at around the same time, or whether some stores tend to follow the price changes of other stores. Across all five clusters, this analysis found no clear pattern of high correlations of price changes with a one- or two- week delay across stores, for products that are sold by all stores in the cluster. Thus, there is no obvious evidence of leader-follower type pricing across the stores in the clusters used in this analysis.
- D46 HoustonKemp submitted that this lack of evidence of leader-follower type pricing is inconsistent with any form of coordinating conduct.¹⁴⁵⁴ Similarly, Woolworths NZ submitted that no evidence was found of retailers increasing prices around the same time, even though supplier cost increases flow through at the same time.¹⁴⁵⁵
- D47 However, the above analysis only checks for a specific type of coordinating conduct (leader-follower behaviour) among individual stores in geographic clusters. Other types of coordination could still be occurring. In addition, the analysis only considered changes in prices and not how cost changes were passed through.

¹⁴⁵³ [].

¹⁴⁵⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition" (10 September 2021) at [131]-[132].

¹⁴⁵⁵ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [29.3.1.2].

- D48 This analysis revealed some products where pricing is very highly correlated across stores in a cluster, either in the same week or with a one- or two-week delay. In some cases, this appears to be due to pricing promotions that alternate across stores of different retail banners within a cluster on a regular schedule. Several examples of products were found with pricing promotions that alternate between stores on a weekly basis for all or almost all weeks of the year.
- D49 More detailed analysis of characteristics of products that were found to have high pricing correlations within these clusters showed that:
- D49.1 Between eight and 29 of the top 1,000 products (by annual revenue) have high pricing correlations across stores in the clusters. These products account for between 0.4% and 2.1% of total annual store revenue.
 - D49.2 Across stores, between 0.1% to 2.1% of KVIs have high pricing correlations.
 - D49.3 Some products with high pricing correlations also have high basket penetration. The median basket penetration ranking for high pricing correlation products for each store in the clusters was between 420 and 3,359, with some high correlation products having basket penetration ranking below 100 (ie, are within the top 100 products by basket penetration).
 - D49.4 These proportions appear to vary by retail banner and by geographic cluster within retail banners.
- D50 HoustonKemp submitted that finding alternating promotion patterns across stores does not indicate a lack of competition because:¹⁴⁵⁶
- D50.1 it was only found for a small number of products;
 - D50.2 it could reflect cost changes or suppliers driving promotions; and
 - D50.3 it is not clear how retailers would benefit from alternating retail promotions.
- D51 We agree that alternating promotions were only found for a small number of products, and that suppliers play a role in determining promotional pricing and schedules. However, we consider that retailers are likely to benefit from alternating promotions, by seeking to maximise the demand response from reduced prices.

¹⁴⁵⁶ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [134].

Analysis of price-cost relationships

D52 Relationships between weighted average weekly prices and weighted average weekly COGS were analysed for individual products. As these relationships may differ across stores within a retail banner, each product sold in each store was treated as a separate item in this analysis. Several different methods were used to examine the extent to which changes in average COGS were reflected in changes in average prices, and the extent to which changes in prices can be explained by changes in COGS.¹⁴⁵⁷

Analysis of one-off cost changes

D53 Products that experienced one-off increases or decreases in average COGS of at least 5% during 2019 were identified and weighted average prices in the periods before and after these changes were compared. Pass-through of the cost change for an individual product was calculated as the ratio of the difference in its average price after versus before the cost change to the difference in its average COGS after versus before the change. Across all stores, 2,413 examples of one-off cost decreases and 3,327 examples of one-off cost increases were identified for analysis.¹⁴⁵⁸

D54 This analysis found median pass-through across all combinations of products and stores for each retail banner of between 0% and 65% for cost decreases and between 8% and 75% for cost increases, which may suggest a slightly stronger tendency for cost increases to be passed through compared to cost decreases. However, a very wide range of pass-through rates for individual combinations of products and stores within each retail banner was also found. Figure D7 shows the range (across retail banners) of the proportion of combinations of products and stores that fell into seven different categories of pass-through for cost decreases and cost increases. This shows:

D54.1 Negative pass-through (ie, average prices changing in the opposite direction to average COGS) occurred for between 16% and 41% of product-store combinations that experienced cost decreases, and for between 19% and 32% of product-store combinations that experienced cost increases.

D54.2 Zero pass-through (ie, average price remaining unchanged before and after the cost change) occurred for between 4% and 14% of product-store combinations that experienced cost decreases, and for between 4% and 10% of product-store combinations that experienced cost increases.

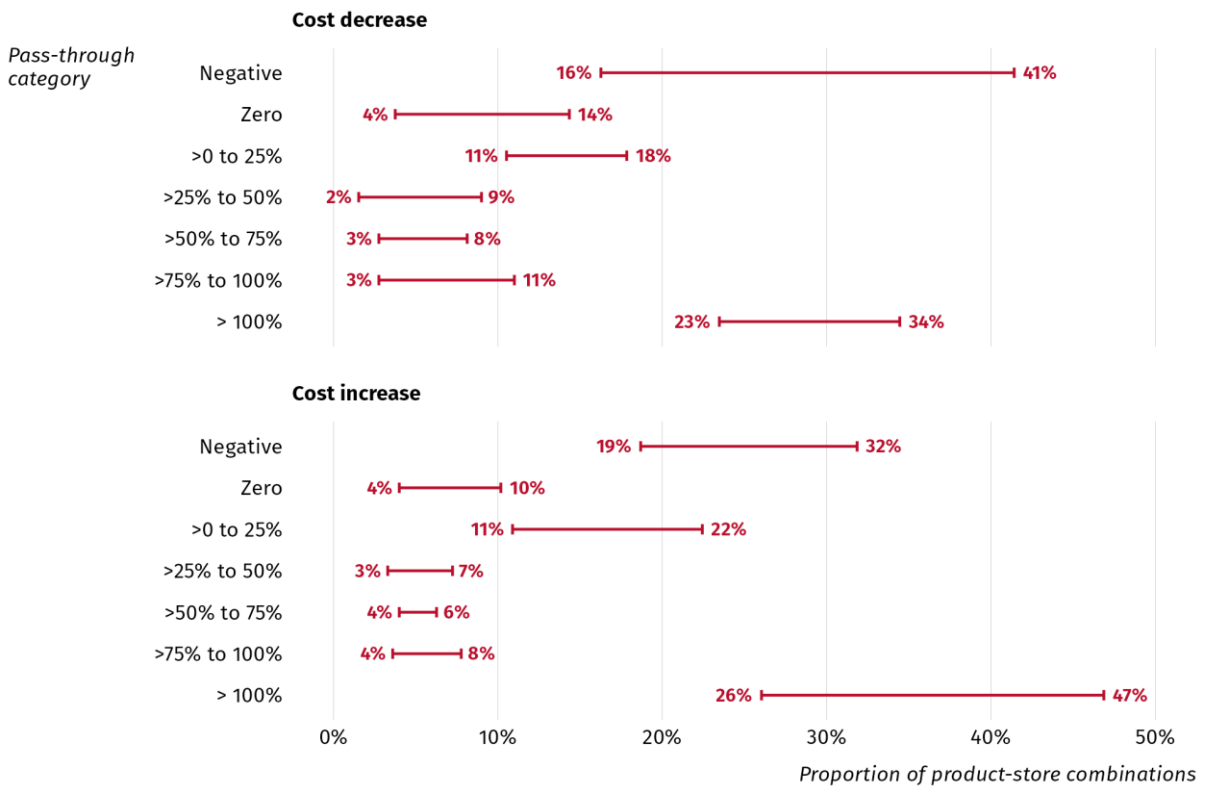
¹⁴⁵⁷ As COGS excludes GST, the analysis in this section was based on revenues and prices also excluding GST.

¹⁴⁵⁸ As each product in each store was treated separately, some of these are cases where the same product sold in multiple stores experienced a one-off cost increase or decrease. The analysis was also restricted to combinations of products and stores where at least 20 weeks of sales were recorded during 2019.

D54.3 Greater than 100% pass-through (ie, the change in average price exceeded the change in average COGS) occurred for between 23% and 34% of product-store combinations that experienced cost decreases, and for between 26% and 47% of product-store combinations that experienced cost increases.

D54.4 The remainder of products experienced rates of pass-through that were greater than zero but less than 100%, ie, not all of the cost change was reflected in prices.

Figure D7 Ranges of rates of pass-through of one-off cost changes to prices, across retail banners



Source: Commission analysis of pricing and promotional data.¹⁴⁵⁹

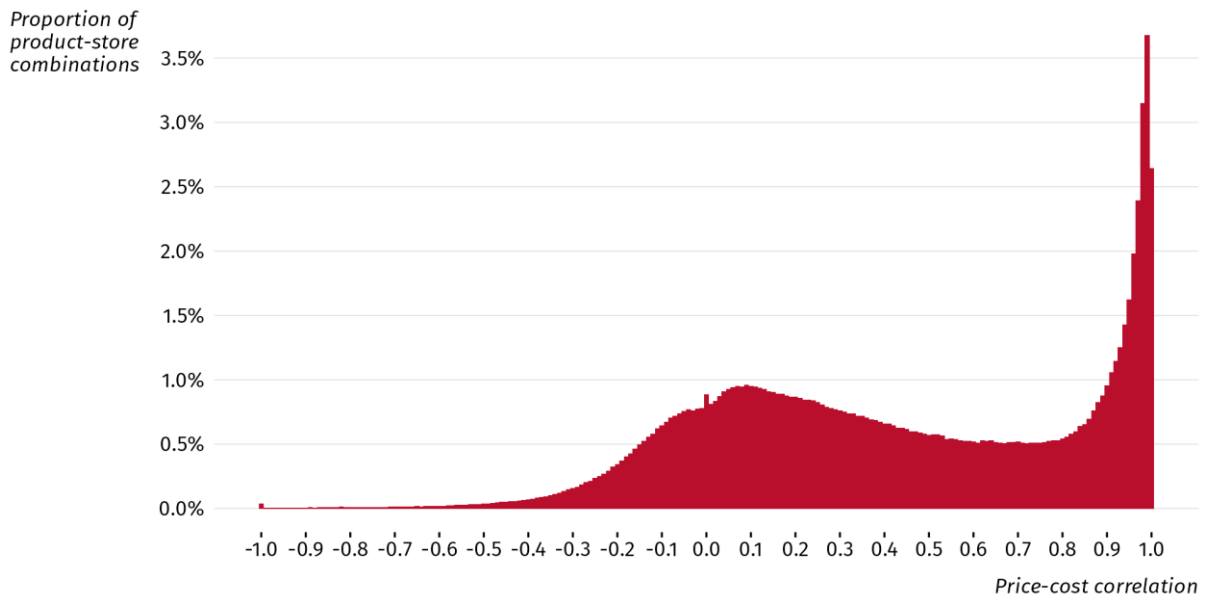
Case studies of pack size changes

D55 Changes in pack sizes may have a similar effect as cost changes, even if unit costs remain unchanged. Three case studies of products that had pack size changes during 2019 were identified and the trends in weekly average prices for these products were examined for each retail banner. These examples illustrated a range of pricing responses to pack size changes, including maintaining similar pricing, and changing either or both of standard and promotional pricing.

Price-cost correlation analysis

D56 For each combination of product and store, the correlation between its weekly average price (excluding GST) and average COGS was calculated and the distribution of these correlations was analysed across retail banners and across products within individual stores. Across retail banners, the median price-cost correlation for all combinations of products and stores for each retail banner ranged from 0.25 to 0.69, with substantial differences in the distribution of these correlations for each retail banner. Figure D8 shows the distribution of price-cost correlations for all combinations of products and stores for all retail banners combined. About 83% of product-store combinations have positive correlations between prices and costs and almost all the remainder have negative correlations (0.1% were zero). Weak correlations between prices and costs (between -0.1 and 0.1) were found for 16.5% of product-store combinations. Correlations greater than 0.5 were found for 43.5% of product-store combinations, and greater than 0.9 for 20.8% of product-store combinations.

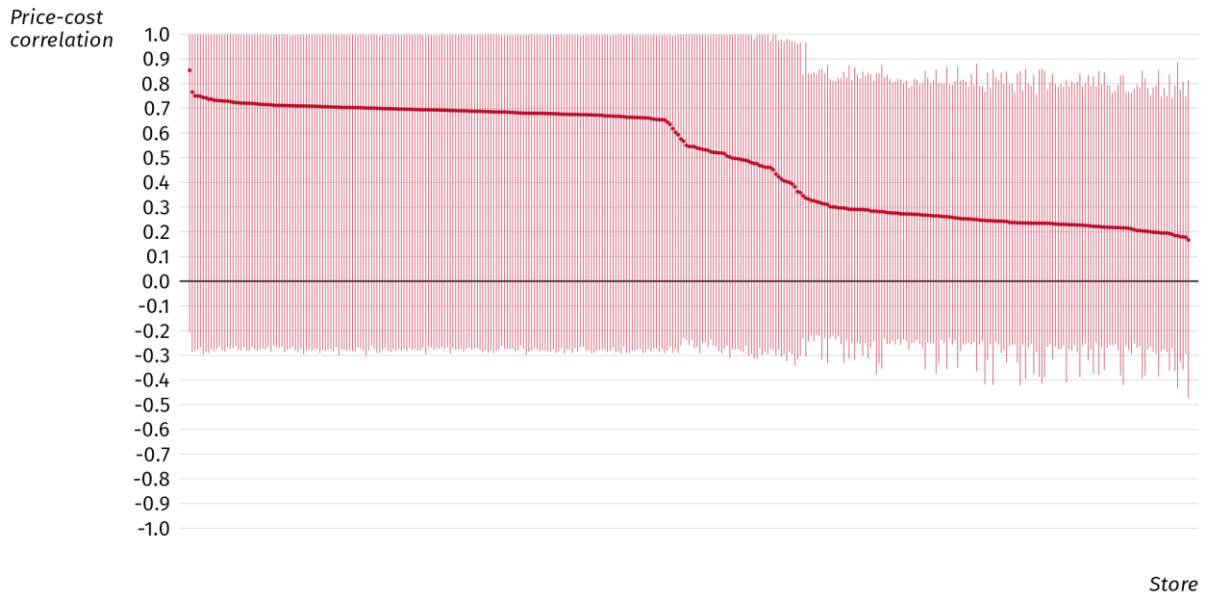
Figure D8 Distribution of price-cost correlations for all retail banners combined



Source: Commission analysis of pricing and promotional data.¹⁴⁶⁰

D57 Figure D9 shows the distribution of median price-cost correlations for individual products across all stores of all retail banners. This suggests that the relationship between prices and costs varies across stores, with median correlations for stores ranging from 0.17 to 0.85. Within stores, a wide range of correlations for individual products was also found, as shown by the range between the 2.5th and 97.5th percentiles of correlations in Figure D9.

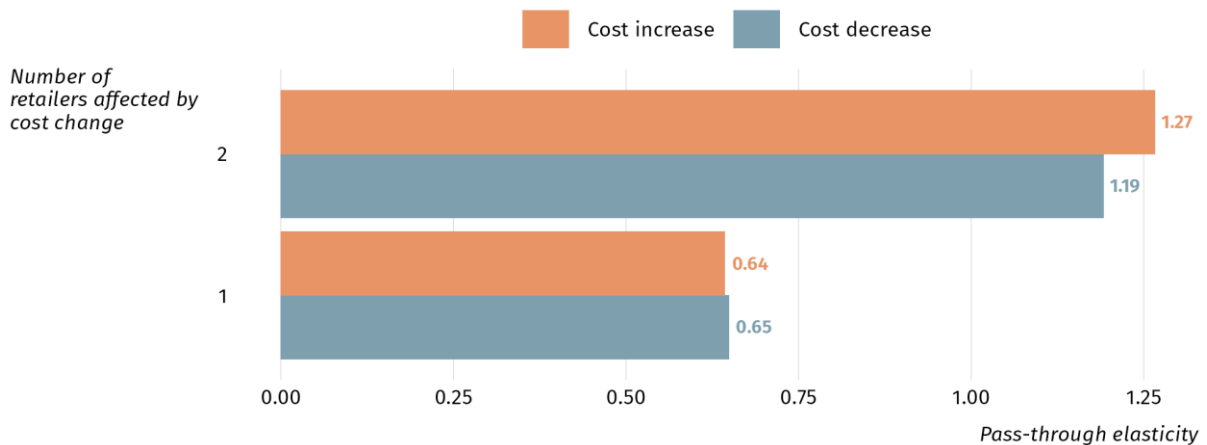
Figure D9 Median and 2.5th/97.5th percentiles of price-cost correlations of products in each store



Source: Commission analysis of pricing and promotional data.¹⁴⁶¹

Analysis of asymmetric cost changes

D58 For the subset of products that were in the top 1,000 products by revenue for each retail banner and were sold by all five retail banners, impacts on prices of cost changes that did not affect all retailers were examined relative to those that did affect all retailers. Figure D10 shows the estimated median rates of pass-through for cost changes that affected both Foodstuffs and Woolworths compared to cost changes that affected only one retailer. This shows substantially higher pass-through of cost changes that affected both retailers compared to changes that affected only one retailer. Slightly higher pass-through for cost increases compared to cost decreases is also observed when both retailers are affected.

Figure D10 Median pass-through elasticities for symmetric and asymmetric cost changes

Source: Commission analysis of pricing and promotional data.¹⁴⁶²

Price-cost regression modelling

D59 Simple regression models of the relationship between changes in weekly average costs and prices for individual products in stores were estimated, of the form:

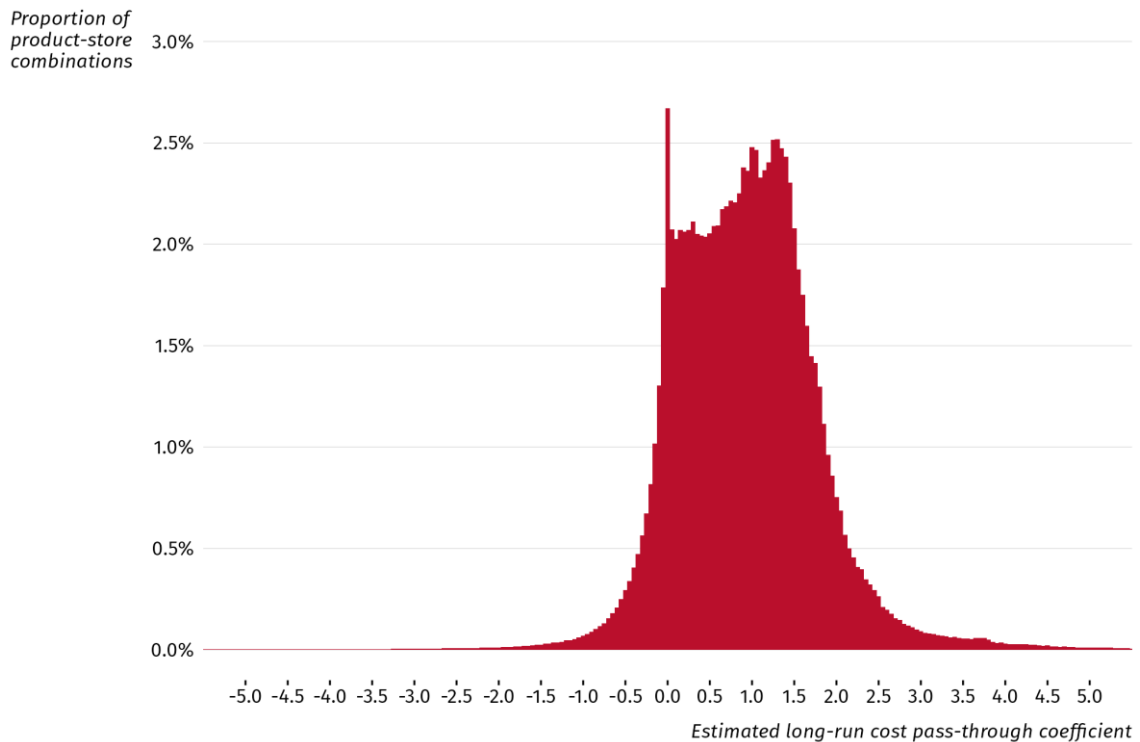
$$\Delta p_t = \alpha + \beta_1 \Delta c_t + \beta_2 \Delta p_{t-1} + \beta_3 d_t + e_t$$

where Δp_t is the weekly change of the average price of a product in a store, Δc_t is the weekly change in the product's average COGS in the store, d_t is a dummy variable indicating whether the product was on any kind of promotion in week t in the store, and e_t is a random error. In this model, the long-run impact of changes in costs on changes in prices is valid if $-1 < \beta_2 < 1$ and is estimated as $\beta^* = \beta_1 / (1 - \beta_2)$.

D60 Estimates of β^* were calculated for individual products in individual stores separately and compared across products within stores and retail banners to understand the variation in the overall relationship between costs and prices for different products. Across retail banners, these models explain an average of between 29% and 85% of the variation in weekly price changes.

D61 Figure D11 shows the distribution of these estimated long-run pass-through coefficients for all combinations of products and stores, across all retail banners combined. Estimated pass-through coefficients were positive for 89% of combinations of products and stores. Around 8.2% were between -0.1 and 0.1 indicating a weak relationship between price and cost. Around 68% were greater than 0.5 and 46% were greater than 1.0.

Figure D11 Distribution of estimated long-run pass-through coefficients for all product-store combinations across all retail banners



Source: Commission analysis of pricing and promotional data.¹⁴⁶³

Response to submissions on analysis of price-cost relationships

D62 HoustonKemp stated that the above analysis provides evidence of retailers passing on both cost increases and cost decreases, and is completely consistent with effective competition between the major grocery retailers. HoustonKemp submitted:¹⁴⁶⁴

- D62.1 median pass-through rates for each retail banner do not provide information as to whether the average rate of pass-through for cost increases is higher than for cost decreases;
- D62.2 consumer price inflation means that the analysis will tend to find higher levels of pass-through for price increases than decreases;
- D62.3 changes in prices are affected by changes in things other than COGS, such as the demand for a product or existence of a promotion;

¹⁴⁶³ [].

¹⁴⁶⁴ Foodstuffs NI "Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition" (10 September 2021) at [140]-[150].

- D62.4 retailers compete across a wide range of products and dimensions other than price, so a cost reduction for a product could lead to a price reduction for a different product, or an improvement in service quality;
 - D62.5 if there is any asymmetry of pass-through for cost increases vs cost decreases, this does not indicate any competition problem; and
 - D62.6 finding higher rates of pass-through of cost changes that affect both Foodstuffs and Woolworths, compared to cost changes that affect only one retailer, is consistent with strong competition.
- D63 We agree that there are limitations of the pass-through analysis we have undertaken, including not capturing other factors (such as changes in demand). However, we note that:
- D63.1 Although median pass-through rates do not give the full picture, ranges of pass-through for one-off cost changes are also provided in Figure D7 above.
 - D63.2 It is not clear that general inflation would lead to higher levels of pass-through for cost increases than cost decreases. This is likely to depend on the way retailers adjust retail prices to reflect cost changes in practice.
 - D63.3 It is also possible that retailers could reduce quality in response to cost increases. Unless the quality response is systematically different for cost increases vs cost decreases, this should not affect our findings regarding the relative rates of pass-through for cost increases and cost decreases.
 - D63.4 Asymmetric pass-through could make consumers worse off than symmetric pass-through, and therefore could represent a competition problem.
 - D63.5 Finding higher rates of pass-through of cost changes that affect both Foodstuffs and Woolworths NZ is consistent with each retailer imposing *some* constraint on each other, but the strength of the constraint is unclear from this result.

Attachment E Consumer survey

Introduction

- E1 This attachment provides further information about our consumer survey.
- E2 The sections in this attachment are:
- E2.1 about our consumer survey;
 - E2.2 how we designed and conducted this survey;
 - E2.3 how we have used the results of this survey;
 - E2.4 some limitations to our consumer survey;
 - E2.5 comparison of survey results with other datasets;
 - E2.6 how we conducted the quantitative analysis of this survey;
 - E2.7 summary of our analysis of shopping behaviour;
 - E2.8 how respondents told us they get to their main store;
 - E2.9 why respondents choose to shop at their main store;
 - E2.10 how respondents compare and choose grocery products;
 - E2.11 what respondents told us about how they use grocery loyalty programmes;
 - E2.12 what respondents told us about their experiences shopping for groceries;
 and
 - E2.13 question script for our consumer survey.

About our consumer survey

- E3 In March 2021 we conducted an online consumer survey hosted on our website. The aim of the survey was to help identify themes relevant to our study and better understand consumer behaviour, including how consumers decide where to shop and what to buy. Our consumer survey was available to the public from 4 March to 25 March 2021. During this time, we received 12,269 responses. Just over half of the respondents also provided a free-text comment.
- E4 The findings of this survey helped us to test information gathered from other sources and identify further areas for analysis. In particular, we used these findings to gain further understanding where, how and why people shop where they do for groceries, and whether this varied by location. This analysis also informed our understanding of how consumers decide what groceries to purchase, and why consumers join grocery loyalty programmes.

- E5 Analysing the responses to our consumer survey highlights that there are range of different shopping behaviours from consumers in New Zealand, driven by a diverse range of preferences. However, we also found that most respondents:
- E5.1 do at least one grocery shop a week;
 - E5.2 consider convenience or price as their main drivers for their choice of main store;
 - E5.3 drive and travel less than 10 minutes to their main store;¹⁴⁶⁵
 - E5.4 shop at one of New World, Countdown or PAK'nSAVE in a typical week; and
 - E5.5 consider one of New World, Countdown or PAK'nSAVE to be their main store and would shop at these stores if their main store closed.
- E6 We did not design this survey to be statistically representative. However, we received a broad range of representation from a large number of New Zealand grocery shoppers. This gives us confidence the results of this survey provide valuable insights into consumers' behaviours and perceptions in the retail grocery sector. We discuss the demographics of who responded to our consumer survey at paragraphs E53 to E58.
- E7 For more explanation on how we have used the results of this survey to inform our findings, see paragraphs E27 to E32 below.

How we designed and conducted this survey

Design and development

- E8 This survey script contained 30 unique multiple-choice questions and an optional free-text field. Some of these multiple-choice questions were repeated for respondents who visited multiple stores. For example, if respondents said they visited three different stores in a typical week, they would have been asked how many times they visited, what they bought and how much they spent at each store.
- E9 However, no respondent was asked all 30 questions, as many questions were dependent on previous responses. For example, respondents who stated they were members of a loyalty programme were asked about their experiences, those that did not were asked why they were not a member. Additionally, as noted below, respondents had the ability to skip some questions.
- E10 This means the total number of questions asked of each respondent was dependent on their shopping experiences. For example, a respondent who shopped at many stores and was a member of a loyalty programme could be asked more than 35 questions, whereas a respondent not usually involved in the grocery shopping would be asked only seven questions.

¹⁴⁶⁵

'Main store' was defined as "the store you spend most at or do most of your grocery shopping with".

We sought to minimise framing effects

- E11 Respondents' answers to survey questions can vary systematically depending on how the survey is designed. That is, how respondents interpret questions can affect the response they provide. For example, research has observed respondents can answer differently depending on the order in which the possible answers are listed, or how the questions or responses are worded.¹⁴⁶⁶
- E12 Given the potential for these effects to impact the reliability of any results of the survey, we sought to minimise the risk of these occurring. We did this by randomising the order in which answers were presented to respondents and seeking to word questions using plain language which did not prompt specific types of responses.¹⁴⁶⁷ For example, we attempted to frame the free-text question to allow consumers to freely provide their views on any areas of the sector they deemed relevant. Figure E1 below shows how respondents provided free-text response.

Figure E1 The free-text question as it was displayed to respondents

Your experience shopping for groceries

Is there anything else you would like to tell us about your experiences shopping for groceries?

This could include your views on the grocery options available to you or anything else you think we should be aware of.

Previous Next

- E13 To help with this, we were assisted by Professor Philip Gendall, an experienced survey designer, during the development of this survey. Professor Gendall reviewed a draft of the survey script and provided advice and recommendations to improve this script to minimise the risk of framing bias and to gather the data we required. However, we were responsible for the design and implementation of the survey.

¹⁴⁶⁶ Regarding how responses can differ depending on the order in which answers are presented, Holbrook, et al. "Response Order Effects in Dichotomous Categorical Questions Presented Orally" *Public Opinion Quarterly*, Vol 71 (2007) at 325-348. Regarding how responses can vary due to wording, see: Chong et al. "Framing Theory" *Annual Review of Political Science* 10 (2007) at 103–106.

¹⁴⁶⁷ For the general principles we referred to when attempting to minimise these effects, CMA "Good practice in the design and presentation of customer survey evidence in merger cases (Revised)" (May 2018) at [3.7]-[3.31] and [3.20a].

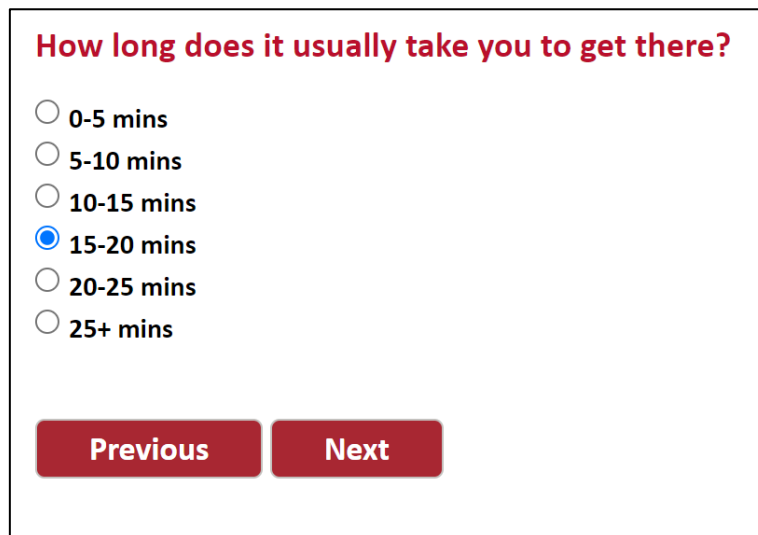
We adjusted the design in an attempt to capture ‘typical’ behaviour

- E14 During the latter stages of the design process, a lockdown occurred in Auckland. To minimise the effect of this, we adjusted parts of our survey. Notably, we changed from asking about the previous week’s shopping to a “typical” week. We made this change as we expected shopping behaviour during these lockdowns was likely to differ from typical shopping behaviour. We do not think this change materially changes the quality of responses, as it still aids respondents to recall their typical shopping behaviour.

We framed questions to aid recall and reduce cognitive load

- E15 When asking respondents to recall some aspect of their behaviour, we framed questions in a general sense as illustrated in Figure E2 below (eg, how long does it usually take you to get to this store?). This was done to help respondents recall how they do most of their shopping, accepting these behaviours may sometime differ which could make it most challenging to respond accurately.

Figure E2 Example of question-answer format presented to respondents



How long does it usually take you to get there?

0-5 mins

5-10 mins

10-15 mins

15-20 mins

20-25 mins

25+ mins

Previous **Next**

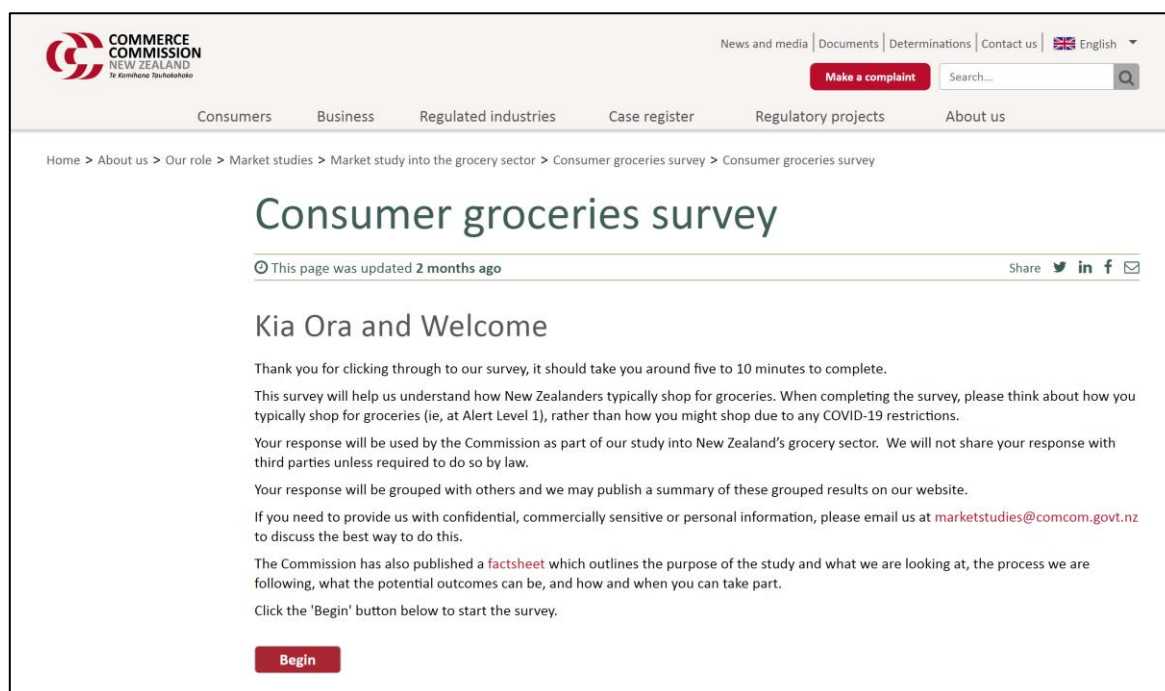
- E16 Additionally, some questions we asked were restricted to respondents’ “main stores” (eg, how do you usually travel to your main store?). This was done to reduce the complexity of the survey design, and to minimise the time taken by respondents to complete the survey.

- E17 We received a submission from Woolworths NZ that some of our questions were cognitively challenging or hypothetical.¹⁴⁶⁸ Its view was that this means consumers were unlikely to be able to respond accurately or provide a meaningful reply. It raised particular concern with question 14, which asked respondents to select which store they would switch to if their current store closed. As discussed below, the hypothetical nature of this question may impact the accuracy of responses. However, we have not relied on analysis of this question when forming our findings in this report.

Conducting the survey

- E18 The survey was conducted online and hosted on our website.¹⁴⁶⁹ Respondents did not have to provide any personal information to participate. We estimate it took about five to 10 minutes to complete. However, as noted at paragraph E10, this would vary depending on the number of questions each respondent was asked. Figure E3 shows the information provided to respondents at the start of the survey.

Figure E3 Landing page of our consumer survey



- E19 To encourage consumers to complete the survey, we engaged Tilt Digital, a digital marketing agency, to run a social media advertising campaign across Facebook and Instagram. As nearly all New Zealanders buy groceries, the campaign aimed to get engagement and responses from across the population, and particularly from communities we expected to be hard to reach based on prior experience. The campaign ran with an accompanying short video fronted by Associate Commissioner Joseph Liava'a explaining why we wanted consumers to take part.

¹⁴⁶⁸ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [1.7] of Appendix Two.

¹⁴⁶⁹ Commerce Commission "Market study into the grocery sector" <https://comcom.govt.nz/groceries/>.

Figure E4 An example of how we advertised our survey



- E20 We conducted regular audience assessments of the three-week campaign, with targeting changes made to reach communities who appeared underrepresented, based on Statistics NZ demographic data, in the survey responses being collected.
- E21 In conjunction with this advertising campaign, we engaged with a wide range of consumer organisations to help also promote the survey through their own individual consumer channels. These groups included FinCap, Consumer New Zealand, Consumer Protection (Ministry of Business Innovation and Employment), Super Seniors (Ministry of Social Development), Federated Farmers, Office of Ethnic Affairs, Ministry for Pacific Peoples and Age Concern.

The questions we asked

- E22 Our survey asked a range of questions about where, why and how respondents shop for groceries. The survey presented written questions to respondents, and respondents selected the most appropriate answers from a list. Respondents could skip most questions by selecting 'Next'. For example, see Figure E2 above. We asked questions about:
- E22.1 shopping behaviour during a typical week (eg, how often they shop, how much they spend and what they buy);
 - E22.2 which store(s) they usually do most of their shopping at, and why this is;
 - E22.3 how they select products, including whether they have brand preferences or check unit price; and

- E22.4 whether they were members of loyalty programmes and, if so, why they joined and their awareness of the attributes of these programmes.

We asked a range of demographic questions

- E23 We also asked respondents a range of demographic questions, such as ethnicity, age, and income. Respondents had the ability to skip demographic questions or select “Prefer not to say”.
- E24 We also asked questions about where respondents lived, as we wanted to compare responses to some questions by location. We asked respondents about which region, district, city, and, in some cases, suburb they lived in. The options provided were based on the Statistics NZ Geographic Areas Table 2021 dataset (Geographic Areas Table), except for the following cities:¹⁴⁷⁰
- E24.1 Auckland;
 - E24.2 Lower Hutt;
 - E24.3 Tauranga;
 - E24.4 Christchurch;
 - E24.5 Dunedin;
 - E24.6 Hamilton; and
 - E24.7 Wellington.
- E25 The suburb-level options provided to for these cities were instead created based on lists of suburbs available online. This is because we considered the options provided for these cities in the Geographic Areas Table would not be easily recognised by respondents.
- E26 An illustrative copy of the survey script, including a full list of the questions asked, is provided at the end of this attachment at page 582.

How we have used the results of this survey

- E27 We have used the findings from this survey to identify areas of interest, and to support information we have collected from other sources. These findings are not intended to draw specific conclusions on the behaviour and perceptions of all grocery consumers in New Zealand. Rather, it is one piece in the puzzle to building a detailed picture of consumer behaviour and perceptions in New Zealand’s retail grocery sector.

¹⁴⁷⁰ Statistics NZ “Geographics Areas Table 2021” <https://datafinder.stats.govt.nz/table/105172-geographic-areas-table-2021>.

E28 The results of the survey are unlikely to be truly representative of the underlying population of interest (ie, grocery shoppers in New Zealand). This means we have not sought to draw specific statistical inferences from the analysis conducted with this data regarding to the behaviour of all New Zealand grocery shoppers.

We are confident this survey provides good insights into consumer behaviour and perceptions

E29 Despite the limitations discussed below, we consider our consumer survey provides valuable insights into consumer behaviour and perceptions in the retail grocery sector. This is because:

E29.1 our sample size is very large;

E29.2 we had a broad range representation across many demographic variables; and

E29.3 estimates of other variables are consistent with other datasets.

Our sample size is large

E30 A large number of consumers told us about their grocery shopping behaviour, and it is important we reflect this. As noted, 12,269 New Zealand grocery shoppers responded to our consumer survey. This provides a large sample of respondents to draw on when conducting our analysis.

We had a broad range of representation across many demographic variables

E31 As discussed from paragraph E47 below, we received a broad range of representation across geography and ethnicity. This gives us confidence the responses to this survey represent a diverse range of grocery shoppers with different experiences and perceptions in the sector.

Estimates of other variables are consistent with other datasets

E32 As noted at E59 to E61 below, our estimates of respondents' spending behaviour are consistent with our findings in Chapter 5 (see, for example, Table 5.1 and Figure 5.1). This gives us confidence our underlying data, and ensuing analysis, is broadly consistent with other, statistically robust, datasets.

Some limitations to our consumer survey

Certain groups of consumers are likely to be underrepresented

E33 Due to the design of our consumer survey, it is possible some groups of consumers with particular attributes are systematically underrepresented. For example, grocery shoppers who do not have internet access, and therefore were unlikely to have completed our consumer survey, may have different experiences with the retail grocery sector than those who do.

- E34 If this is the case, our results may be biased, and this should be considered when interpreting this analysis.¹⁴⁷¹
- E35 However, as explained below, we have conducted analysis and comparisons to identify any areas where responses appear biased. While we cannot fully verify the extent of this potential bias, these results provide reassurance that our consumer survey results are unlikely to be misleading regarding the general behaviour and perceptions of grocery shoppers in New Zealand.

Our survey was publicly available

- E36 As discussed above, anyone with internet access was able to participate in our survey. The purpose of this was to ensure we heard from a broad range of New Zealanders from across different groups. Woolworths NZ submitted that it considers this presents a “significant risk” to the robustness of our insights from the survey.¹⁴⁷² It holds this view because this approach means we are unable to ensure the demographic profile of respondents is statistically representative.
- E37 We agree with Woolworths NZ’s view that we are unable to ensure our sample is statistically representative. However, as discussed at paragraphs E6 and E28, we acknowledge that the survey may not be statistically representative, and we have assessed the insights from our analysis with regard to this caveat.¹⁴⁷³
- E38 Woolworths NZ also submitted that, because our survey was publicly available, this meant organisations with a specific viewpoint (eg, consumer advocacy organisations) were able to encourage their audiences to complete the survey.¹⁴⁷⁴ Its view is this presented a risk of respondent skew.
- E39 We do not consider that the public availability of our survey reduces the usefulness of the insights gained from it for two reasons:
- E39.1 As noted by Woolworths NZ, there are many ways respondents could have heard about the survey (eg, our media release, website, or our social media channels). Of note, as discussed at paragraphs E19 to E21 above, we conducted an extensive marketing campaign to promote the survey via various channels, targeting various demographic groups using neutral language.

¹⁴⁷¹ Foodstuffs NI made a similar submission on our draft report, stating our survey was “naturally biased towards those who have ready online access”, Foodstuffs NI “Submission on Market study into grocery sector” (10 September 2021) at [238.1].

¹⁴⁷² Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [1.2] of Appendix Two.

¹⁴⁷³ Commerce Commission “Market study into the retail grocery sector – Draft report (29 July 2021) at [F6].

¹⁴⁷⁴ Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [1.3] of Appendix Two.

E39.2 The survey questions were predominantly descriptive or behavioural questions (eg, what do you typically purchase when shopping at Retailer X), as opposed to questions soliciting opinions or feelings about the grocery sector. We consider it unlikely the answers to these descriptive or behavioural questions would be affected by a respondent's views or attitudes toward the retail grocery sector.

Our survey focuses on grocery shopping

E40 The questions in our consumer survey intended to capture how New Zealanders shop for groceries. Our survey is unlikely to capture respondents' shopping and spending on all food consumed in a typical week as our consumer survey did not provide specific options for some sources of food like take-away foods, restaurants, or markets.

E41 However, some respondents may have included these sources of food under the option 'other.' Therefore, it is important to note that our analysis relates to how respondents' source groceries rather than all types of food in a typical week.

The survey required respondents to recall past behaviour which may inhibit accuracy

E42 Respondents may struggle to accurately recall some aspects of their past behaviour, such as how much they typically spend at a given store. As discussed at paragraph E15 above, we attempted to mitigate this by framing questions in ways that would aid recall. However, this risk of reduced accuracy is an inherent limitation in this type of survey design, as it relies on respondents recalling past actions.

E43 Although this design may result in imperfect recall, we do not consider this is likely to cause a systematic over or under-reporting of certain behaviour (generally referred to as a response bias). Response bias is a systematic, rather than random, error caused by differences in the accuracy of respondents' recollections of past behaviour.¹⁴⁷⁵

Respondents may have over-reported their in-store behaviour

E44 However, there may have been systematic over-reporting of some questions. That is, respondents may have reported engaging in certain behaviour (such as comparing prices between products) more often than they actually do.

E45 This is referred to as a social desirability bias, which is the tendency of some respondents to report an answer in a way they deem more socially desirable than their "true" answer.¹⁴⁷⁶ For example, some respondents may have considered the act of comparing prices or referring to unit pricing as being socially desirable, leading to an over-reporting of this behaviour.

¹⁴⁷⁵ Paul Lavrakas "Encyclopedia of Survey Research Methods" (2008) at 486, available at <https://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n486.xml>.

¹⁴⁷⁶ Paul Lavrakas "Encyclopedia of Survey Research Methods" (2008) at 537, available at <https://methods.sagepub.com/reference/encyclopedia-of-survey-research-methods/n537.xml>.

E46 However, this analysis still provides useful insight, for example, when comparing variance in reported behaviour between different groups of respondents.

We have not reweighted this survey

E47 We chose not to reweight the results of this survey using the demographic data we collected. Given we did not design this survey to collect a statistically representative sample, reweighting the results would give a misleading impression about the statistical representativeness of any findings.

E48 However, we did conduct some sensitivity testing on some pieces of analysis using reweighted samples to check whether this materially changed the outcomes of the analysis. This reweighting did not appear to change the analysis in any material way. We conducted this testing by re-running some pieces of analysis using four datasets, each reweighted by a separate demographic variable: ethnicity, age, region, and urban-rural location.

E49 Where we received submissions that specific aspects of the demographic distribution of our sample may have affected certain results, we sought to re-test our analysis using the relevant reweighted dataset to identify any effects.¹⁴⁷⁷

Comparison of survey results with other datasets

E50 We received responses from 12,269 New Zealanders. More than 99% of these were the main grocery shopper in their household. We cleaned our data and removed unreliable data from the raw dataset before conducting analysis on the results of our consumer survey. This resulted in removing 172 responses across the whole dataset, and removing less than 20 responses across responses to questions around store behaviour and loyalty programmes. This explains why the sample size is less than 12,269 in the figures below. We discuss our cleaning process in paragraph E62 to E73 below.

E51 As shown in the analysis below, our sample is broadly consistent with key population demographics collated by Statistics NZ, such ethnicity and region. This gives us confidence that our consumer survey respondents reflect a broad range of New Zealand grocery shoppers.

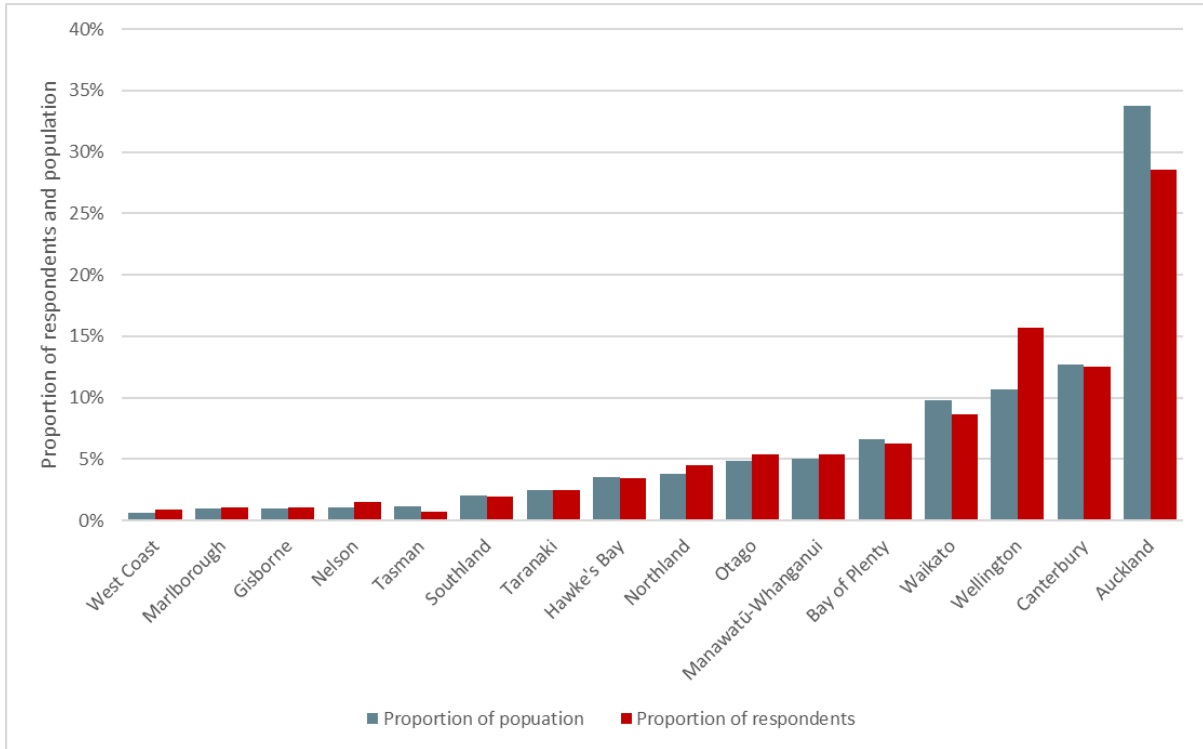
E52 We also compared spending estimates from responses with other datasets, such as Statistics NZ household expenditure statistics. Our estimates appear to be broadly consistent with these external datasets.

¹⁴⁷⁷ For example: Woolworths NZ “Submission on Market study into retail grocery sector draft report” (10 September 2021) at [28.7.7] and [28.7.5]; Foodstuffs NI “Submission of Market study into grocery sector draft report” (10 September 2021) at [199]-[200].

Demographics of respondents in comparison to Statistics NZ data

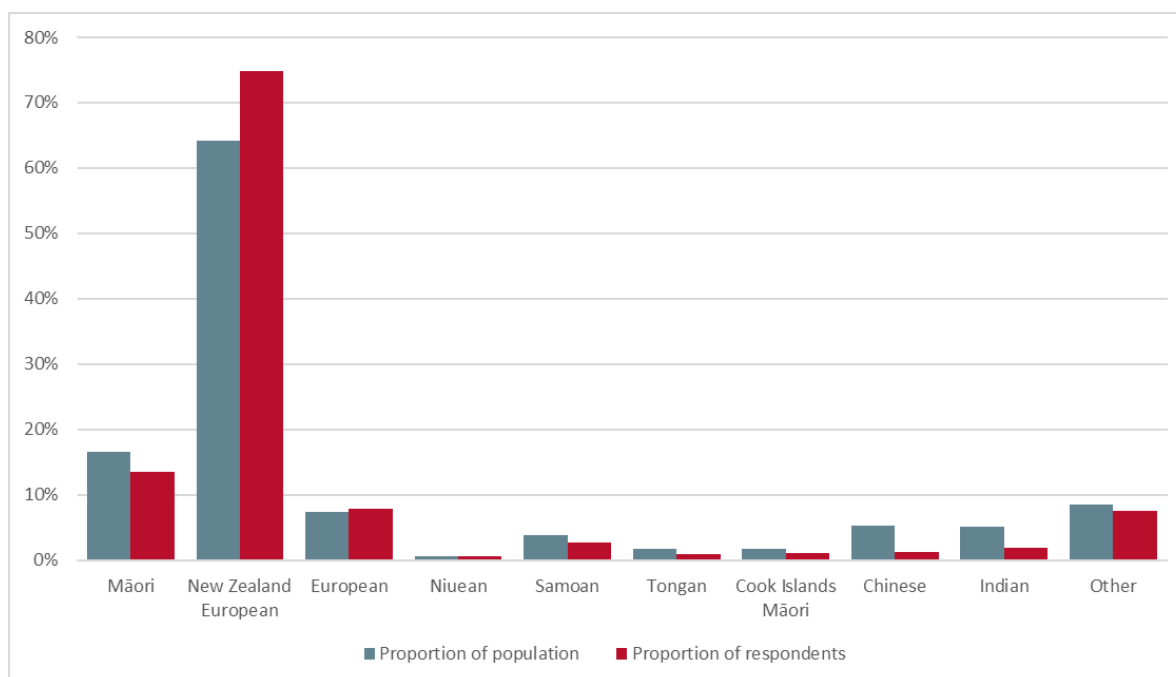
E53 The regional representation of respondents appears to be broadly consistent with Statistics NZ population estimates, as illustrated in Figure E5 below. However, Wellington was somewhat overrepresented in the sample and Auckland was underrepresented in the sample.

Figure E5 Region of respondents in comparison to Statistics NZ 2020 estimates



Source: Commission analysis based on data from our consumer survey (n=12,003) and from Statistics NZ.¹⁴⁷⁸

¹⁴⁷⁸ Statistics NZ “Subnational population estimates: At 30 June 2020” <https://www.stats.govt.nz/information-releases/subnational-population-estimates-at-30-june-2020>; [].

Figure E6 Ethnicity of respondents in comparison to Statistics NZ 2018 estimates

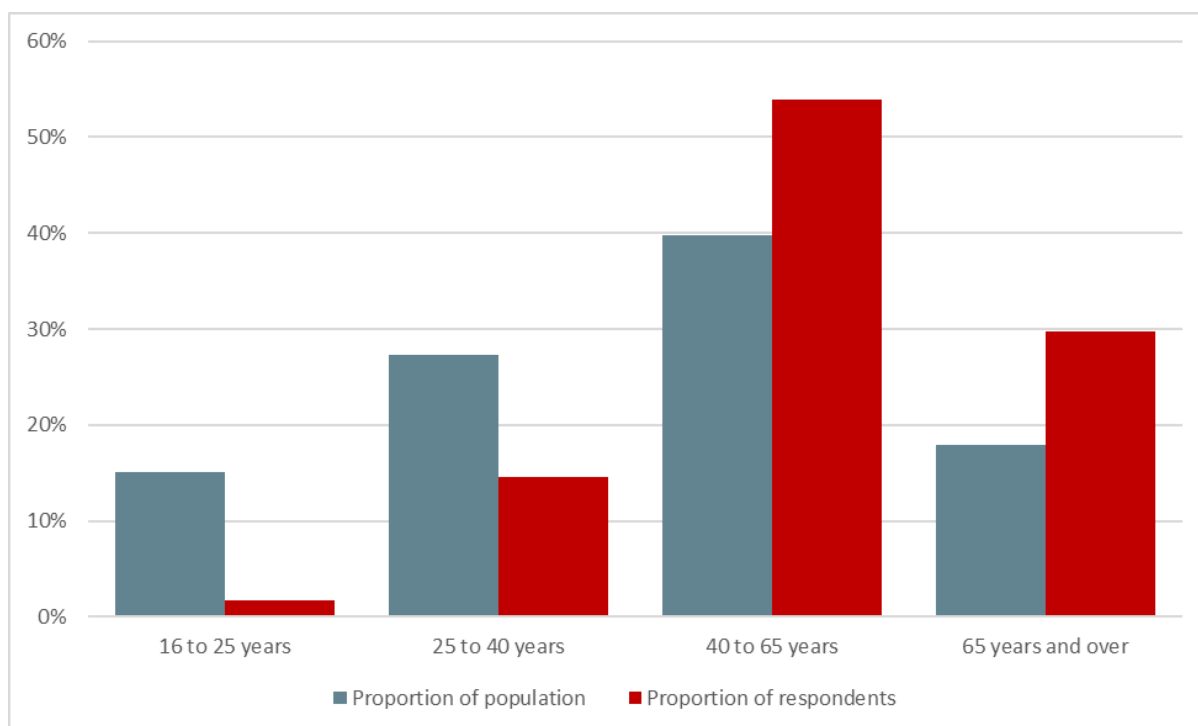
Source: Commission analysis based on data from our consumer survey (n=12,097) and from Statistics NZ.¹⁴⁷⁹

- E54 Respondents to our consumer survey identified with a range of ethnicities, as illustrated in Figure E6 above.¹⁴⁸⁰ The distribution of ethnicities identified is largely consistent with Statistics NZ Census 2018 data. However, Chinese and Indian respondents were relatively underrepresented in our sample.
- E55 As discussed at paragraph E20, we re-targeted our communications to try and mitigate this underrepresentation. This re-targeting had some effect on engagement; however, these groups remained underrepresented in the final sample.
- E56 Woolworths NZ submitted this underrepresentation of Chinese and Indian respondents means that our analysis understates the proportion of Kiwis that use an international grocery retailer for their main shop (in turn, overstating the proportion who use a major grocery retailer).¹⁴⁸¹ As discussed at paragraph E109 below, this underrepresentation does have a marginal effect of the proportion of respondents using ethnic retailers, but this does not materially impact our analysis of main store choice.

¹⁴⁷⁹ Statistics NZ “Estimated resident population (2018-base): At 30 June 2018” <https://www.stats.govt.nz/information-releases/estimated-resident-population-2018-base-at-30-june-2018>; [].

¹⁴⁸⁰ As with the Statistics NZ 2018 census, our consumer survey enabled respondents to select as many ethnicities as they identified with, explaining why each dataset sums to >100%.

¹⁴⁸¹ Woolworths NZ “Submission on Market study into retail grocery sector draft report” (10 September 2021) at [28.7.7].

Figure E7 Age of respondents compared to Census 2018 data

Source: Commission analysis based on data from our consumer survey (n=11,927) and Census 2018 data based on usually resident population counts for individuals aged 16 or over.¹⁴⁸²

E57 Representation of older age groups was higher in our consumer survey, compared to population estimates. Although it is possible main household shoppers are generally older than the population average, this is unlikely to completely explain the overweighting towards older respondents in our sample as illustrated Figure E7 above.

E58 Foodstuffs NI noted this overrepresentation in its submission on our draft report, stating that it may have implications for some pieces of analysis, such as the frequency of shopping trips.¹⁴⁸³ As discussed at paragraph E95 below, this overrepresentation did not have a material impact on analysis of the frequency of shopping trips.

Estimated shares of supply in comparison to other estimates

E59 We also used responses on weekly spend to estimate shares of supply for the grocery sector. This estimate is shown in Figure E8.

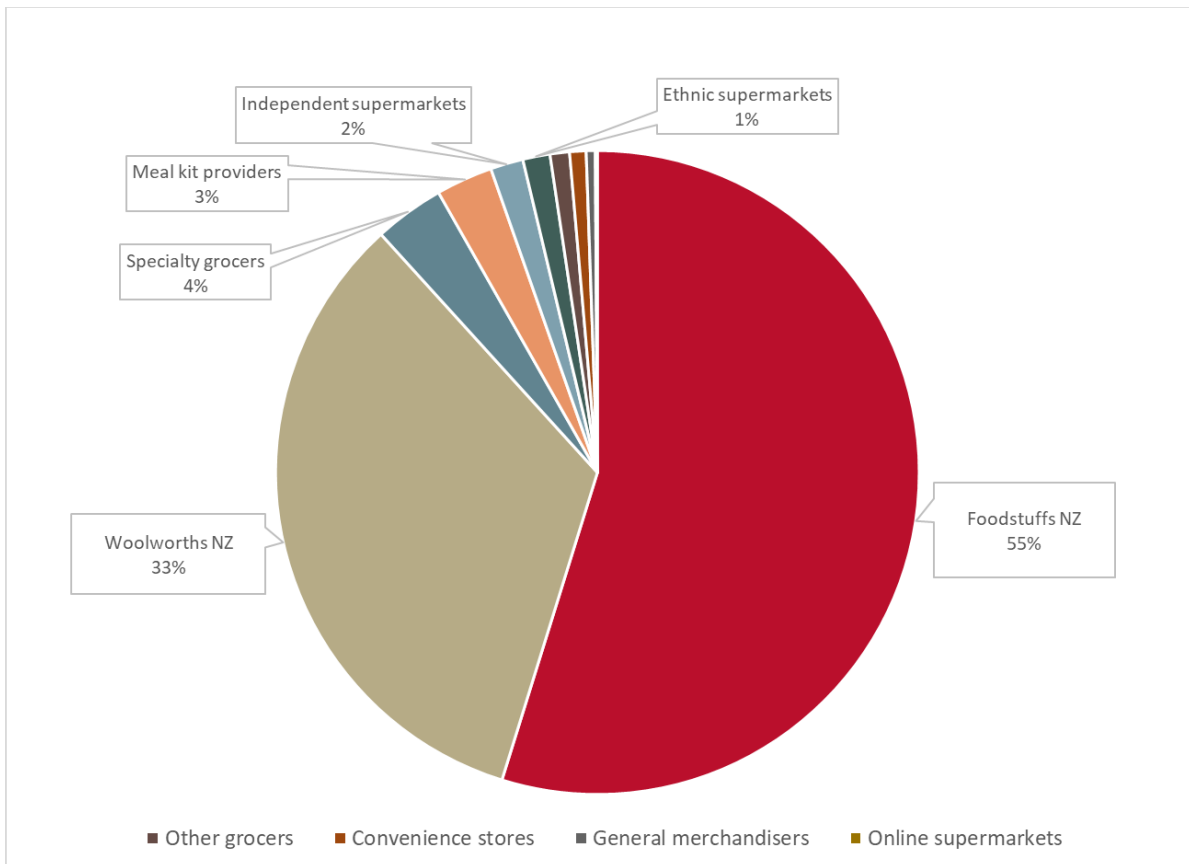
¹⁴⁸² Statistics NZ “2018 Census totals by topic – national highlights (updated)” (30 April 2020) <https://www.stats.govt.nz/information-releases/2018-census-totals-by-topic-national-highlights-updated>; [].

¹⁴⁸³ Foodstuffs NI “Submission on Market study into grocery sector draft report” (10 September 2021) at [238.2] and [199]-[200].

E60 We do not necessarily consider our estimate to be a representative view of shares of supply in the retail grocery sector. However, we consider its consistency with more robust estimates, conducted by other parties, supports the strength of this spending data.

E61 In Chapter 5, we reviewed a range of estimates from the major grocery retailers, and we calculated our own estimates. We found that most estimates of the combined shares of supply for the major grocery retailers were between 80% to 90% (see Figure 5.1 and Table 5.1). Our estimate based on respondents reported spending is consistent with this, finding that the major grocery retailers had a market share of 88%.

Figure E8 Estimated national market share of grocery sector from our survey



Source: Commission analysis based on data from our consumer survey.¹⁴⁸⁴

How we conducted the quantitative analysis of this survey

We cleaned the raw dataset

- E62 Given that our consumer survey was publicly available, there is a risk that we received responses to the survey that may not be genuine or which lack accuracy due to haste in completion. However, the fact half of the respondents took the time to submit free-text responses indicates most were prepared to spend time to accurately provide the information requested.
- E63 Nonetheless, we sought to identify responses that we considered were unlikely to accurately reflect the grocery shopping experiences of New Zealanders. We did this by removing data which may be unreliable and removing responses to certain questions.
- E64 We removed 172 responses across the whole dataset. We also removed some responses and additional variables created related to store behaviour or loyalty programmes. Our cleaning resulted in less than 20 observations being turned to missing for most responses and variables.
- E65 The rest of this section discusses how we identified and removed potentially unreliable data, and the impact of this process.

How we identified unreliable data

- E66 We identified potentially unreliable data by identifying respondents who were unlikely to be representative of grocery shoppers in New Zealand. This could include respondents who told us they do not usually do grocery shopping and respondents with potentially unrealistic shopping habits.
- E67 For example, some respondents who did not report visiting the stores they selected as their main store(s). Respondents' "main store" was defined as the grocery store or service they spend most at or do most of their shopping with.
- E68 Given the purpose of our consumer survey was to understand consumer behaviour and perceptions of New Zealand grocery shopper, these types of respondents are unlikely to be the type of consumers we are aiming to seek views from.

We removed some unreliable data from the whole dataset

- E69 We removed responses by respondents who we did not consider to be representative of typical grocery consumers in New Zealand. This resulted in us removing:
- E69.1 85 responses from respondents who said they are not usually involved in the grocery shopping;
- E69.2 17 responses with the Commerce Commission's IP address, as these responses may have been influenced by information about our study;

- E69.3 11 responses made before 4 March 2021 as our consumer survey was not publicly available until this date, these are likely to be test responses;
- E69.4 31 responses made after the survey closed on 25 March 2021. This occurred because the webpage was still live until 29 March 2021 when the webservice provider closed the survey; and
- E69.5 28 duplicate responses which were submitted from the same IP address, on the same day, gave the same responses to questions around how they shopped and identical free-text responses.¹⁴⁸⁵
- E70 We also checked whether any respondents selected the first answer to each question, as this may have indicated that their responses were rushed or unconsidered. We did not find any respondents who did this.

We removed some unreliable data from questions related to shopping behaviour and loyalty programmes

- E71 We removed some responses to questions related to shopping behaviour in a typical week, choice of main store and the stores respondents would shop at if their main store closed, and loyalty programmes. We did this by transforming responses into missing observations, meaning these responses were not included in our analysis.
- E71.1 We generated dummy variables (explained at paragraph E79 below) to identify whether a respondent visited a store in a typical week. Dummy variables are variables that take the value of 0 or 1 to indicate whether a condition is true or not, and they are useful for grouping responses into categories.¹⁴⁸⁶
- E71.2 We removed some observations within some dummy variables about shopping behaviour. We did this if a respondent reported visiting a store but did not report spending anything at the store as we would expect a consumer to spend money at a store. We removed between 0 and 20 observations depending on the dummy variable.
- E71.3 We also asked respondents what their main stores were (respondents could select up to two) and we created dummy variables to identify if a respondent reported a store as their main store or not. We transformed observations in the dummy variables to missing if respondents did not report having a main store in the first place or did not report visiting their main store(s) in a typical week.

¹⁴⁸⁵ The questions around shopping behaviour related to shopping involvement (main shopper, not involved, shared with others), number of people shopped for, shopping channel (in store, online and delivered, ordered online and collected at store) and frequency of shops in a typical week.

¹⁴⁸⁶ For example, a dummy variable may be created to take the value of 1 if a respondent lives in Napier, and 0 if they do not.

- E71.4 We would expect a respondent to visit their main store in a typical week as main store was defined as the store a respondent spends most at or does most of their grocery shopping with.
- E71.5 We also generated dummy variables to indicate which stores respondents told us they would shop at if their main store(s) closed for the foreseeable future. We removed observations from these dummy variables if a respondent did not report having a main store or did not report shopping at any stores in a typical week. This resulted in up to 345 observations being removed, depending on the variable. These observations were removed as respondents told us they do less than one shop a week and therefore were not asked questions about their shopping in a typical week.
- E72 We turned five observations into missing for dummy variables related to loyalty programmes. These dummy variables indicated which type of loyalty programme membership respondents had. We also created dummy variables indicating the reasons for having a loyalty card if respondents did not report being a member of a loyalty programme in the first place.
- E73 We also adjusted responses to questions around shopping behaviour which we considered were outliers and potentially unrealistic. This included transforming responses to store behaviour questions to missing if:
- E73.1 respondents bought more than 20 product categories per person in a household in a typical week. This resulted in up to 59 observations being transformed to missing,¹⁴⁸⁷ and
- E73.2 respondents spent less than \$10 or more than \$400 per person in a household in a typical week. This resulted in up to 16 observations being transformed to missing.

We created additional variables to conduct our analysis

- E74 We also derived variables from our raw dataset for our analysis.

We derived estimates from some variables

- E75 We created estimates of some variables by taking the mid-point of responses to multi-choice questions. For example, when asking respondents how long it takes them to travel to their main store, we provided options such as “0-5 minutes”, “5-10 minutes” and so on. These responses were then converted to numeric values such as 2.5 and 7.5.

¹⁴⁸⁷ Respondents could choose up to 15 groups of product categories per store. Examples of product categories include fresh fruit or vegetables or meat, poultry, or seafood.

- E76 We presented these questions as multi-choice options, rather than an asking respondent to construct their own estimate, as we considered it would significantly ease the cognitive load on respondents. Further, we considered asking for an exact estimate may give an impression of false accuracy in the responses.
- E77 Following this process enabled us to calculate estimates such as total travel time to main stores (see Figure E20) and total spending across stores (see Figure E14).
- E78 Using mid-point estimates requires assuming responses are distributed around the mid-point of each option (ie, the mean spending of respondents who selected “\$100-\$150” is \$125). We recognise we are unable to test this in practice. However, this assumption is unlikely to materially bias our analysis, given the large sample size, and our spending estimates appear broadly consistent with Statistics NZ estimate.

We created dummy variables

- E79 We created dummy variables from the raw dataset which we used to create many of the figures in our analysis of respondents’ shopping behaviour and why respondents choose to shop at their main store. For example, we created the following dummy variables to indicate:
- E79.1 whether respondents visited a store in a typical week;
 - E79.2 whether respondents selected a store as one of their main store(s); and
 - E79.3 whether respondents selected a store as one of the store(s) they would shop at if their main store closed for the foreseeable future.
- E80 We also created a dummy variable to categorise types of stores visited in a typical week, main stores and substitute stores. These dummy variables indicate:
- E80.1 if respondents only visited major grocery retailers, only other stores, or visited a mix of major grocery retailers and other stores in a typical week;
 - E80.2 if respondents’ main stores were only major grocery retailers, only other stores or a mix of major grocery retailers and other stores in a typical week; and
 - E80.3 if respondents selected stores they would shop at if their main store closed which were only major grocery retailers, only other stores or a mix of major grocery retailers and other stores.
- E81 Survey respondents were able to select from retail banners owned by Foodstuffs and Woolworths NZ, or categories of other grocery retailers as shown in Table E1 below. A mix of stores refers to a mixture of major grocery retailers and other grocery retailers. These dummy variables are used in Figure E13, Figure E15, Figure E17 and Figure E24.

Table E1 Grocery retailers survey respondents could select from

Major grocery retailers	Other grocery retailers
New World	Ethnic supermarket (eg, Tai Ping, Japan Mart, Yogijis Food Mart)
Countdown	Another supermarket (eg, Farro Fresh, Moore Wilson's, Bin Inn)
PAK'nSAVE	A single-category or specialist grocery store (eg, greengrocers, butchers, bakeries)
Four Square	A general merchandiser (eg, The Warehouse)
FreshChoice	A convenience store (eg, dairies, petrol stations, Night 'n Day)
SuperValue	A meal kit provider (eg, Hello Fresh, My Food Bag)
	An online-only supermarket (eg, The Honest Grocer)
	Other (please state)

Urban-Rural Indicator

- E82 As shown in a number of graphs below, we conducted some analysis by looking at where respondents lived. To achieve this, we constructed a variable which matched respondents against the "Urban-Rural Indicator 2018" variable from the Statistics NZ Geographic Areas Table using the location respondents provided.
- E83 However, as noted at paragraph E24 above, the suburb options for some cities differed from those contained in the Geographic Areas Table. These cities were instead marked with the Urban-Rural Indicator corresponding to their population size, as defined by Statistics NZ (see Table E2 below). For example, all observations with Area=Auckland were set to "Major urban area".
- E84 The parameters of these Urban-Rural Indicators, as defined by Statistics NZ, are set out in Table E2 below.¹⁴⁸⁸

1488

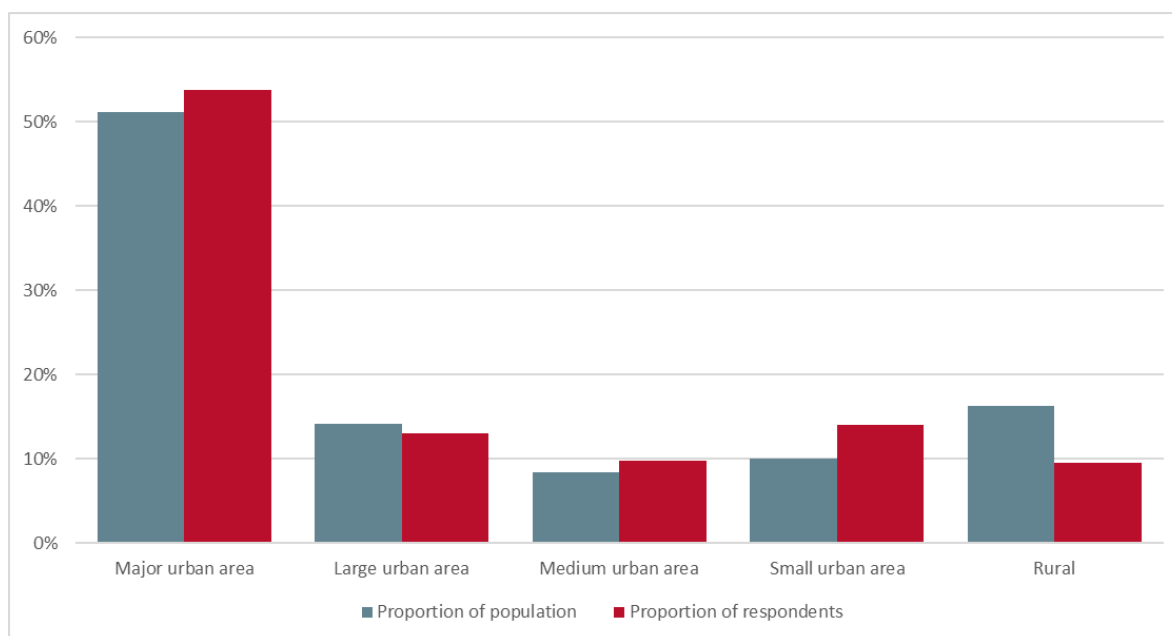
Statistics NZ "Urban accessibility – methodology and classification" (2020) at 25, available at: <https://www.stats.govt.nz/assets/Uploads/Methods/Urban-accessibility-methodology-and-classification/Download-document/Urban-accessibility-methodology-and-classification.pdf>.

Table E2 Respondents' urban-rural location

Urban-Rural Indicator	Population	Examples
Major urban area	100,00 or more residents	Auckland, Christchurch, Wellington, Hamilton, Tauranga, Dunedin and Lower Hutt
Large urban area	30,000-99,999 residents	Rotorua, Whanganui and Invercargill
Medium urban area	10,000-29,999 residents	Cambridge, Te Awamutu and Rolleston
Small urban area	1,000-9,999 residents	Thames, Stratford and Gore
Rural settlements	200-1,000 residents, or at least 40 residential dwellings	
Rural other	Other mainland areas located outside urban areas or rural settlements	

E85 The “rural settlement” and “rural other” categories were consolidated at the analysis stage. We did this as the geographic data provided by respondents made it challenging to easily distinguish which category of the two categories was most appropriate based on the Geographic Areas Table.

E86 Summary statistics of this variable, in comparison to Statistics NZ’s 2018 population estimate, is at Figure E9 below.

Figure E9 Area of respondents compared to Census 2018 data

Source: Commission analysis based on data from our consumer survey (n=11,205) and Census 2018 data.¹⁴⁸⁹

1489

Environmental Health Intelligence New Zealand “Urban-rural profile”

<https://www.ehinz.ac.nz/indicators/population-vulnerability/urbanrural-profile/>; [

].

- E87 7.3% of respondents did not provide enough geographic data to generate an Urban-Rural Indicator (eg, they provided no response, or only region).

Summary of our analysis of shopping behaviour

- E88 This section summarises some of the analysis we conducted to understand how respondents told us they shop for groceries. We asked respondents a range of questions about how often they shop, where they shop, how much they spend and what their main store is.

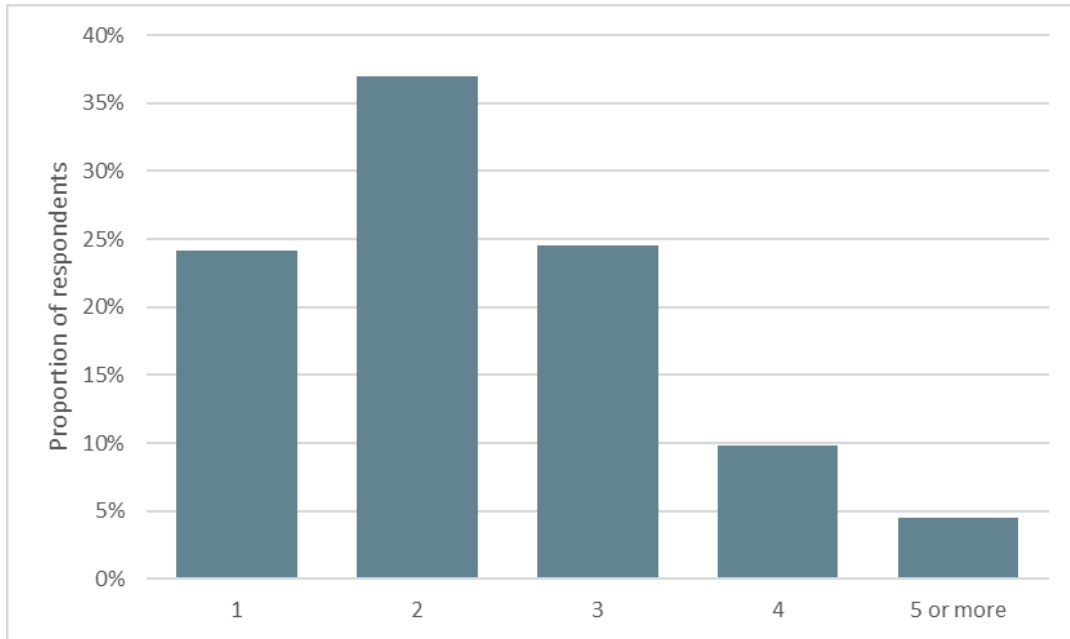
Main findings on shopping behaviour

- E89 Based on this analysis, it appears that:
- E89.1 most respondents visit between one and three different grocery stores in a typical week;
 - E89.2 most visits are to Countdown, New World and PAK'nSAVE;
 - E89.3 around 60% of respondents shop only at stores owned by Foodstuffs and Woolworths in a typical week;
 - E89.4 respondents who visit Countdown, New World or PAK'nSAVE or use meal kit services spend more on average in a typical week compared to respondents' spending at other stores or services in our consumer survey; and
 - E89.5 most respondents report Countdown, New World and PAK'nSAVE as their main stores across the whole of New Zealand and across different regions.
- E90 These findings indicate that most respondents shop at Countdown, New World and PAK'nSAVE and spend the most money there. This results in Foodstuffs and Woolworths NZ having a larger estimated market share, compared to other retailers, as shown in Figure E8 above.
- E91 We discuss the following findings on shopping behaviour which shows how respondents reported the shopped below:
- E91.1 how often respondents told us they shop;
 - E91.2 where respondents told us they shop;
 - E91.3 how much respondents told us they spend; and
 - E91.4 respondents' choice of main store(s).

How often respondents told us they shop

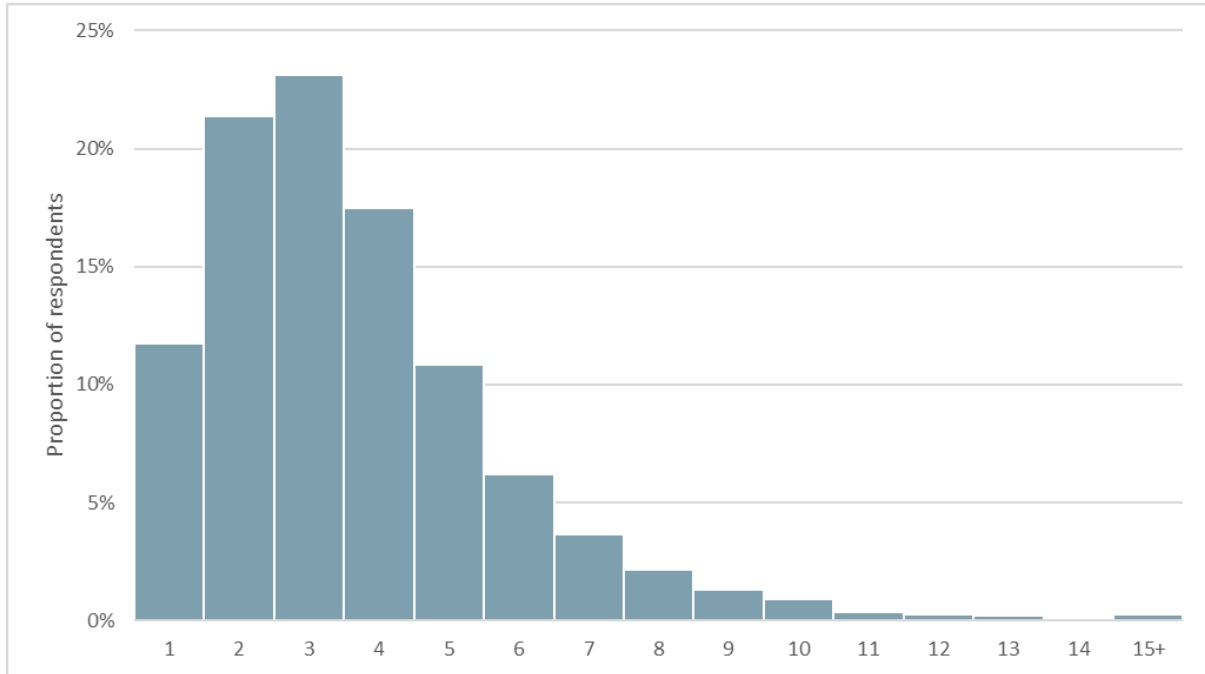
- E92 Figure E10 shows that 86% of respondents visit between one and three different grocery stores in a typical week.

Figure E10 Number of different grocery stores respondents said they visit in a typical week



Source: Commission analysis based on data from our consumer survey, n=10,619.¹⁴⁹⁰

Figure E11 Number of shop visits in a typical week



Source: Commission analysis based on data from our consumer survey, n=10,543.¹⁴⁹¹

1490 [].
 1491 [].

- E93 Figure E11 above shows more than half of respondents conduct between one and three shops in a typical week. Almost three quarters conducting between one and four shops.
- E94 Foodstuffs NI submitted that, given the underrepresentation of respondents aged 16-40 years, our analysis is likely to overstate consumers' preferences for shopping once a week.¹⁴⁹² It stated that research it commissioned indicates missions shopping is less common amongst people aged 55 and over. Woolworths NZ made a similar submission, stating the skew towards older respondents in the sample causes an undue emphasis of the importance of the "main shop".¹⁴⁹³
- E95 Our analysis of the average number of shop visits in a typical week suggests that those aged 65 years and over tend to make slightly fewer shops per week than younger cohorts. However, this relative underrepresentation of younger cohorts in the sample does not appear to cause material bias in the average number of shop visits for the sample: the average number of shop visits in a typical week remains at approximately 3.7 when the sample is reweighted to reflect the population age distribution.

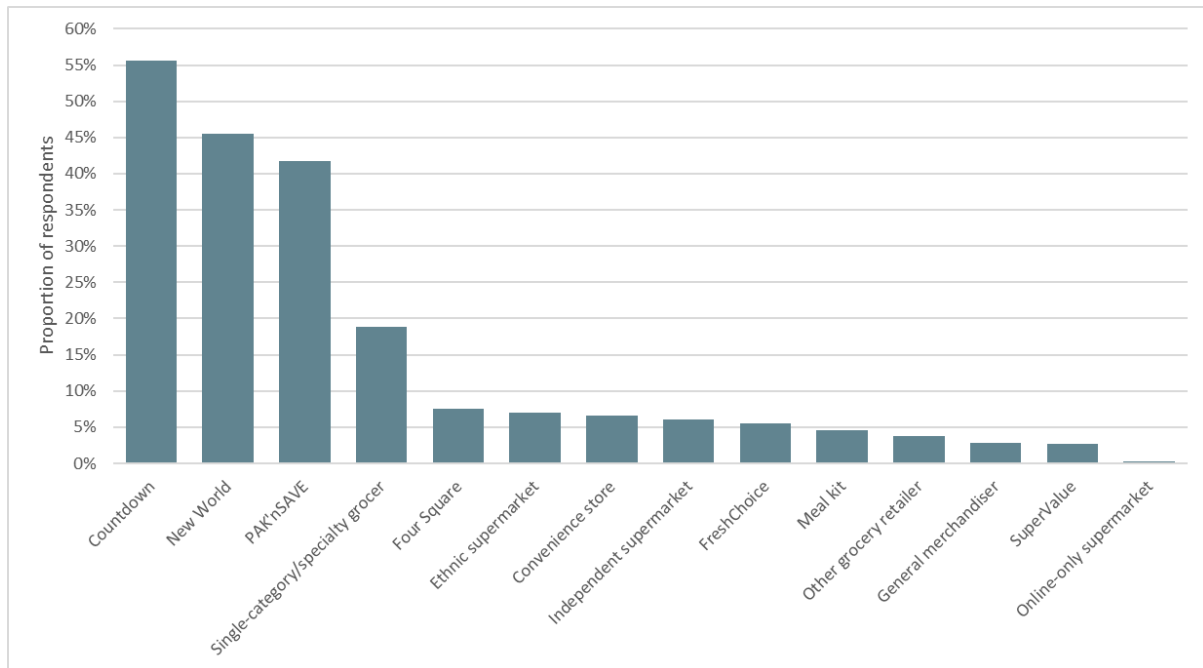
Where respondents told us they shop in a typical week

- E96 Figure E12 below shows the following:
- E96.1 A large proportion of respondents reported visiting one or more of Countdown, New World and PAK'nSAVE in a typical week. For example, more than half of respondents reported visiting Countdown in a typical week.
- E96.2 Nearly one in five respondents reported visiting a single-category or speciality grocery store (eg, greengrocers, butchers and bakers) in a typical week.
- E96.3 It was uncommon for respondents to report visiting other types of grocery store in a typical week. For example, less than one in 10 respondents reported visiting an ethnic supermarket in a typical week and less than one in 20 reported shopping with a meal kit provider in a typical week.

¹⁴⁹² Foodstuffs NI "Submission on Market study into grocery sector draft report" (10 September 2021) at [199]-[200].

¹⁴⁹³ Woolworths NZ "Submission on Market study into grocery sector draft report" (10 September 2021) at [28.7.5].

Figure E12 Proportion of respondents who reported visiting a given store in a typical week



Source: Commission analysis based on data from our consumer survey, n=12,097.¹⁴⁹⁴

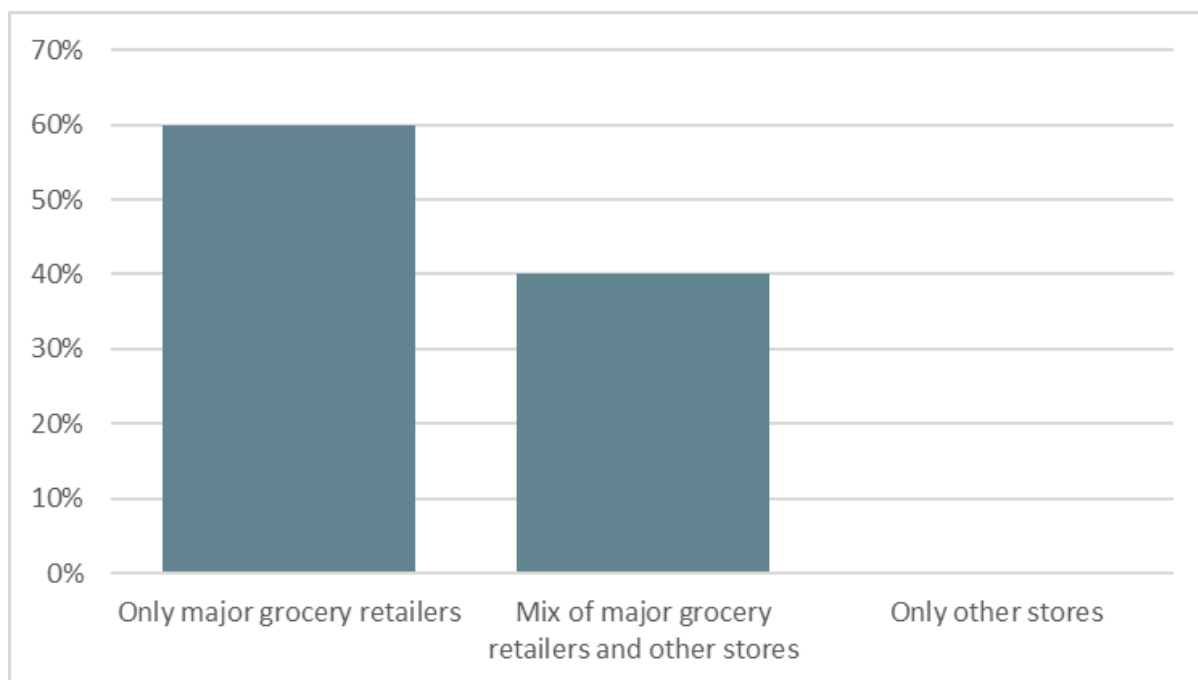
E97 Figure E13 shows that, in a typical week:

E97.1 60% of respondents visit only major grocery retailers;

E97.2 less than 0.5% visit only other stores; and

E97.3 40% visit a mix of major grocery retailers and other stores.

Figure E13 Proportion of respondents who visit only major grocery retailers, only other stores, or a mix of both types of stores in a typical week



Source: Commission analysis based on data from our consumer survey, n=10,523.¹⁴⁹⁵

How much respondents told us they spend

E98 Figure E14 below shows that respondents who visit Countdown, New World, PAK'nSAVE or use meal kits in a typical week spend nearly twice as much on average as respondents who reported their spending at other stores.

E99 As discussed earlier, we estimated average spending by using the mid-point of spending categories selected by respondents. For example, if respondents stated they spent \$0-\$10 a week at a store, this would be treated as \$5 for the purposes of the estimate. Therefore, it is important to interpret our spending estimates as an indication of how much respondents' may spend in a typical week.

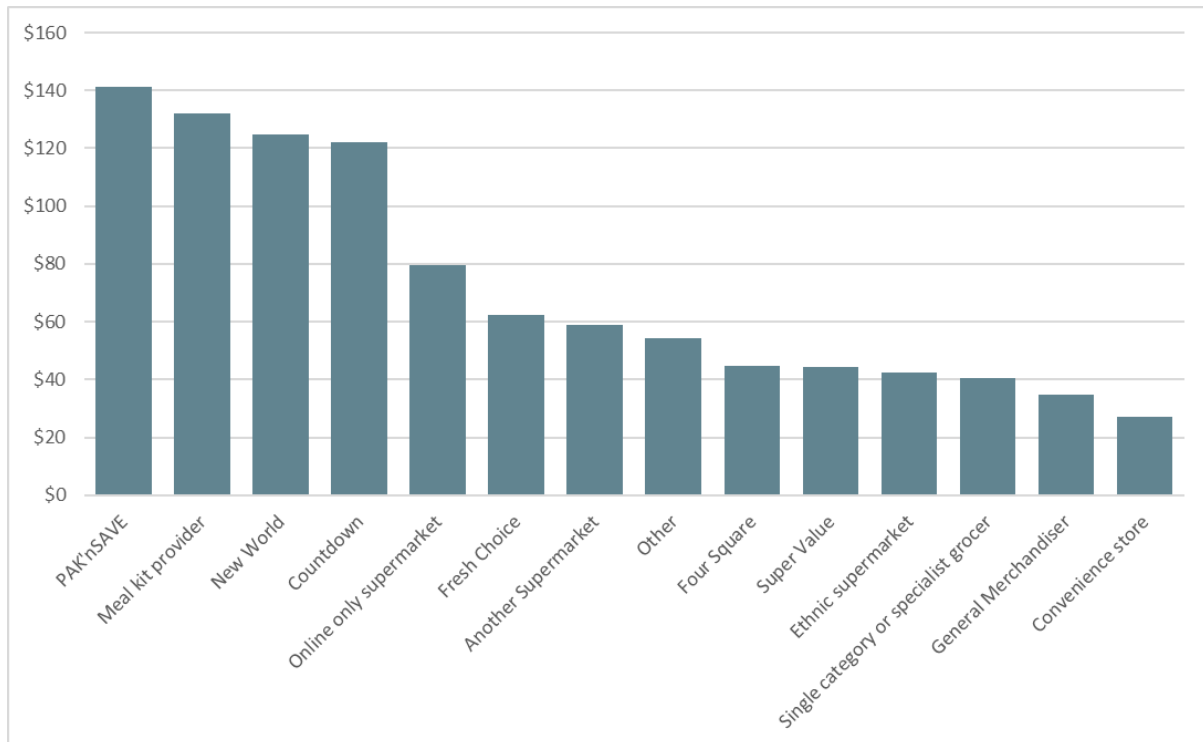
E100 Woolworths NZ submitted that, in its experience, respondents typically find it challenging to accurately recall their spending behaviour, especially if they are required to differentiate between store types.¹⁴⁹⁶ We agree that it is likely challenging for respondents to provide accurate accounts of their spending behaviour, and the ensuing analysis should be interpreted with this caveat in mind.

E101 However, this inaccuracy is unlikely to vary between store types. This means, although the estimates should be treated as such, the analysis provides useful insight into the relative levels of spending among different retailers.

¹⁴⁹⁵ [].

¹⁴⁹⁶ Woolworths NZ "Post conference submission on Market study into retail grocery sector" (24 November 2021) at [1.9] of Appendix Two.

Figure E14 Average spend at each store in a typical week for respondents who said they visited the given store



Source: Commission analysis based on data from our consumer survey, n=12,097.¹⁴⁹⁷

- E102 Figure E15 shows average spending by respondents who only visit major grocery retailers, only visit other stores or a mix of both.
- E103 Figure E15 shows that the level of average spending by respondents varies across all stores. Only Countdown, New World and PAK'nSAVE have similar and high levels of spending. This high level of spending is regardless of whether a respondent only shops at only that store, or at a mix of both major grocery retailers and other stores.
- E104 Average spending in a typical week also appears to vary depending on whether respondents shop only at major grocery retailers, only at other retailers, or a mix of stores. Figure E15 shows:
- E104.1 average spending at other stores is generally higher if respondents only shop at other stores compared to respondents who shop at a mix of stores. However, we recognise the sample of respondents who shop at other retailers is very small and so this finding may not be representative of consumers in New Zealand,¹⁴⁹⁸ and

¹⁴⁹⁷

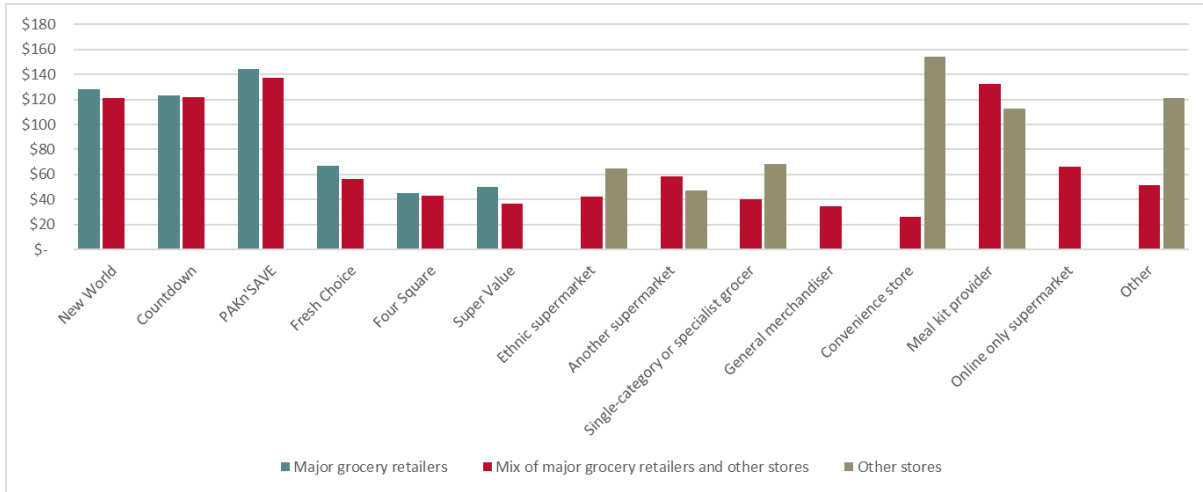
[].

¹⁴⁹⁸

From the sample of respondents used to estimate Figure E15, a total of 36 respondents shop at other retailers and the sample of respondents shopping at individual other retailers ranges from two to 12 respondents. For example, two respondents used meal kit providers and 12 respondents bought groceries from other stores.

E104.2 there is little difference in average spending at major grocery retailers by respondents who shop only at major grocery retailers or a mix of stores.

Figure E15 Average spending by respondents who only visit only major grocery retailers, only other stores or a mix of both types of store in a typical week¹⁴⁹⁹



Source: Commission analysis based on data from our consumer survey, n=2 to n=3,919.¹⁵⁰⁰

Respondents' choice of main store(s)

E105 We asked respondents what their main grocery store was. Respondents could choose up to two stores. We explained to respondents that their “main store” was defined as “the store you spend most at or do most of your grocery shopping with”.

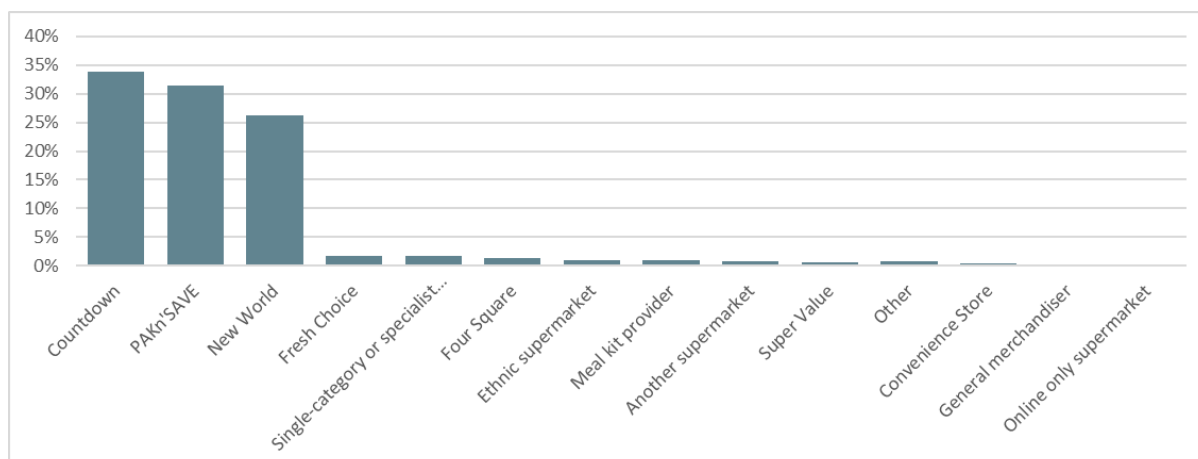
E106 Figure E16 below shows that most respondents (91%) reported Countdown, New World and PAK'nSAVE as one of their main store(s).¹⁵⁰¹

¹⁴⁹⁹ The sample size ranges from two for respondents who only visit other stores/services and one of those other services is meal kits up to 3,919 for respondents who only visit major grocery retailers and one of those major grocery retailers is Countdown.

¹⁵⁰⁰ [].

¹⁵⁰¹ The totals of these proportions may sum to >100% due to respondents being able to select two options. We chose not to reweight respondents who provided two options, as we considered this would cause proportions for some stores to be misreported. Sensitivity testing indicates this reweighting would increase the relative proportion of respondents who reported a major grocery retailer as their main store, and decrease the relative proportion of respondents who selected another type of retailer as their main store.

Figure E16 Proportion of respondents who report a store as their main store, or one of their main stores



Source: Commission analysis based on data from our consumer survey, n=12,097.¹⁵⁰²

E107 Figure E17 shows that most respondents (95%) reported only major grocery retailers as their main store(s). This means that out of the respondents who reported one main store, most told us their main store was a major grocery retailer; and out of the respondents who reported two main stores, most told us their two main stores were major grocery retailers.

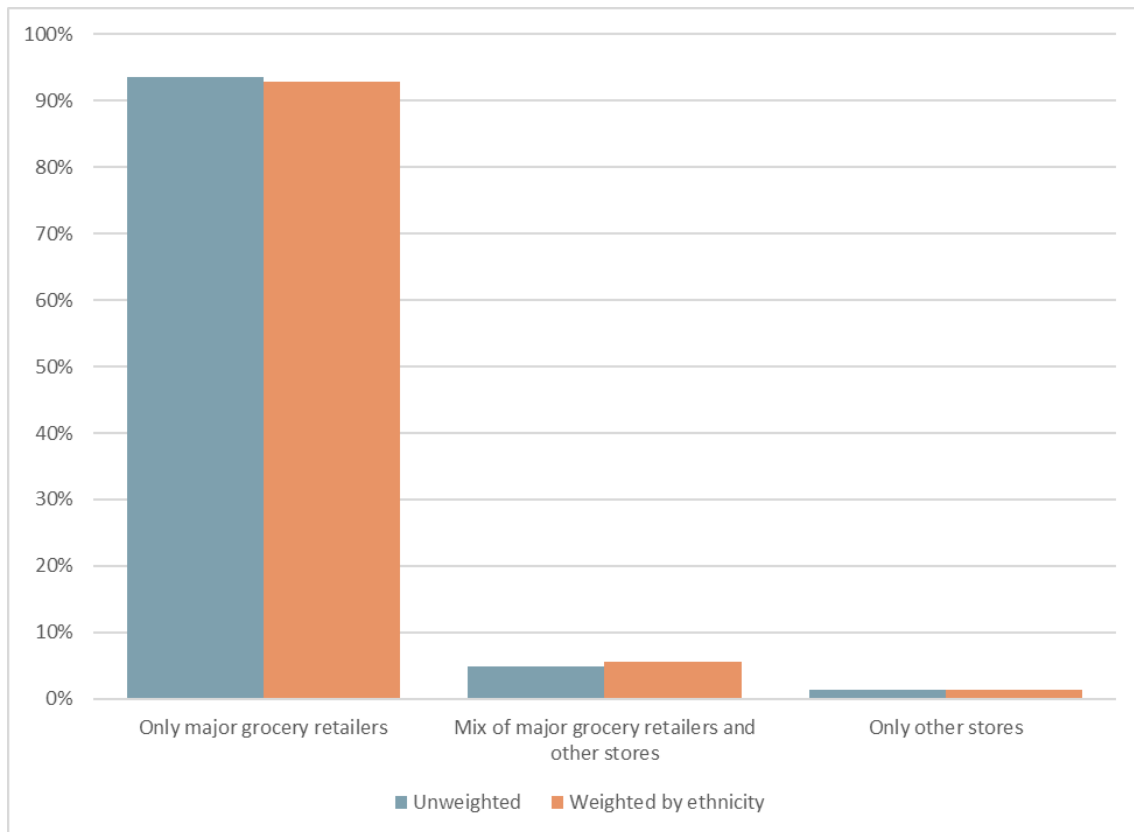
E108 Woolworths NZ submitted that our survey overstates the proportion of main shops that occur at the major grocery retailers because respondents of Chinese and Indian ethnicity were underrepresented in our sample.¹⁵⁰³ It said that, given many international grocery retailers specialise in Chinese and Indian cuisine, it expects our initial results understate the proportion of Kiwis who use international grocers for their main shop.

E109 However, this underrepresentation of Chinese and Indian respondents does not materially affect the results of this analysis. This is shown by the orange bars in Figure E17 below: when our sample is reweighted to reflect 2018 Census population ethnicity estimates, we only see a marginal decrease in the proportion of respondents who selected a major grocery retailer as their main store.

¹⁵⁰² [].

¹⁵⁰³ Woolworths NZ "Submission on Market study into retail grocery sector" (10 September 2021) at [28.7.7].

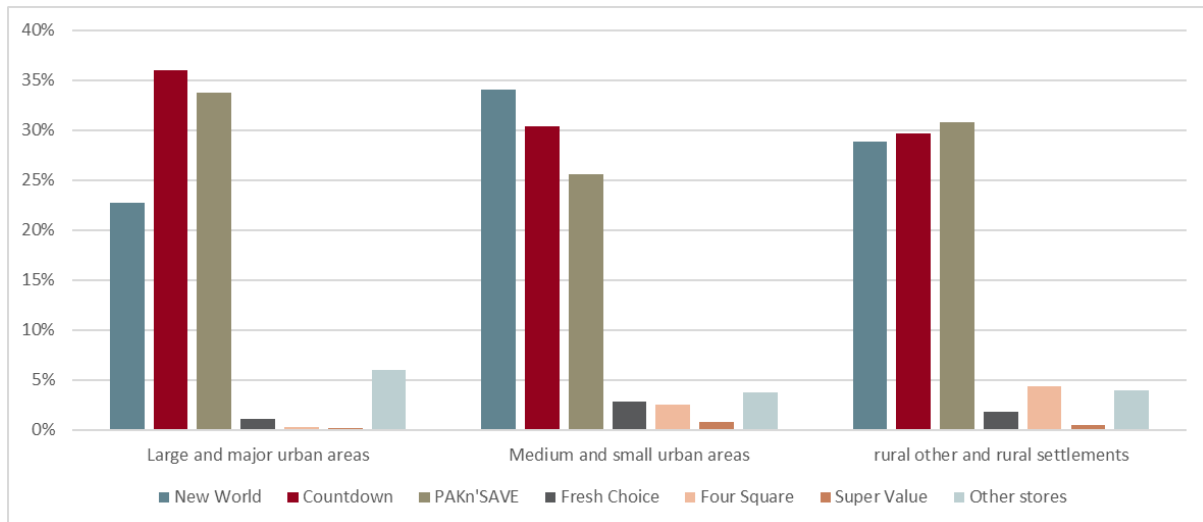
Figure E17 Proportion of respondents who report main store(s) which were only major grocery retailers, only other stores, or a mix of both types of stores



Source: Commission analysis based on data from our consumer survey, n= 11,730.¹⁵⁰⁴

- E110 We also see that there is the same overall trend in respondents' choice of main stores across New Zealand as shown in Figure E16, as respondents' choice of main stores across different regions in Figure E18.
- E111 However, there are some slight differences in respondents' main stores across different regions. We find that:
- E111.1 more respondents told us Four Square and FreshChoice are one of their main stores in rural areas and medium and small urban areas compared to large and major urban areas;
 - E111.2 fewer respondents told us New World is their main store in large and major urban areas compared to other areas;
 - E111.3 more respondents told us Countdown is their main store in large and major urban areas compared to other areas; and
 - E111.4 fewer respondents told us PAK'nSAVE is their main store in small and medium urban areas compared to other areas.

Figure E18 Proportion of respondents who report each store as one of their main store(s) by region



Source: Commission analysis based on data from our consumer survey, n=1253 to n=8379. The sample size ranges from 1253 in rural other and rural settlements to 8379 in large and major urban areas.¹⁵⁰⁵

How respondents told us they get to their main store

E112 We asked respondents how they usually travel to their main store, and how long it usually takes them to get there. We found:

E112.1 most respondents said they usually drive to their main store;

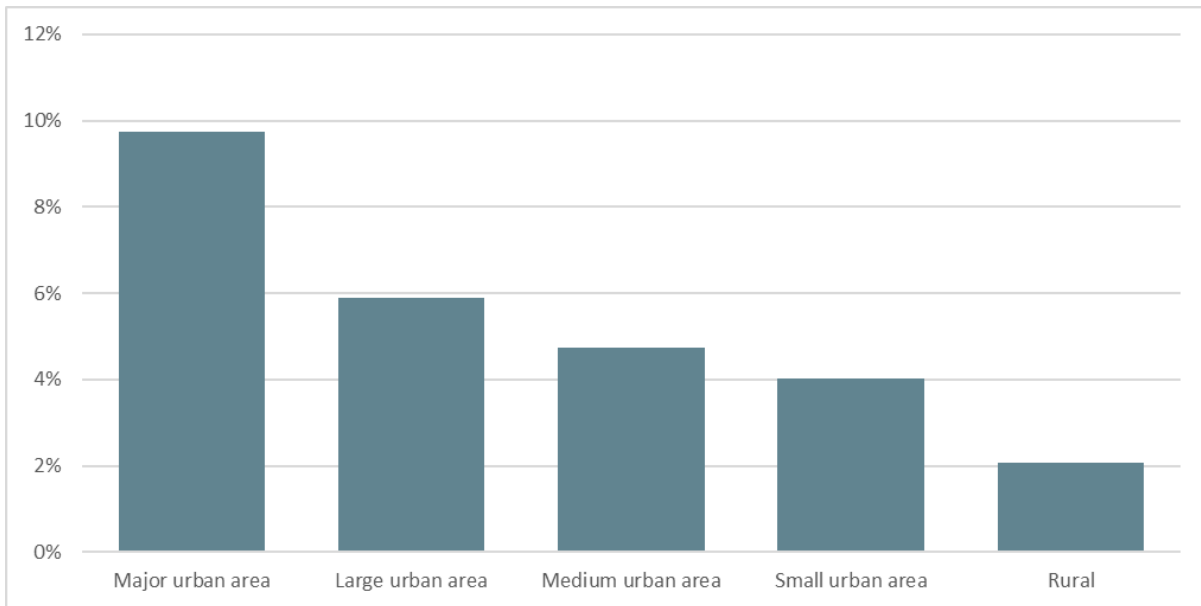
E112.2 most respondents said they usually travel less than 10 minutes to their main store; and

E112.3 respondents in more rural areas were more likely to drive and tended to take longer to get to their main store.

E113 The responses only covered how respondents travel to their main store. Consumers' mode of travel, and travel times, may differ for other types of shopping missions (eg, top-up shops).

Most respondents said they drive to their main store

E114 More than nine in 10 respondents said they usually drive to their main store. As shown in Figure E19 below, this tended to be higher in smaller urban and rural areas (eg, 98% of rural respondents drive to their main store).

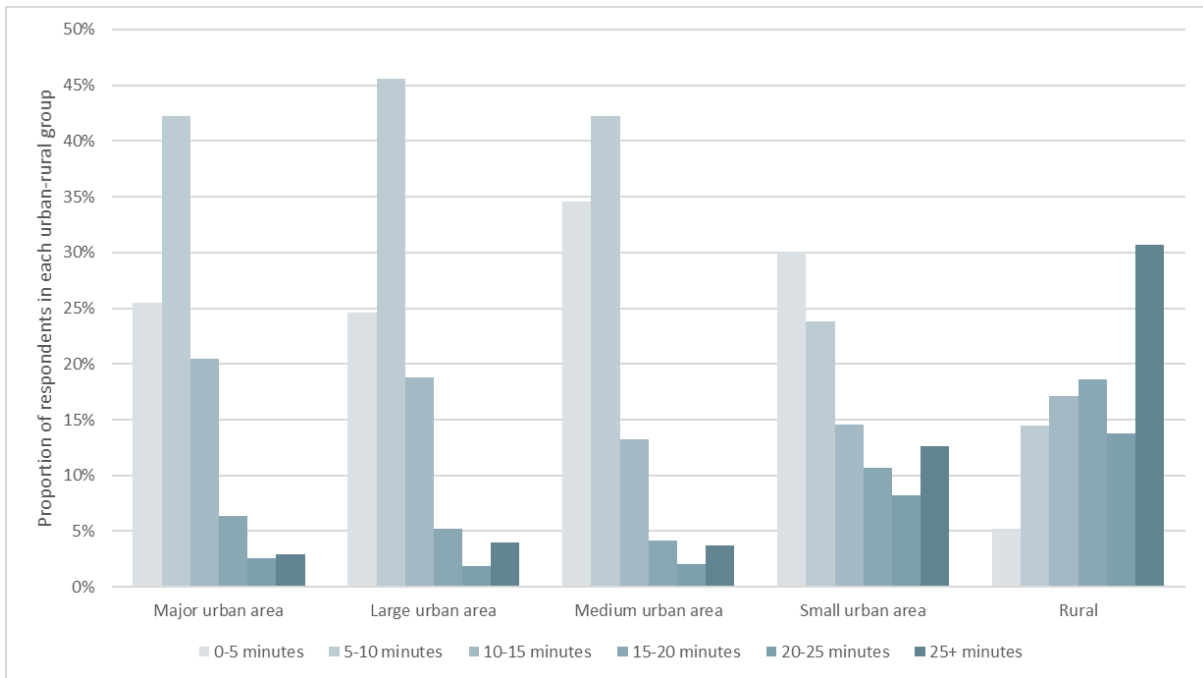
Figure E19 Proportion of respondents who do not usually drive to their main store

Source: Commission analysis based on data from our consumer survey, n=11,328.¹⁵⁰⁶

Most respondents do not usually drive more than five to 10 minutes to their main store

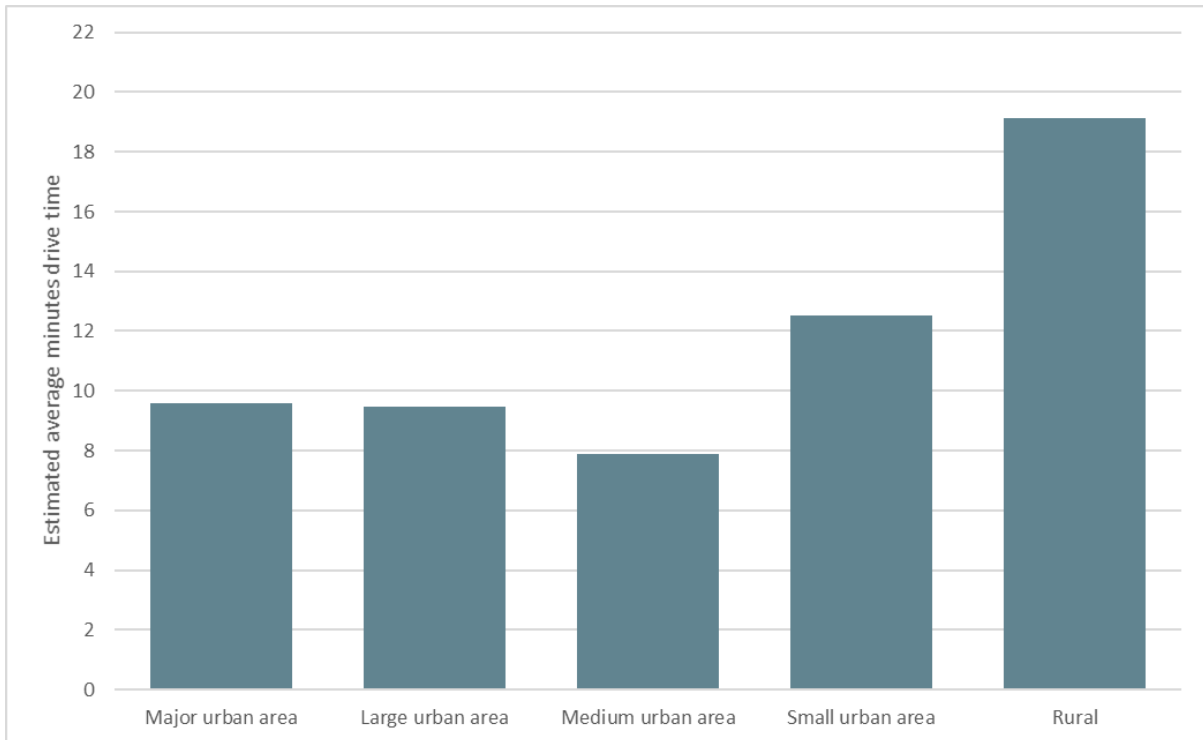
E115 On average, respondents in medium, large and major urban areas said they usually travel less than 10 minutes to their main store. Respondents in rural areas, on average, said they travel almost 20 minutes to their main store. Approximately a quarter of urban respondents said they travel less than five minutes to their main store. A summary of this analysis is shown in Figure E20 below.

Figure E20 How long it usually takes respondents to get to their main store



Source: Commission analysis based on data from our consumer survey, n=10,363.¹⁵⁰⁷

Figure E21 Average time it takes respondents to drive to their main store



Source: Commission analysis based on data from our consumer survey, n=6,534.¹⁵⁰⁸

1507 [].
 1508 [].

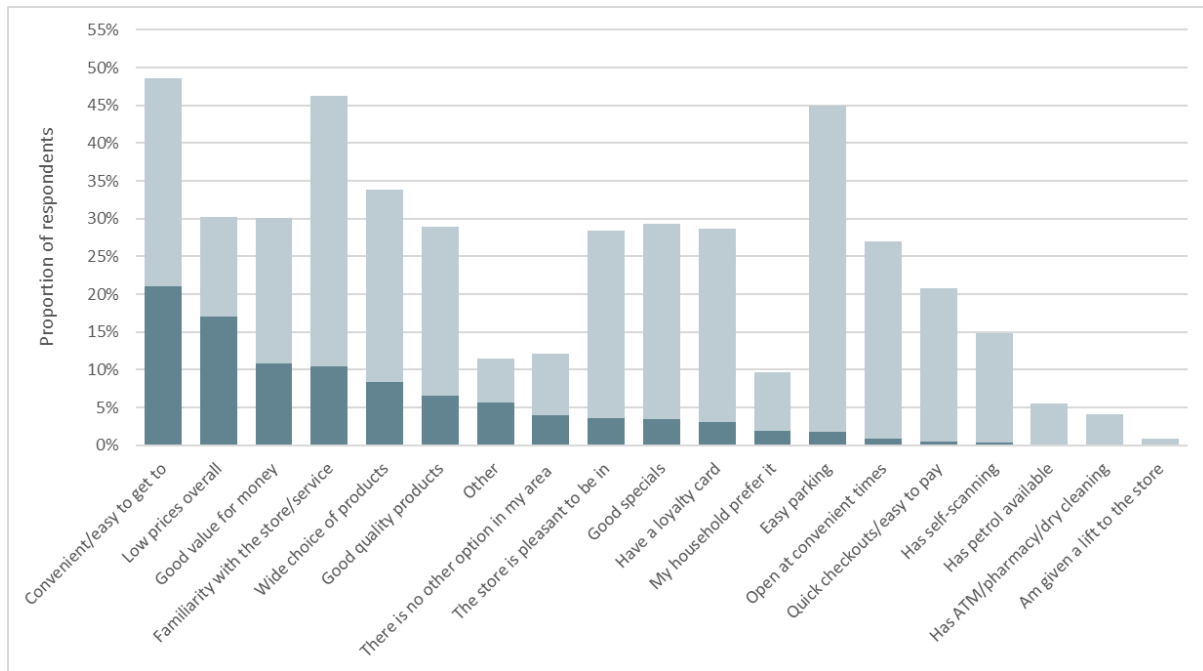
Why respondents choose to shop at their main store

- E116 We asked respondents to select from a range of 19 options (including a free-text box) to reflect why they choose to shop at their main store. There was a wide range of reasons why respondents said they choose to shop at their main store. However, convenience and low prices were the most common key drivers.
- E117 Figure E22 below shows respondents' stated reasons for shopping at their main store. For this question, respondents could select as many reasons that they felt applied.

“Convenience/easy to get to” and “low prices overall” are key drivers of store choice

- E118 Many respondents said they value attributes such as easy parking, convenient opening times and good specials. However, very few respondents consider any of these to be the single most important reason they shop at their main store.
- E119 This is illustrated by Figure E22 below. The total bar shows the proportion of respondents who considered the attribute to be a reason for their main store choice, when they could select multiple options (eg, 30% considered “low prices overall” one of the reasons they shop at their main store). The smaller, dark blue bars is the proportion of respondents who considered the attribute to be the single most important reason for their choice of main store (eg, just over 15% considered “low prices overall” the single most important reasons for their main store choice).
- E120 Some drivers of main store choice which are very common when multiple options are allowed, are very uncommon key drivers of main store choice. For example, 45% of respondents said ‘easy parking’ was one reason for their main store choice, however less than 1% considered it the single most important reason.
- E121 The dark blue bars show that convenient/easy to get to and low prices were the most common key drivers of main store choice. For this question, respondents could only select the single most important reason why they choose to shop at their main store. HoustonKemp, acting on behalf of Foodstuffs NI, submitted on this analysis and provided views on how these findings should be interpreted.¹⁵⁰⁹ This is discussed in Chapter 4 at paragraphs 4.65 to 4.72.

¹⁵⁰⁹ Foodstuffs NI “Submission on Market study into grocery sector draft report: Appendix B - HoustonKemp - Empirical evidence of grocery sector competition” (10 September 2021) at [91]-[97].

Figure E22 Why respondents said they shop at their main store

Source: Commission analysis based on data from our consumer survey, n=11,880.¹⁵¹⁰

There is some geographic variance in the key drivers of store choice

E122 As shown in Table E3 below, respondents' key drivers of store choice varied depending on where they lived in. Of note:

E122.1 "there is no other option in my area" was the most common key driver of main store choice for those in small urban areas;

E122.2 "convenient/easy to get to" was a more common key driver for those in larger urban areas, such as Auckland, than in smaller urban or rural areas; and

E122.3 a larger proportion of respondents in smaller urban areas selected "Familiarity with the store/service" than in larger urban areas.

Table E3 Single most important drivers of store choice, by urban-rural

Ranking	Major urban area	Large urban area	Medium urban area	Small urban area	Rural
1	Convenient/easy to get to	Convenient/easy to get to	Convenient/easy to get to	There is no other option in my area	Low prices overall
2	Low prices overall	Low prices overall	Low prices overall	Convenient/easy to get to	Familiarity with the store/service
3	Good value for money	Familiarity with the store/service	Good value for money	Low prices overall	Convenient/easy to get to
4	Familiarity with the store/service	Good value for money	Familiarity with the store/service	Familiarity with the store/service	Good value for money
5	Wide choice of products	Wide choice of products	Wide choice of products	Wide choice of products	Wide choice of products

Commission analysis based on data from our consumer survey, n=9,047.¹⁵¹¹

Where respondents said they would shop if their main store(s) closed

- E123 We asked respondents where they would shop if their main store(s) closed for the foreseeable future. We gave respondents the option to choose up to 12 types of stores, modified to account for their main store as respondents could select “I would go to the same store in a different location, or use the same type of store/service somewhere else.”
- E124 We asked this question to understand which stores respondents considered to be their best alternative if their main store was unavailable. We asked this question to see which stores respondents consider are the closest substitutes to their main store.
- E125 If respondents consider a store to be their best alternative to their current offering, this could be an indication that the two stores are competing closely, at least compared to stores which are not considered close alternatives.
- E126 We considered that it was important to phrase the question based on respondent’s best alternatives if their current store was closed. This was because this was easier for respondents to understand compared to hypothetical pricing scenarios.
- E127 This means, while we may gain some indication of which stores respondents consider to be the closest alternatives for each other, we are not able to infer that the closest alternatives are competing closely with each other. This is because a consumer might choose to go to a particular store if their current store is unavailable but would not switch store even if faced with a significant reduction to their current offering, such as higher prices.

¹⁵¹¹

- E128 We have also taken the following into account when analysing responses to this question:
- E128.1 Many factors may influence a consumer's choice of store such as location, quality and range and some consumers are more likely to switch stores in response to changes in these factors than others.¹⁵¹²
- E128.2 Woolworths NZ submitted that hypothetical questions, such as this one, are likely to present significant cognitive challenges to respondents, particularly due to including concepts such as 'foreseeable future'.¹⁵¹³ We acknowledge this question may have been challenging for some respondents to answer.
- E129 Our analysis may overestimate spending diverted to retailers other than major grocery retailers, as we did not ask respondents to estimate how they would split their spend between different options. We assumed that the spend would be split evenly. This approach may overestimate the proportion of spend that would be diverted to retailers other than the major grocery retailers as, based on the other responses, we expect that consumers are likely to spend more at the major grocery retailers than other retailers. Despite these limitations, we consider it useful to reproduce this analysis below for completeness. However, we have not relied on the analysis of responses to this question in reaching our findings on consumer behaviour.
- E130 In addition to looking at respondents' choice of main store by region, we also looked at where respondents would shop if their main store(s) closed by region as these two questions are related.

Main findings on where respondents would shop if their main store(s) closed

- E131 Our main findings are that:
- E131.1 just over half of respondents would shop at Countdown, New World or PAK'nSAVE if their main store closed. We found this result did not vary across different types of regions;
- E131.2 most respondents who reported one of the major grocery retailers as their main store would shop at the same retail banner in a different location or same type of retail banner, or a major grocery retailer; and

¹⁵¹² CMA "Good practice in the design and presentation of customer survey evidence in merger cases" (May 2018) at 35, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708169/Survey_good_practice.pdf.

¹⁵¹³ Woolworths NZ "Post conference submission on Market study into grocery sector" (24 November 2021) at [1.10] of Appendix Two.

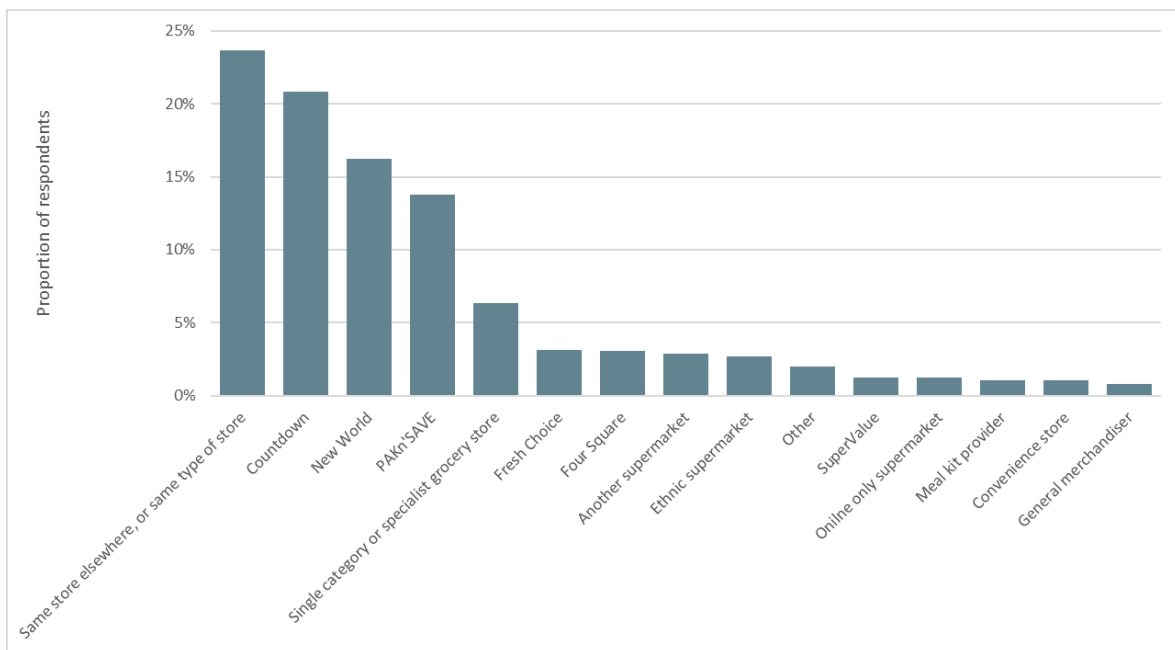
E131.3 most respondents who said they would shop at the same retail banner in a different location or same type of retail banners as their main store reported New World, Countdown or PAK’nSAVE, or a combination of two of these stores.

E132 These findings indicate that respondents report that they would switch to similar types of stores to their main stores and stores they would shop at in a typical week.

Which stores respondents would shop at if their main store(s) closed

E133 Figure E23 below shows that 51% of respondent would shop at New World, Countdown and PAK’nSAVE if their main store closed, and 24% would shop at the same store or same type of store as their main store.¹⁵¹⁴ Same store largely refers to New World, Countdown and PAK’nSAVE as 98% of respondents who told us they would shop at the same store if their main store closed, reported that at least one of their mains store was New World, Countdown and/or PAK’nSAVE.

Figure E23 Proportion of respondents who would shop at a store if their main store(s) closed



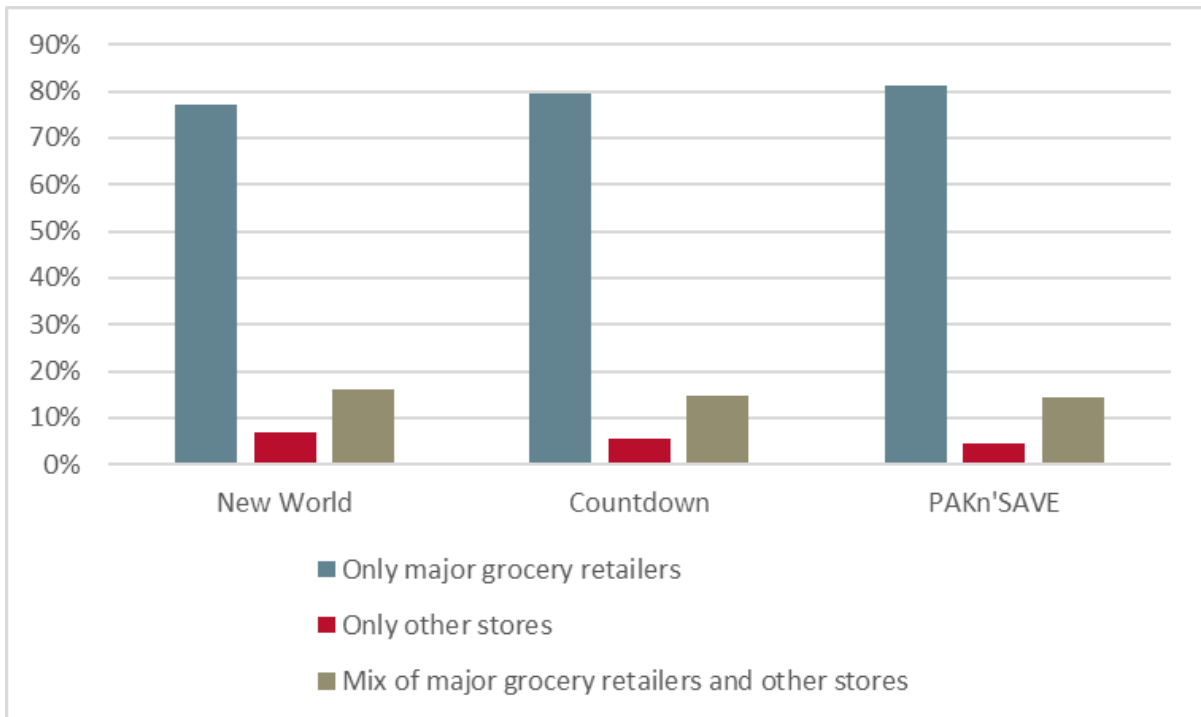
Source: Commission analysis based on data from our consumer survey, n=12,097.¹⁵¹⁵

E134 Figure E24 below shows that over 77% of respondents who shop at a major grocery retailer would switch their shopping to only the major grocery retailers if they reported their main store as Countdown, New World or PAK’nSAVE. This is relevant as most respondents reported these stores as one of their main stores.

¹⁵¹⁴ Respondents could select ‘I would go to the same store in a different location or use the same type of store/service somewhere else’.

¹⁵¹⁵ [].

Figure E24 Type of stores respondents said they would switch to if their main store closed, grouped by respondents' main store choice



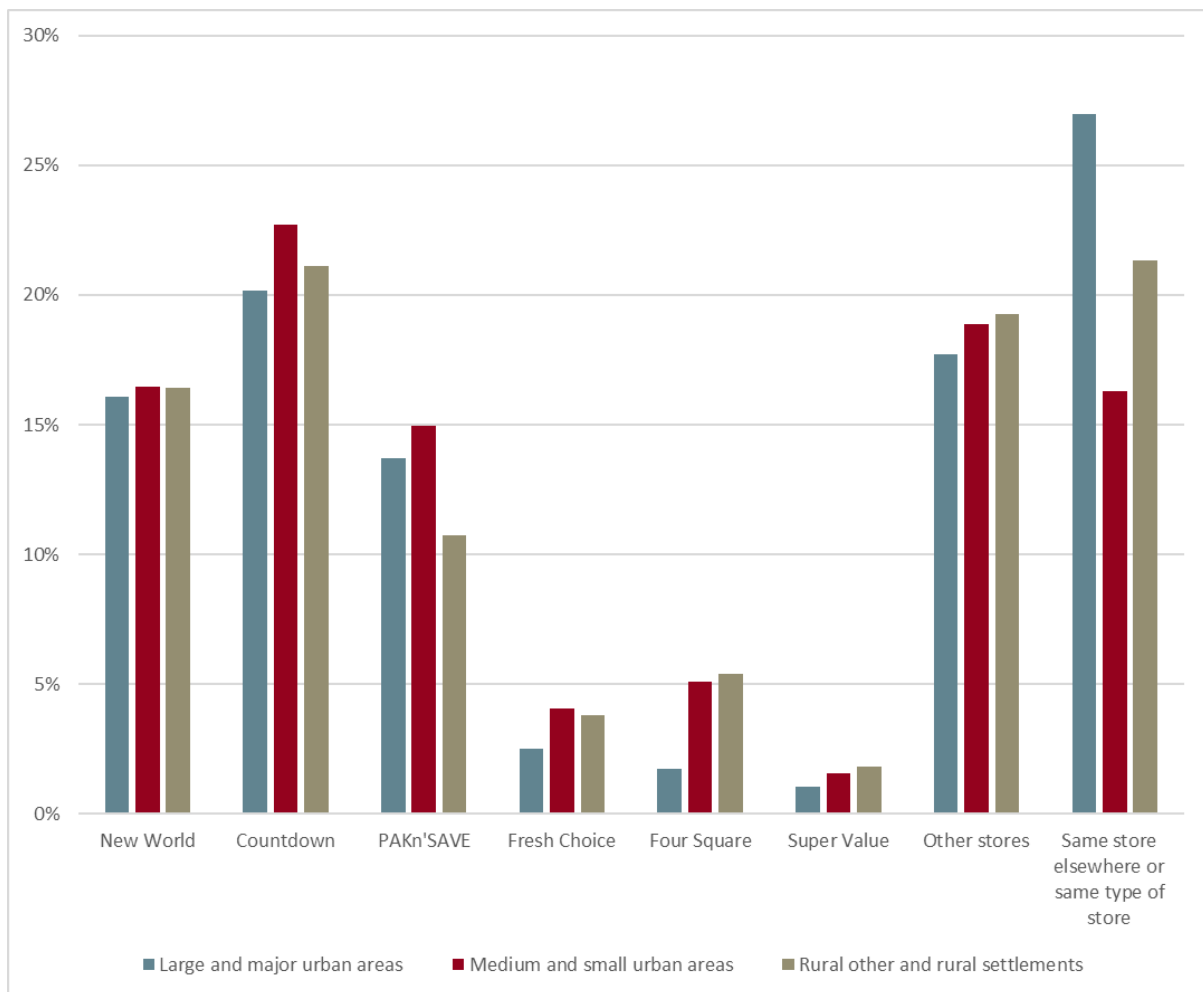
Source: Commission analysis based on data from our consumer survey, n=3,700 to 4,775. The sample size ranges from 3,700 for New World customers to 4,775 for Countdown customers.¹⁵¹⁶

E135 Figure E25 shows that most respondents would shop at New World, PAK'nSAVE or Countdown if their current main store closed across different regions. These results are similar to respondents' choice of substitute store across New Zealand as shown in Figure E23 and respondents' choice of main store across regions in Figure E18 above.

E136 However, there are some slight variations across region:

- E136.1 fewer respondents told us they would shop at the same store in a different location or same type of store in small and medium urban areas compared to other areas;
- E136.2 fewer respondents told us they would shop at PAK'nSAVE in other rural and rural settlements compared to other areas; and
- E136.3 more respondents told us they would shop at Four Square or FreshChoice in urban areas compared rural areas.

Figure E25 Proportion of respondents who would shop at a store if their main store closed, by region



Source: Commission analysis based on data from our consumer survey, n=1,515 to 10,818. The sample size ranges from 1,515 in rural other and rural settlements to 10,818 in large and major urban areas.¹⁵¹⁷

How respondents compare and choose grocery products

E137 We asked respondents some questions about how they choose what products to purchase. These were:

E137.1 how often do you check unit pricing on products (where available)?

E137.2 how often do you usually compare prices between similar products when grocery shopping (eg, three different brands of laundry detergent)?

E137.3 which of these best describes which brands of grocery products you buy?

E138 As discussed at paragraph E44, some respondents may have over-reported the frequency with which they check unit prices or compare prices between products.

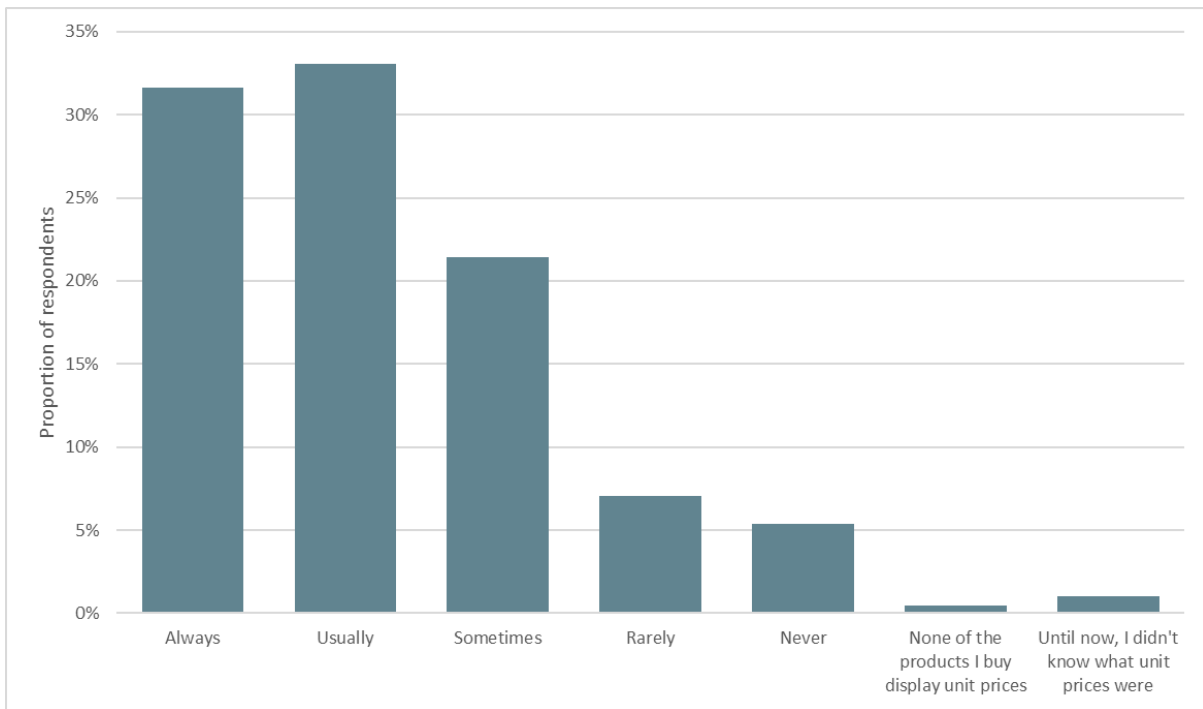
¹⁵¹⁷ [].

Respondents report a high rate of checking unit pricing

E139 Almost two thirds of respondents reported always or usually checking unit pricing, where available, when grocery shopping. A very small proportion of respondents stated they did not know what a unit price was, indicating most respondents had at least a general awareness of the practice.

E140 The question provided an example of unit pricing to ensure respondents would be able to easily understand the question (see Figure E27 below). Therefore, any confusion regarding what is meant by a unit price is likely to be minimal.

Figure E26 Reported use of unit price




Source: Commission analysis based on our consumer survey data, n=12,083.¹⁵¹⁸

Figure E27 How the unit price question was displayed to respondents

How often do you check unit pricing on products (where available)?

Never
 Rarely
 Sometimes
 Usually
 Always
 None of the products I buy display unit prices
 Until now, I didn't know what unit prices were

Here is what unit pricing looks like



JASMINE RICE 5 KG \$12.99
 26 cents per 100 grams
 ↑
 Unit price

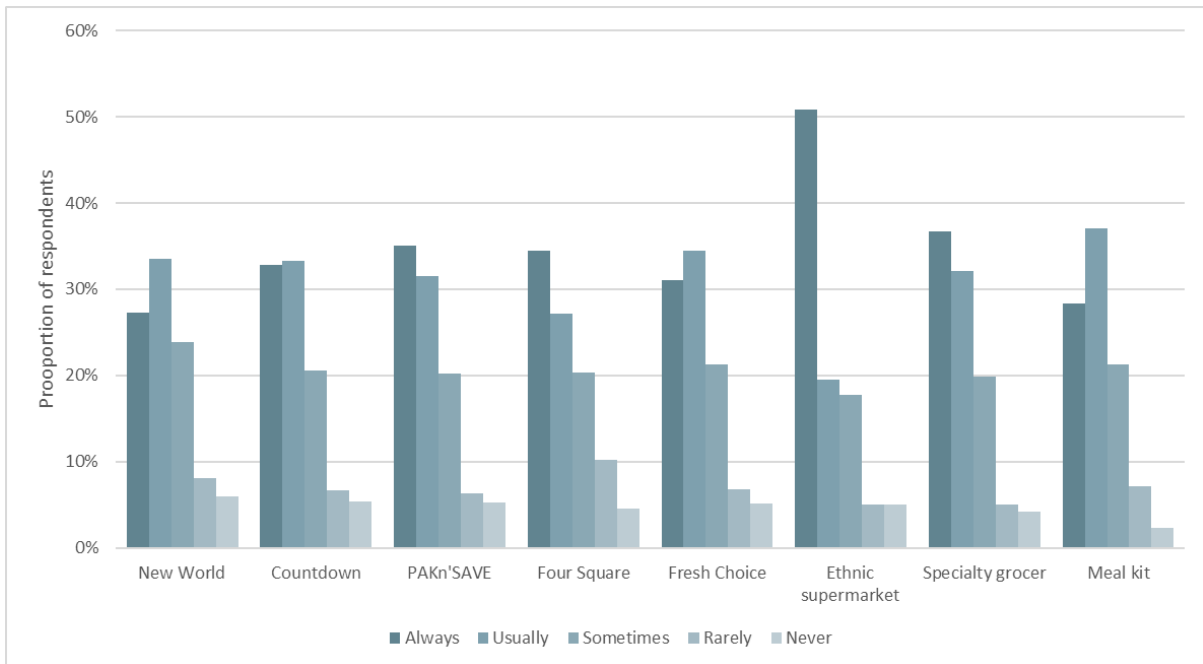
JASMINE RICE 1 KG \$3.99
 40 cents per 100 grams
 ↑
 Unit price

[Previous](#) [Next](#)

Reported use of unit pricing does not vary much between the main retail banners

- E141 Reported checking of unit price is relatively consistent between PAK'nSAVE, Countdown and New World (albeit slightly less frequent for New World shoppers).
- E142 Reported checking of unit price appears higher for other retailers, for example, ethnic supermarkets. However, given the relatively small sample sizes for these groups ($n < 100$), additional care should be taken when reviewing these results.

Figure E28 Reported use of unit price, by retail banner



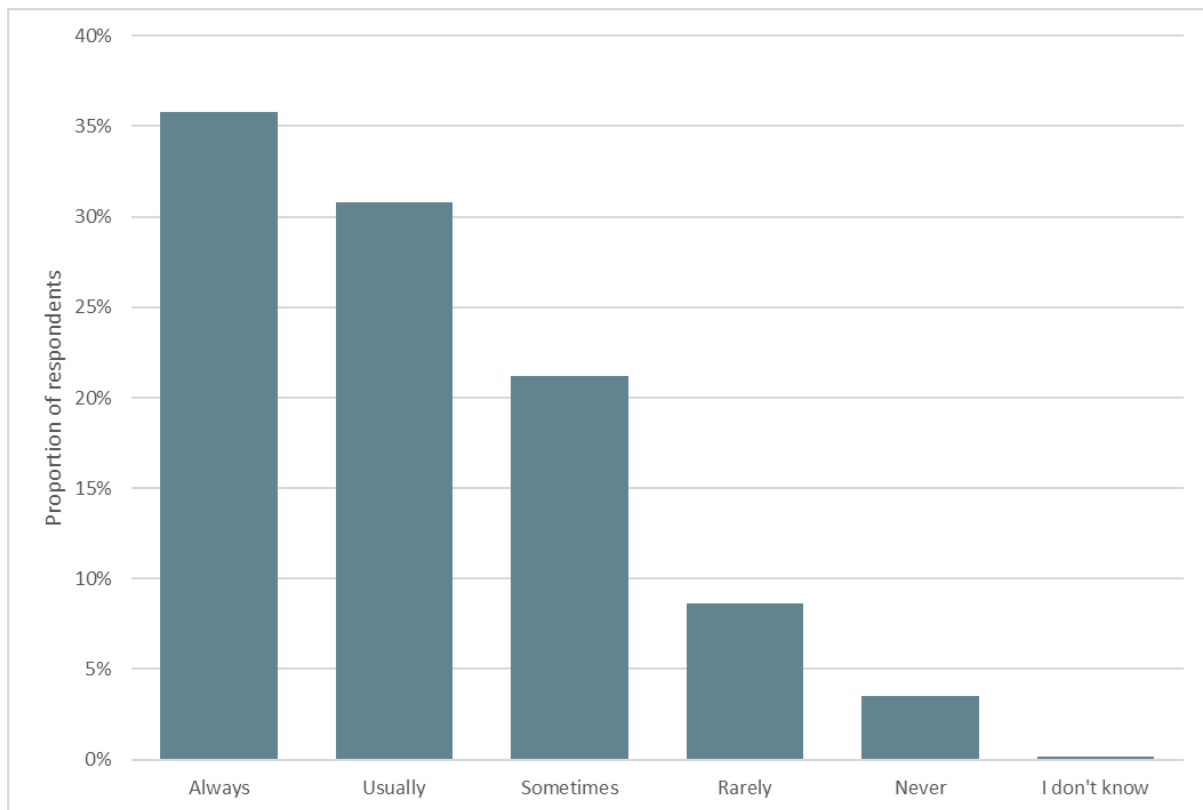
Source: Commission analysis based on our consumer survey data, n=10,287.¹⁵¹⁹

Respondents also said they often compare prices between products

E143 Similar to the responses regarding unit pricing, two thirds of respondents said they ‘usually’ or ‘always’ compare prices between similar products when grocery shopping, as shown in Figure E29 below.

1519

[].

Figure E29 Reported checking of prices between similar products

Source: Commission analysis based on our consumer survey data, n=12,067.¹⁵²⁰

What respondents told us about how they use grocery loyalty programmes

E144 We asked respondents a range of questions about their experiences with grocery loyalty programmes. This included what programmes they were members of, why they signed up for the programmes, how well they know how the retailer uses their data, and how closely they read the terms and conditions when registering.

E145 Respondents could select from five options in the survey:

E145.1 Clubcard (New World);

E145.2 Airpoints (New World);

E145.3 Onecard (Countdown);

E145.4 AA Smartfuel (Countdown); and

E145.5 Other (free text).

- E146 Flybuys is also an option at New World stores. This option was inadvertently missed from the survey script. Foodstuffs made us aware of this omission in the latter stages of the survey being live; however, by this stage it was impractical to amend the script.
- E147 This omission may have resulted in the under-reporting in the number of respondents who are members of the Flybuys programme. It is possible this may have had some effect on our results, however responses to questions about loyalty programmes did not seem to vary depending on what programmes were a member of. Additionally, respondents had the ability to provide a free-text response regarding what programme they are a member of.¹⁵²¹
- E148 Woolworths NZ submitted that the way we listed the five options of loyalty programmes may have been confusing to respondents, as the list conflates supermarket loyalty schemes (eg, Clubcard) with other loyalty schemes that have a supermarket relationship (eg, Airpoints).¹⁵²² The purpose of providing this list was to capture the range of loyalty programme cards accepted at the major grocery retailers and/or linked to rewards available through supermarket loyalty schemes.

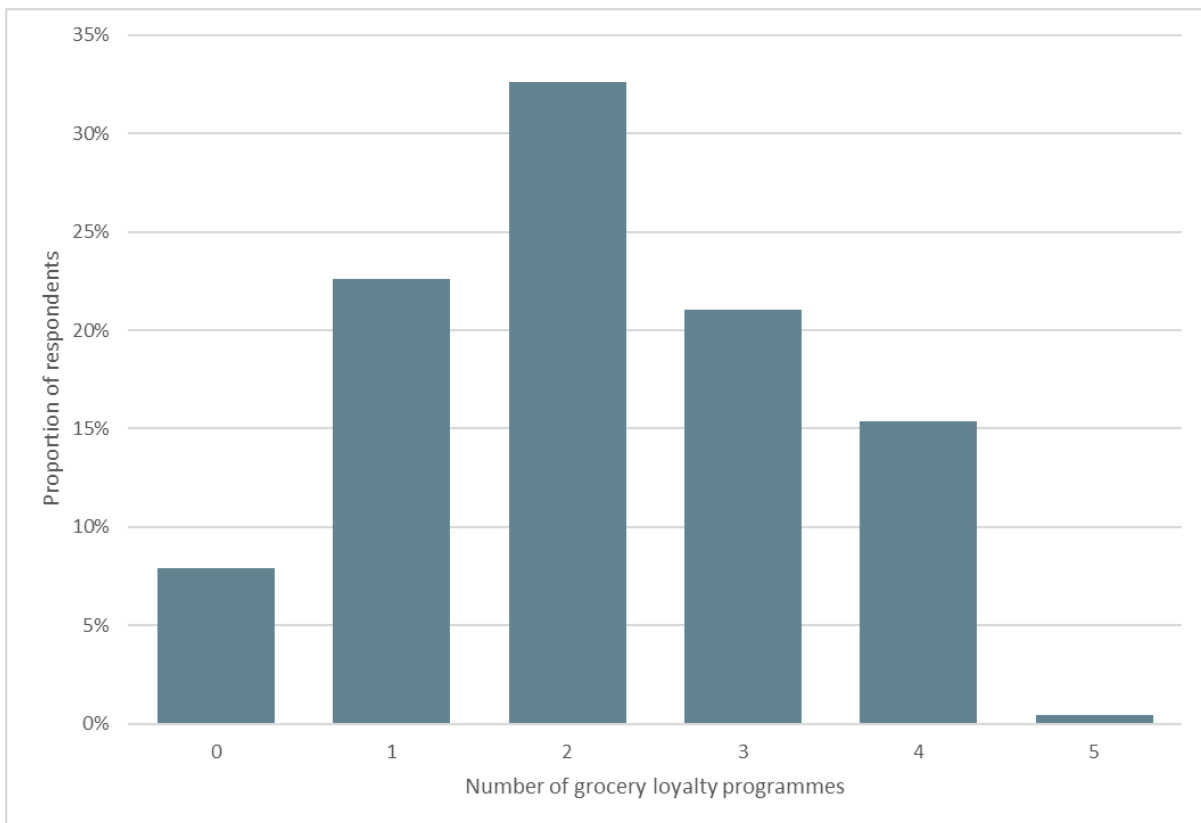
Most respondents are a member of a grocery loyalty programme

- E149 Nine in 10 respondents are a member of at least one grocery loyalty programme. On average, these respondents are member of 2.3 programmes. This appears consistent with figures about loyalty programme membership contained in research provided by the major grocery retailers.¹⁵²³

¹⁵²¹ Approximately 78 out of 328 respondents provided “Flybuys” as a free-text response to this question.

¹⁵²² Woolworths NZ “Post conference submission on Market study into grocery sector” (24 November 2021) at [1.11.1] of Appendix Two.

¹⁵²³ For example: [];
[].

Figure E30 Number of loyalty programmes respondents are a member of

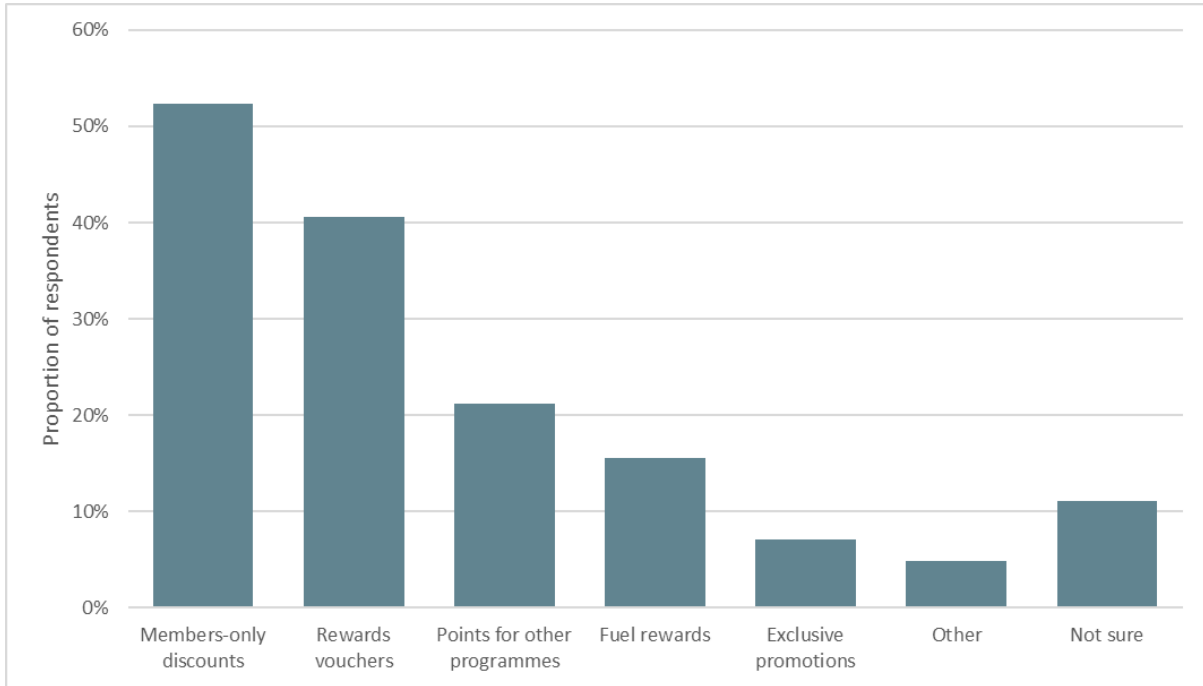
Source: Commission analysis based on our consumer survey data, n=12,097.¹⁵²⁴

Member-only discounts were the most common reasons respondents signed up for their respective loyalty programme

E150 Respondents said they signed up for loyalty programmes for a range of reasons. Figure E31 below shows that the most common reasons why respondents signed up for the grocery loyalty programme they use most often.

E151 For this question, we provided respondents a list of seven reasons why they signed up for the programme they use most often. Respondents could select multiple options or provide a free-text response if their reason was not listed.

Figure E31 Respondents’ reasons for joining their main loyalty programme



Source: Commission analysis based on our consumer survey data, n=11,141.¹⁵²⁵

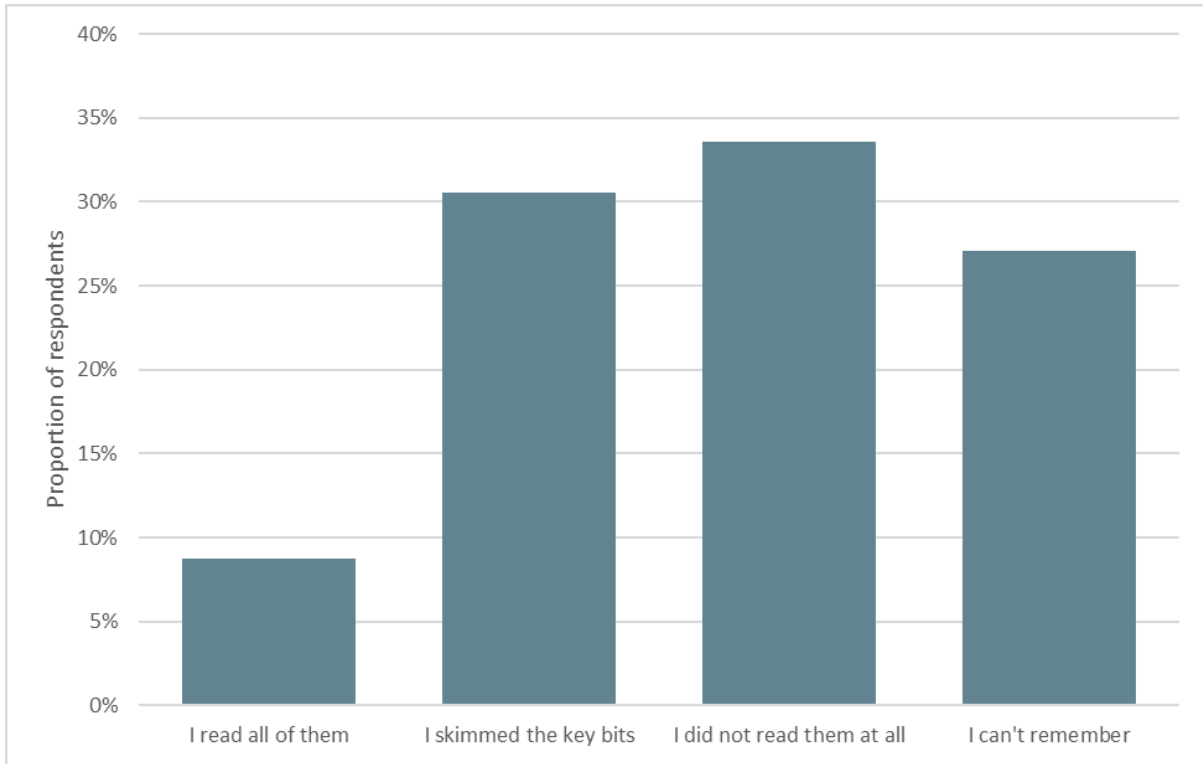
Less than one in 10 respondents said they read all the terms and conditions of the loyalty programme they use most often

E152 When respondents who are members of a grocery loyalty programme were asked how closely they read the relevant terms and conditions most did not read all of them or could not remember.

¹⁵²⁵

[].

Figure E32 How closely respondents reported reading the terms and conditions of the programme the use most often



Source: Commission analysis based on data from our consumer survey, n=11,039.¹⁵²⁶

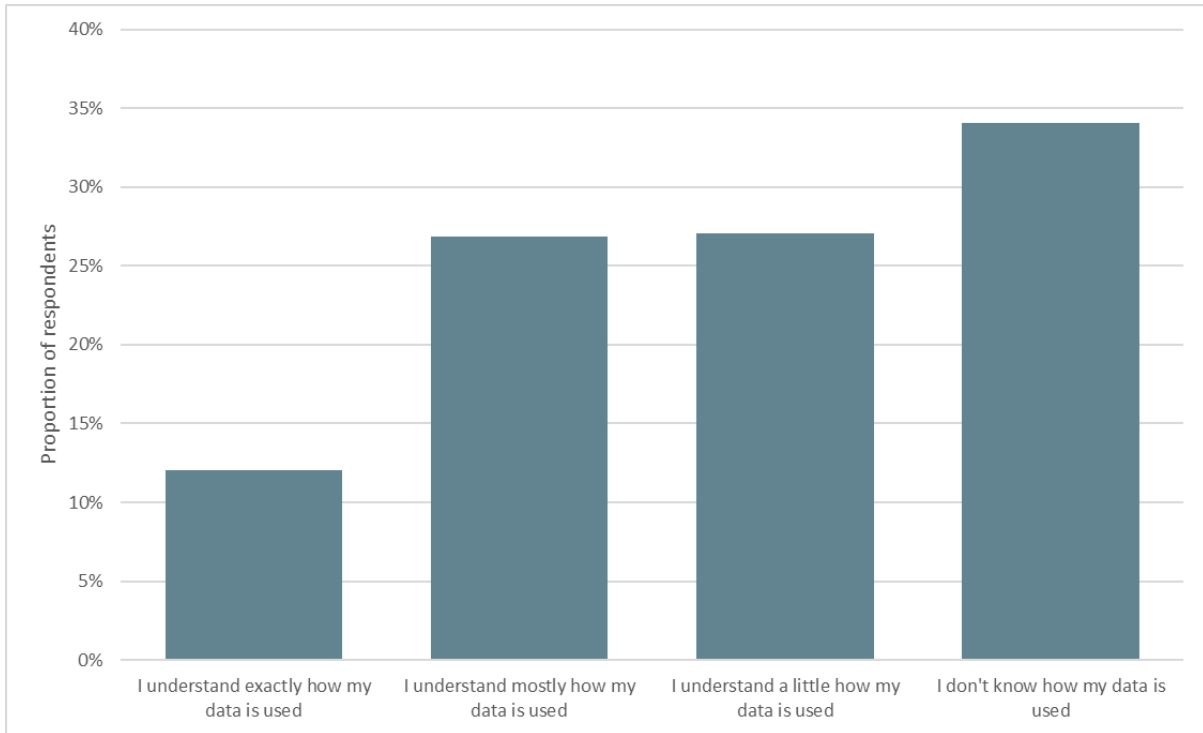
A third of respondents said they do not know how their data is used

E153 When respondents who are members of a grocery loyalty programme were asked about their awareness of how their data was used by the operator of this programme, most said they did not know exactly how their data is used.

¹⁵²⁶

[].

Figure E33 How respondents described their awareness of how their grocery loyalty programme uses the data it collects



Source: Commission analysis based on data from our consumer survey, n=11,105.¹⁵²⁷

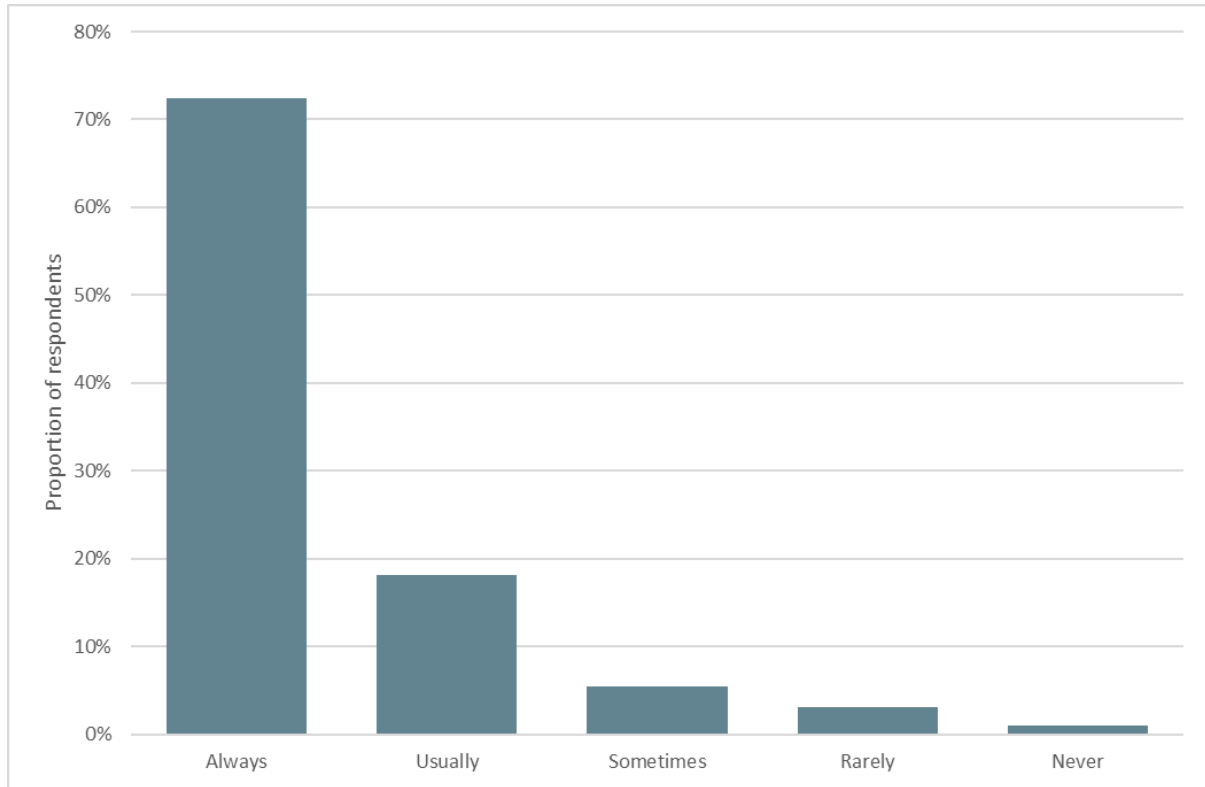
Almost three quarters of respondents said they always scan their loyalty card

E154 When respondents who are a member of a grocery loyalty programme were asked how often they scan their card when making a purchase, almost all respondents said they usually or always scan or swipe their card.

¹⁵²⁷

[].

Figure E34 How often respondents said they swipe or scan their loyalty card when making a purchase



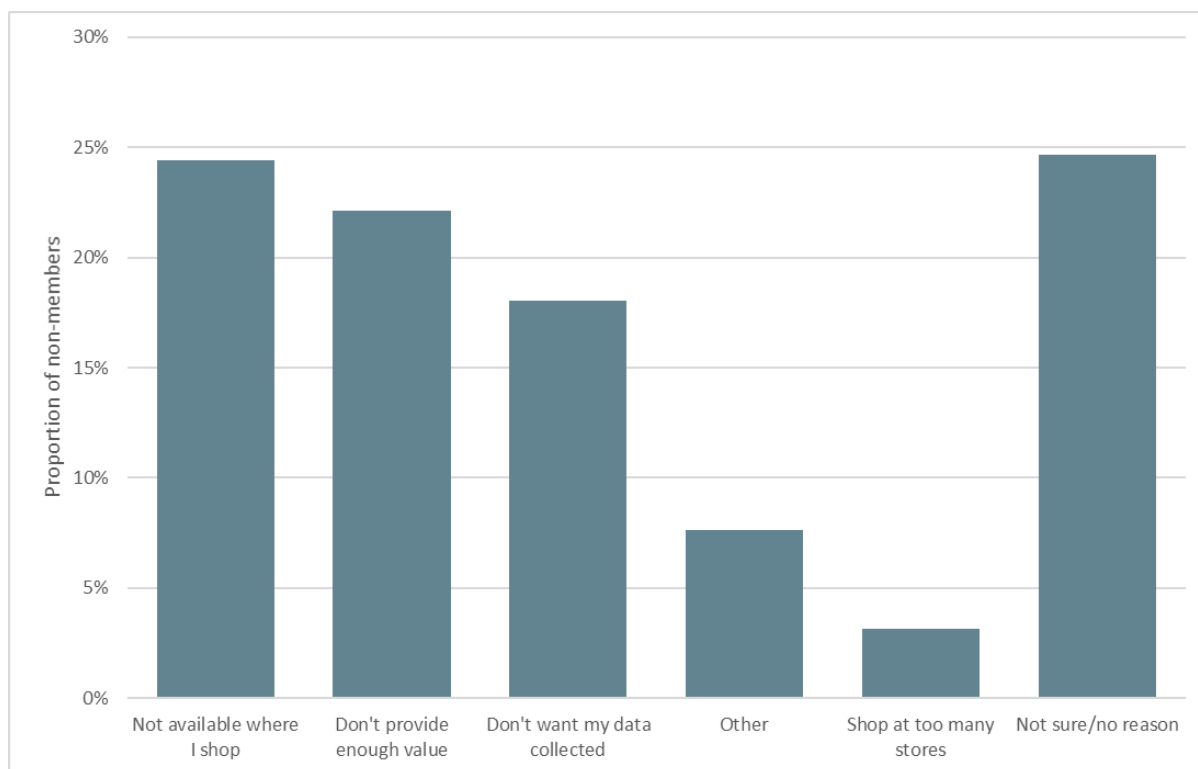
Source: Commission analysis based on data from our consumer survey, n=10,505.¹⁵²⁸

The reasons why some respondents were not members of a loyalty programme varied

E155 About 8% of respondents reported not being a member of any programme. The most common reason for this was that a loyalty programme is not available where they shop. However, there did not appear to be any strong reasons why these respondents were not members of any programme.

E156 It also possible that a proportion these respondents are actually a member of the Flybuys programme but did recall they were a member, due to the omission of Flybuys as an option.

Figure E35 Why respondents said they are not a member of any grocery loyalty programmes



Source: Commission analysis based on data from our consumer survey, n=953.¹⁵²⁹

What respondents told us about their experiences shopping for groceries

E157 We received 6,617 free-text responses to the question “Is there anything else you would like to tell us about your experiences shopping for groceries?”. We read each of these comments to identify themes and common narratives. These are discussed in detail below. A wide range of themes were represented in these comments and respondents often raised many different points in their response.

E158 We conducted this analysis to capture and present what respondents told us, using this to identify common themes and narratives. Given respondents did not provide any personally identifiable information, we are unable to contact any respondent to verify, or further understand, what they have told us.

E159 The Ipsos report, which is published alongside this report, provides detailed qualitative research into many of the themes and comments raised by respondents. Our consumer survey was not designed with the intent of conducting in-depth qualitative research.

How we conducted our analysis of the free-text responses

E160 Responses that contained text, but were non-responses (eg, “no comment”, “n/a”, etc.) were removed to yield 6,617 free-text responses.

- E161 We then categorised these responses, using keywords, into eight main themes. For example, responses which contained words such as “price” or “cost” were categorised within the Price theme.
- E162 We then read each response to:
- E162.1 ensure the themes assigned using key words were accurate (and removing them if they were not);
 - E162.2 add any other main themes which were relevant;
 - E162.3 add relevant sub-themes; and
 - E162.4 identify any emerging narratives from the responses.
- E163 Table E4 below shows the themes and sub-themes we assigned the responses against.
- E164 Responses were coded with a sub-theme if they related to a specific matter. For example, a response discussing pricing labels will have already been assigned under ‘Price’, but this would additionally be assigned under the sub-theme ‘Pricing labels and discounts’.
- E165 This categorisation was completed by following defined sub-themes.¹⁵³⁰ This was done to minimise definition shift during the code process, to ensure consistency.
- E166 Once we completed the coding, some key themes were selected to analyse in further detail. These were selected as we considered them particularly relevant to our study. Responses related to these themes were then summarised, and peer reviewed for consistency.

¹⁵³⁰ For example, the ‘Dietary requirements’ sub-theme was defined as comments on ‘The range of products stocked by grocery retailers which cater to various dietary requirements (eg, gluten free, vegan, free-from)’.

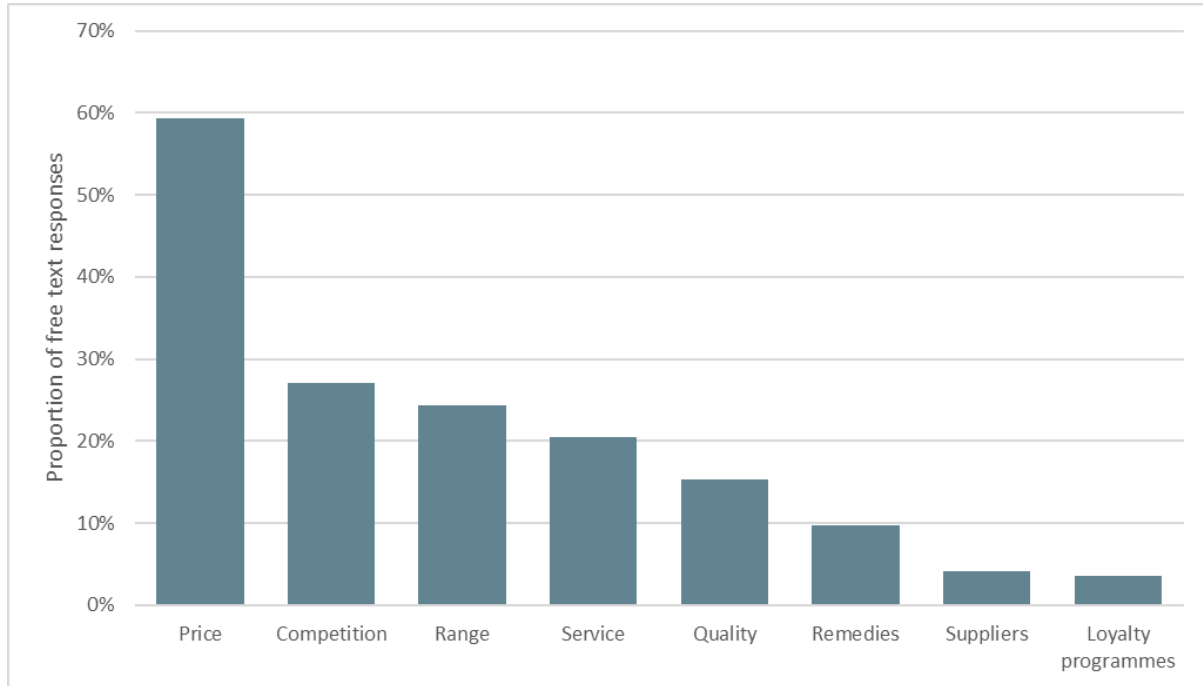
Table E4 Themes and sub-themes used to categorise the free-text responses

Price	Quality	Range	Service	Competition	Suppliers	Loyalty programmes	Remedies
Price change due to COVID-19 pandemic	Sustainability/environmental	Dietary requirements	Store cleanliness			Data collection/privacy	Tax
High prices/poor value	Bakery	Choice of products	COVID-19 pandemic procedures			Loyalty discounts	Price controls
Low prices/good value	Meat/seafood	Availability of products	Staff and checkouts			Consumer benefit	New entrant
Pricing labels and discounts	Fresh produce		Convenience				Consumer information
Price integrity							Country of origin
Promotions							

Overview of the themes from the responses

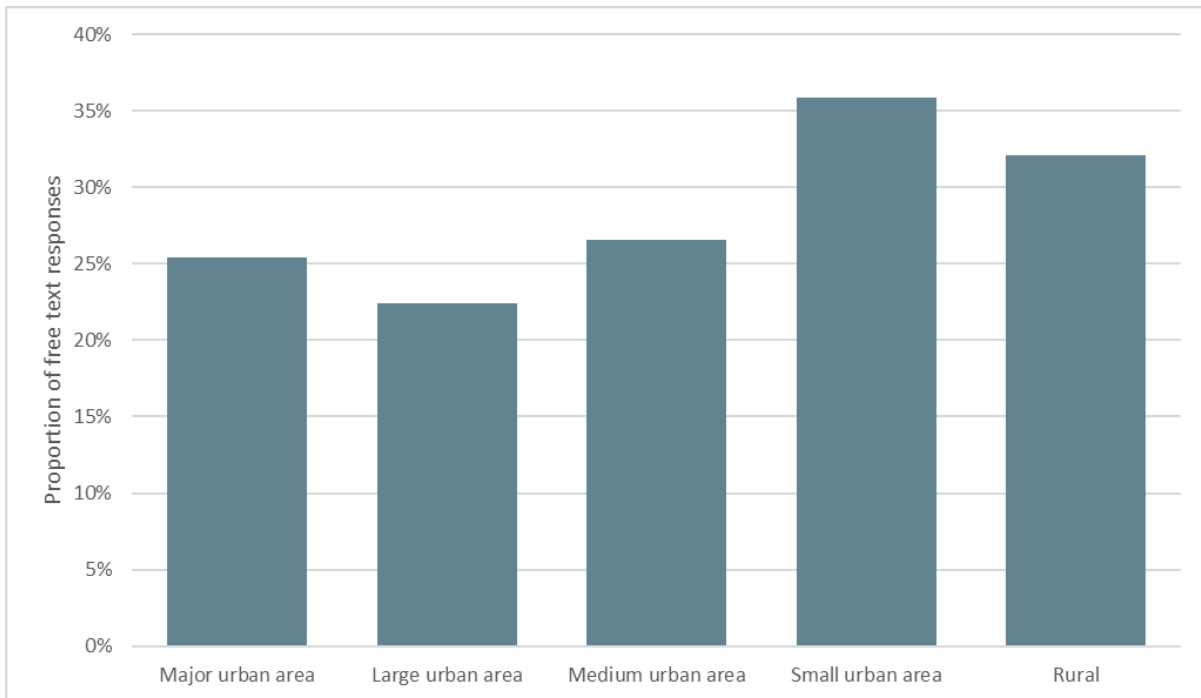
E167 Figure E36 below shows the prevalence of the themes people talked about in their free-text responses. Price was the most discussed theme. However, it is clear respondents care about a range of things beyond price when grocery shopping.

Figure E36 Themes of free-text responses



Source: Commission analysis based on data from our consumer survey, n=6,617.¹⁵³¹

E168 In general, the prevalence of these themes did not tend to vary significantly depending on region or other demographic variables. However, there were some differences. For example, as shown in Figure E37 below, comments about competition appeared to be more prevalent in smaller urban and rural areas.

Figure E37 Where people who discussed competition live

Source: Commission analysis based on data from our consumer survey, n=6,058.¹⁵³²

Respondents' perceptions

E169 As shown in Figure E36 above, over half the responses we received discussed price. Of these, the most common comment was about the perception of high prices (or poor value) of groceries in New Zealand.

What respondents said about prices

E170 Roughly one third of feedback about prices was that the price of groceries in New Zealand is high or poor value, particularly in comparison to other countries. Respondents also commented how the cost of groceries has increased relative to their income. These types of comments appeared to be more prevalent among respondents in younger age brackets.

E171 Some respondents said they are more likely to purchase products that are on special and may avoid buying products that are at full price.

E172 Some respondents identified factors that make it harder for them to base their decisions on price and made it harder to compare prices. These reasons include:

E172.1 products can be advertised as “special” where there is no discount or special offer;

E172.2 the standard price and discounted prices change rapidly, and prices can vary between different stores under the same retail banner;

E172.3 perceived discrepancies between the shelf price and the checkout price (either an error or member-only discount);¹⁵³³ and

E172.4 unit pricing is not used consistently and is often missing on promotional price labels.

What respondents said about product quality

E173 Many respondents also provided feedback on the quality of products that the supermarkets provide. Typically, feedback focused on quality across three broad areas: bakery, meat and seafood, and produce.

E174 Some respondents that discussed quality told us that the quality of meat, seafood and produce at the major grocery retailers is poor. Some respondents would visit specialist stores such as green grocers, butchers or farmers markets for better quality products.

E175 Some respondents that discussed quality identified that better quality products (such as meat) are produced in New Zealand but exported rather than sold in local stores.

What respondents said about the range of products available

E176 The range of products available in store was a key theme for roughly a quarter of respondents. These respondents provided feedback about the range of products available at any given store or retail banner, as well as how many stores were accessible to them and near where they live.

E177 Some consumers reported that they have noticed that there are fewer brands to choose from for some products, and that branded products may be discontinued if a private label alternative is introduced. Private label products were described generally as a cheaper alternative to branded products.

E178 Respondents who would prefer to do all their shopping at one supermarket told us that the range of products available was a key factor for their decision to shop elsewhere as well.

E179 For respondents that identified a specific dietary requirement (such as gluten free), the range available at a given supermarket heavily influenced which store they visited. Several respondents noted that the range of diet-specific products available can be particularly limited.

¹⁵³³ Approximately 200 respondents discussed concerns relating to the perceived consistency of prices between advertisements/in-store, shelf prices/till prices, etc.

What respondents said about service and convenience

- E180 Many respondents told us how many supermarkets were nearby, or the travel time to their nearest store. Consistent with the responses in the previous section, in the free-text responses respondents told us that they found supermarkets nearby to be more convenient, and told us that this was likely to impact which supermarket they decided to visit, and how often they shop each week.
- E181 Our feedback indicated that when a consumer has several shops nearby, they are likely to target a specific store that offers the best value to them (a combination of price, quality or range), for a large weekly shop. They will supplement the single shops with smaller shops at whichever supermarket is closest to access.
- E182 Some respondents that used online shopping indicated they would shop with only one shop once they had initially compared the quality of each online website. The decision was based more on the quality of the online store and delivery cost rather than groceries value.

What respondents said about loyalty programmes

- E183 A small number of respondents (less than five percent) commented on loyalty programmes. Feedback was mixed between the benefits (or lack there-of) of the cards and the requirement to have a card to access discounts.
- E184 Some respondents expressed frustration at the requirement to be a loyalty programme member to access a discount. Some respondents appeared to not like the fact that retailers use loyalty cards to collect data about their purchase information. Feedback also included frustration at missing out on discounts if the respondent did not have a card on them for a particular visit.
- E185 For the respondents that provided feedback, it appeared as though a key driver for joining loyalty programmes was to access the member-only discounts rather than the programmes other rewards (such as fuel discounts or points). When a respondent did refer to the benefits, they typically found the benefits (other than access to member-only discounts) negligible.

Respondents' suggestions and views about potential recommendations

- E186 Approximately 10% of respondents made recommendations to the issues that they raised in their feedback.
- E187 In the context of high prices for healthy foods, some respondents suggested GST should not apply to some foods. This was primarily suggested for fresh produce and was also suggested for other core food items such as meat. Other feedback that identified the low price of processed foods suggested a sugar tax.

- E188 The most suggested recommendation was the entry of a new retailer to address a lack of competition, with approximately 180 respondents making comments to this effect. Many of these comments suggested that a grocery retailer, such as Aldi, should be encouraged to enter New Zealand. Other respondents noted they felt there was limited competition in their area and expressed a desire for more options. This feedback identified the lack of competition as a reason for high prices, limited range, or poor quality.
- E189 Many of these respondents had previously lived overseas and made comparisons to international groceries markets (such as the UK or Australia), and specific competitors such as Aldi or Costco.
- E190 Some respondents were concerned with the current lack of visibility of a product's country of origin. These respondents would prefer to see better information about where a product's ingredients are sourced, and whether they are produced ethically and sustainably.

Question script for our consumer survey

Introductory page

Kia Ora and Welcome

Thank you for clicking through to our survey, it should take you around five to 10 minutes to complete.

This survey will help us understand how New Zealanders typically shop for groceries. When completing the survey, please think about how you typically shop for groceries (ie, at Alert Level 1), rather than how you might shop due to any COVID-19 pandemic restrictions.

Your response will be used by the Commission as part of our study into New Zealand's grocery sector. We will not share your response with third parties unless required to do so by law.

Your response will be grouped with others and we may publish a summary of these grouped results on our website.

If you need to provide the Commission with confidential, commercially sensitive or personal information, please email us at marketstudies@comcom.govt.nz to discuss the best way to do this.

The Commission has also published a factsheet [[hyperlink](#)] which outlines the purpose of the study and what we are looking at, the process we are following, what the potential outcomes can be, and how and when you can take part.

To go directly to the survey please click on the 'Next' button at the bottom of the page.

Begin Survey

Survey questions

First, some questions about how you shop for groceries

By groceries, we mean meat, fruit and vegetables, canned goods, dairy products and other types of food and drink, as well as other household products, like toilet paper, cleaning products and pet food. These products can usually all be purchased at a supermarket, but are often available through other shops as well.

1. How involved are you in the grocery shopping for your household?

By your 'household' we mean the people you shop for groceries for and who live in the same place as you

- a. Main shopper
- b. Shared with others
- c. Not usually involved in the grocery shopping

[if c, skip to Q25]

2. INCLUDING YOURSELF, how many people do you generally shop for?

- a. 1
- b. 2
- c. 3
- d. 4
- e. 5 or more

3. How do you usually buy most of your groceries?

- a. In store
- b. Online and delivered to me
- c. Ordered online and collected in store

4. Which of the following best describes how you usually shop for groceries each week?

- a. I tend to make one or two large shop(s)/get one or two large order(s)
- b. I tend to do one or two larger shop(s)/order(s) and a few smaller shop(s)/order(s)
- c. I do several smaller shops/orders
- d. None of these, I usually do less than one shop a week

[if 3d go to Q9, otherwise continue to Q5]

For the next few questions, think about your shopping during a typical week

We want to understand how you usually shop under normal conditions when not affected by restrictions due to Alert Levels 2 or 3. If you are not sure what a typical week is for you, think about how you shopped for groceries in the most recent week you can remember at Alert Level 1.

5. During a typical week, which of these stores/services do you buy groceries from?

- a. New World
- b. Countdown
- c. PAK'nSAVE
- d. Four Square
- e. FreshChoice
- f. SuperValue
- g. An ethnic supermarket (eg, Tai Ping, Japan Mart, Yogijis Food Mart)
- h. Another supermarket (eg, Farro Fresh, Moore Wilson's, Bin Inn)
- i. A single-category or specialist grocery store (eg, greengrocers, butchers, bakeries)
- j. A general merchandiser (eg, The Warehouse)
- k. A convenience store (eg, dairies, petrol stations, Night n Day)
- l. A meal kit provider (eg, Hello Fresh, My Food Bag)
- m. An online-only supermarket (eg, The Honest Grocer)
- n. Other (please state)

[Questions 6 to 8 are provided for all stores selected at Q5]

6. During a typical week, how many times would you shop with [store response to Q5]?

Number of times []

7. During a typical week, how much in total would you spend with [store response to Q5]?

- a. \$0-10
- b. \$10-25
- c. \$25-50
- d. \$50-100
- e. \$100-200
- f. \$200-300
- g. \$300+

8. During a typical week, what would you buy from [store response to Q5]?

Please select all that apply

- a. Fresh fruit or vegetables
- b. Meat, poultry or seafood
- c. Dairy or eggs (eg, milk, cheese, eggs)
- d. Frozen food (eg, frozen vegetables, ice cream, pizza)
- e. Chilled food (eg, sauces, dips, soups)
- f. Deli goods (eg, salads, small goods, cooked meats)
- g. Baked goods (eg, bread, muffins)
- h. Confectionery, nuts or snacks (eg, chocolate, potato crisps)
- i. Other food (eg, pasta, tinned vegetables, breakfast cereals, flour)
- j. Alcohol
- k. Non-alcoholic drinks
- l. Pet supplies (eg, pet food)
- m. Cleaning products and other household supplies (eg, dishwashing detergents and powders, paper towels)
- n. Personal care products (eg, toothpaste, shampoo, deodorant)
- o. Other (please specify)

These questions are about how you usually do your main shop

9. Which of the below is usually your MAIN grocery store/service (the one you spend the most at, or do most of your grocery shopping with)?

If you have more than one main store/service, select the two you use most often

- a. New World
- b. Countdown
- c. PAK'nSAVE
- d. Four Square
- e. FreshChoice
- f. SuperValue
- g. An ethnic supermarket (eg, Tai Ping, Japan Mart, Yogiji's Food Mart)
- h. A specialty supermarket (eg, Farro Fresh, Moore Wilson's, Bin Inn)
- i. A single-category store (eg, a butcher, baker, greengrocer or farmers' market)
- j. A general merchandiser (eg, The Warehouse)
- k. A meal kit provider (eg, Hello Fresh, My Food Bag)
- l. An online-only supermarket (The Honest Grocer)
- m. A convenience store (eg, a dairy, petrol station, Night and Day)
- n. Other [text box]
- o. I don't have a main shop

[If 4b, 9k or 9l, go to Question 12]

[If 9o, go to Question 15]

[Questions 10 to 13 are provided for all stores selected at Q9]

These questions are about your main shop with [FOR EACH] main store in Q9]

10. How do you usually get there?

- a. Drive
- b. Walk
- c. Bus/train
- d. Bicycle/scooter
- e. Taxi/rideshare
- f. Other: please explain

11. How long does it usually take you to get there?

- a. 0-5 mins
- b. 5-10 mins
- c. 10-15 mins
- d. 20-25 mins
- e. 25+ mins

12. Why is it your main grocery store/service?

Please select all that apply

Randomise order

- a. Convenient/easy to get to
- b. Good value for money
- c. Low prices overall
- d. Good specials
- e. Good quality products
- f. Wide choice of products
- g. Familiarity with the store/service
- h. Easy parking
- i. Quick checkouts/easy to pay
- j. Have a loyalty card
- k. My household prefer it
- l. Open at convenient times
- m. Has self-scanning
- n. Has ATM/pharmacy/dry cleaning
- o. The store is pleasant to be in
- p. Has petrol available
- q. Am given a lift to the store
- r. There is no other option in my area
- s. Other: explain

13. Please choose the single most important reason why [main store in Q9] is your main grocery store/service:

[auto populate list from selections at Q12]

- 14. If your main grocery store/service(s) closed for the foreseeable future, which store/service(s) would you use instead?**

If you would replace your main shop(s) with many smaller ones, please select all stores you would visit

[Delete Q9 response(s) from list (i.e. if 9a hide 14b)]

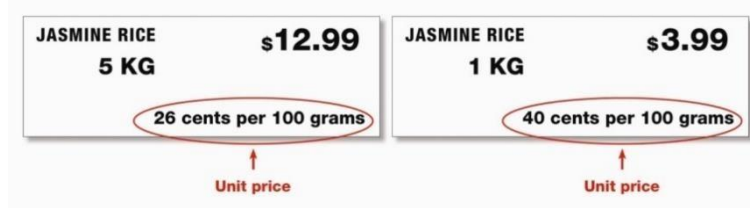
- a. I would go to the same store in a different location, or use the same type of store/service somewhere else.
- b. New World
- c. Countdown
- d. PAK'nSAVE
- e. Four Square
- f. FreshChoice
- g. SuperValue
- h. An ethnic supermarket (eg, Tai Ping, Japan Mart, Yogijis Food Mart)
- i. Another supermarket (eg, Farro Fresh, Moore Wilson's, Bin Inn)
- j. A single-category or specialist grocery store (eg, greengrocers, butchers, bakeries)
- k. A convenience store (eg, dairies, petrol stations, Night n Day)
- l. A meal kit provider (eg, Hello Fresh, My Food Bag)
- m. An online-only supermarket (eg, The Honest Grocer)
- n. Other (please state)

Now, some questions about how you decide what groceries to buy

- 15. Which of these best describes how you decide which grocery products to buy?**
- a. I usually have preferred brands I look for
 - b. I have preferred brand for some products, but for others I decide each time I shop
 - c. I don't really have preferred brands; I decide each time I shop
 - d. I always decide each time I shop
- 16. How often do you usually compare prices between similar products when grocery shopping (eg, three different brands of laundry detergent)?**
- a. Never
 - b. Rarely
 - c. Sometimes
 - d. Usually
 - e. Always
 - f. I don't know

17. How often do you check unit pricing on products (where available)?

Here is what unit pricing looks like



- Never
- Rarely
- Sometimes
- Usually
- Always
- None of the products I buy display unit prices
- Until now, I didn't know what unit prices were

These questions are about how you use grocery loyalty programmes

18. Which of the following grocery loyalty cards do you belong to?

Select all that apply

- Clubcard (New World)
- Airpoints (New World)
- Onecard (Countdown)
- AA Smartfuel (Countdown)
- None
- Other (please state)

[if 18, skip to Q24]

[if more than one selected, continue to Q19]

[if only one selected, skip to Q20]

19. Which do you use most often?

- [auto-populate based on selections at Q18]

20. How often do you swipe or scan your [card selected at Q19 (or Q18 if only one selected)] when making a purchase?

- Never
- Rarely
- Sometimes
- Usually
- Always

21. Why did you join [card selected at Q19 (or Q18 if only one selected)]?

Select all that apply

- To get access to members-only discounts
- To collect rewards points which allow me to get vouchers
- To collect points for other programmes (e.g. Flybuys)
- To enter the exclusive competitions and promotions
- To get members-only discounts on fuel
- I don't know/can't remember
- Other reason [text box]

22. Which of these best describes your awareness of how [card selected at Q19 (or Q18 if only one selected)] uses the data it collects when you swipe or scan it?

- a. I understand exactly how my data is used
- b. I understand mostly how my data is used
- c. I understand a little how my data is used
- d. I don't know how my data is used

23. When you signed up for [card selected at Q19 (or Q18 if only one selected)], which statement best describes how you read the terms and conditions?

- a. I read all of them
- b. I skimmed the key bits
- c. I did not read them at all
- d. I can't remember

[only if 18e]

24. Please select the statement that best describes why you are not a member of any grocery loyalty programmes:

- a. I don't want grocery stores to collect my data
- b. I shop at too many stores for it to be worthwhile
- c. They don't provide enough value
- d. No particular reason
- e. Not available where I shop
- f. I'm not sure
- g. Other [free text]

Your experience shopping for groceries

25. Is there anything else you would like to tell us about your experiences shopping for groceries? [free text]

This could include your views on the grocery options available to you or anything else you think we should be aware of.

A bit about you

26. How old are you?

- Under 16 years
- 16 to 25 years
- 25 to 40 years
- 40 to 65 years
- 65 years and over
- Prefer not to say

27. What suburb/region do you live in?

[Conditional drop-down boxes:]

Chapter 1	Regions
Chapter 2	District/Cities
Chapter 3	Cities/Suburbs, depending on region selected
Chapter 4	Suburbs (for five most populous cities)

28. Which of the following best describes your household?

By your 'household' we mean the people you shop for groceries for and who live in the same place as you

- a. Single, living alone
- b. Group flatting (single or with a partner)
- c. Couple, no kids living in household
- d. Household with children
- e. Single parent
- f. Household with multiple generations
- g. Prefer not to say

29. What ethnicity(ies) do you identify with?

Please select as many that apply

- a. New Zealand European
- b. Māori
- c. Samoan
- d. Cook Islands Māori
- e. Tongan
- f. Niuean
- g. Chinese
- h. Indian
- i. European
- j. Other, please state: [text box]
- k. Prefer not to say

30. What is the total annual income of your household?

- a. Less than \$15,000
- b. \$15,001 - \$45,000
- c. \$45,001 - \$75,000
- d. \$75,001 – \$105,000
- e. \$105,001 - \$135,000
- f. \$135,001 - \$165,000
- g. More than \$165,000
- h. Prefer not to say

Final page**Thank you for taking the time to complete our survey.**

The information you have provided will help us in our study into whether competition is working well in the retail grocery sector.

If you want to be kept up to date with progress on the study, please subscribe to our mailing list [\[here\]](#).

Attachment F Supplier survey

Introduction

- F1 This attachment provides further information about our supplier survey.
- F2 In early 2021, we conducted a supplier survey to help to build our understanding of how well competition is working for the acquisition of groceries. We sought views on suppliers' trading relationships with grocery retailers and wholesalers.
- F3 We received 126 responses to our supplier survey.¹⁵³⁴ These respondents supplied across a range of grocery retailers and product categories.
- F4 The responses we received have informed our analysis of competition for the acquisition of groceries by retailers, as discussed in Chapter 8 of this report.
- F5 The sections in this attachment are:
- F5.1 how we designed and conducted our supplier survey;
 - F5.2 our approach to confidentiality of suppliers' information;
 - F5.3 who responded to our supplier survey;
 - F5.4 how we have used the results of our supplier survey; and
 - F5.5 question script for our supplier survey.

How we designed and conducted our supplier survey

- F6 Our supplier survey was conducted online and hosted on our website. The survey was available from 4 March to 25 March 2021.
- F7 The survey included 31 questions in total, but none of the respondents were asked all of these.¹⁵³⁵ The questions respondents were asked depended on their answers to previous questions.
- F7.1 Respondents who indicated that they currently supply grocery retailers or wholesalers in New Zealand were asked either 17 or 18 questions.¹⁵³⁶
 - F7.2 Respondents who indicated that they do not currently supply grocery retailers or wholesalers in New Zealand, but have done so in the past, were asked 11 questions.¹⁵³⁷

¹⁵³⁴ []

¹⁵³⁵ The full question script for our supplier survey is included on pages 593 to 603 below.

¹⁵³⁶ Q1-Q17 and Q31 on pages 595 to 603 below. Q9 only applied to respondents who currently supply major grocery retailers.

¹⁵³⁷ Q1, Q18-Q26 and Q31 on pages 595 to 603 below.

- F7.3 Respondents who indicated that they do not currently supply grocery retailers or wholesalers in New Zealand, but either hope to in the future or have no intention of doing so in the future, were asked 6 questions.¹⁵³⁸
- F8 The initial questions were designed to get an overview of the respondents' business, including the products they supply and who they supply to.¹⁵³⁹ Tick-box options were provided for many of these questions.
- F9 Subsequent questions focused on respondents' trading relationships with New Zealand grocery retailers and wholesalers, or their role in the supply chain.¹⁵⁴⁰ Respondents were generally only able to provide free-text responses to these questions.
- F10 Topics covered in questions regarding respondents' trading relationships with New Zealand grocery retailers and wholesalers included:
- F10.1 the form of supply agreements and terms of trade;
- F10.2 suppliers' views on their bargaining power relative to that of the grocery retailers and wholesalers they supply; and
- F10.3 any specific behaviour or conduct which may be positively or negatively affecting the respondents' business.
- F11 We sought to frame the questions using neutral language, to allow suppliers to freely provide their views.
- F12 We promoted the survey to seek input from a wide range of suppliers, including publishing a media release and adding a link to the survey on the home page of our website.¹⁵⁴¹ We also engaged with a range of industry associations, asking them to help promote the survey to their members through their communication channels.¹⁵⁴²

Our approach to confidentiality of suppliers' information

- F13 We were conscious that some of the information suppliers wanted to share with us could be commercially sensitive and highly confidential.

¹⁵³⁸ Q1, Q27-Q30 and Q31 on pages 595 to 603 below.

¹⁵³⁹ Q1-Q9, Q18-21 and Q27-Q28 on pages 595 to 603 below.

¹⁵⁴⁰ Q10-Q17, Q22-Q26 and Q29-Q30 on pages 595 to 603 below.

¹⁵⁴¹ Commerce Commission "Media release – Surveys launched to help suppliers and consumers inform grocery market study" (4 March 2021).

¹⁵⁴²

[
].

- F14 Respondents were able to either complete the survey anonymously or share their details with us. Of the 126 responses received, 58 provided their details and 68 remained anonymous.¹⁵⁴³
- F15 The option to respond anonymously was included given concerns had been raised regarding the potential reluctance of suppliers to share their views with us.¹⁵⁴⁴
- F16 We implemented additional information handling measures for information provided to us by suppliers, including restricting the number of our staff who have access to the information. The identities of suppliers have also been protected with code-names.
- F17 We have published limited details regarding responses received due to the highly sensitive nature of the identities of survey respondents and the information they provided. Given that many of the substantive survey questions required free-text responses from respondents, it is difficult to provide details of the responses received without risking identifying individual suppliers.

Who responded to our supplier survey

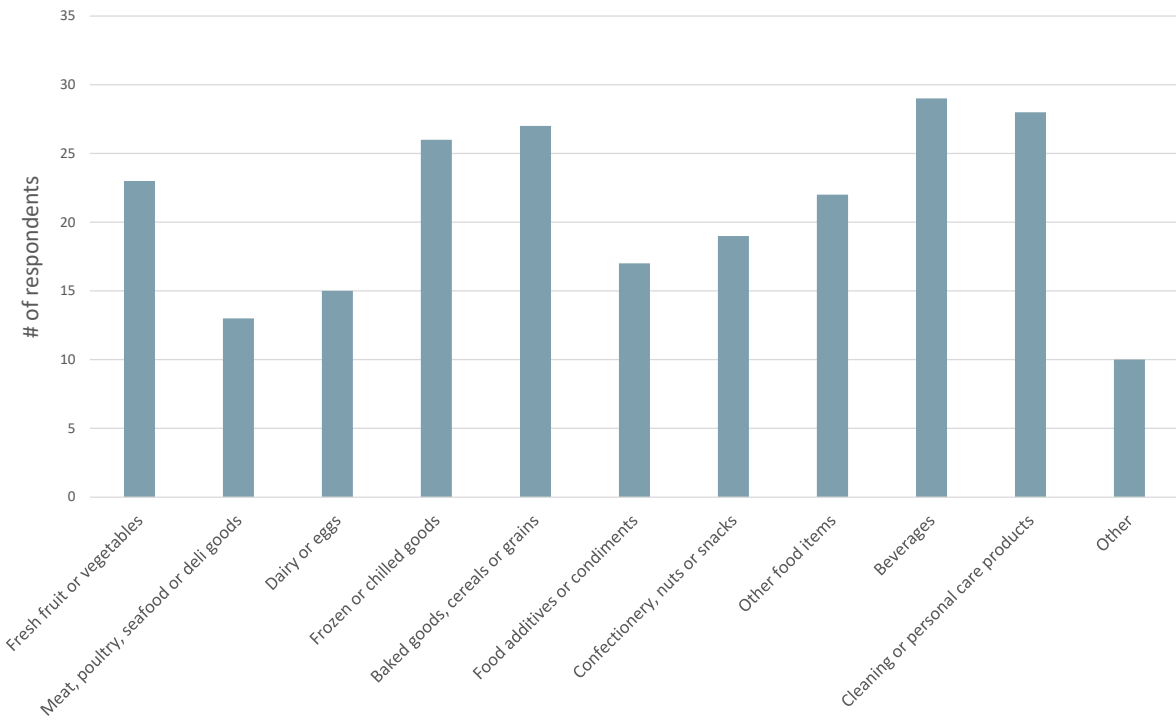
- F18 Of the 126 responses we received, 110 indicated that they are current suppliers to grocery retailers or wholesalers in New Zealand.¹⁵⁴⁵ The remaining 16 respondents indicated that they do not currently supply grocery retailers or wholesalers in New Zealand, but either:
- F18.1 have done so in the past;
- F18.2 hope to in the future; or
- F18.3 have no intention of doing so in the future.
- F19 Responses received from the 110 current suppliers indicated that they supply across a range of product categories, as shown in Figure F1 below.

¹⁵⁴³ [].

¹⁵⁴⁴ For example, the NZFGC submitted: "...given the concentrated nature of the industry, [the Commission] will face significant challenges obtaining evidence. Much of the conduct is purposefully not committed to writing, and suppliers will be naturally reticent to comment on such a small market", NZFGC "Submission on retail grocery market study preliminary issues paper" (4 February 2021) at [10(c)].

¹⁵⁴⁵ [].

Figure F1 Product categories supplied by survey respondents



Source: Commerce Commission analysis of responses to our supplier survey.¹⁵⁴⁶

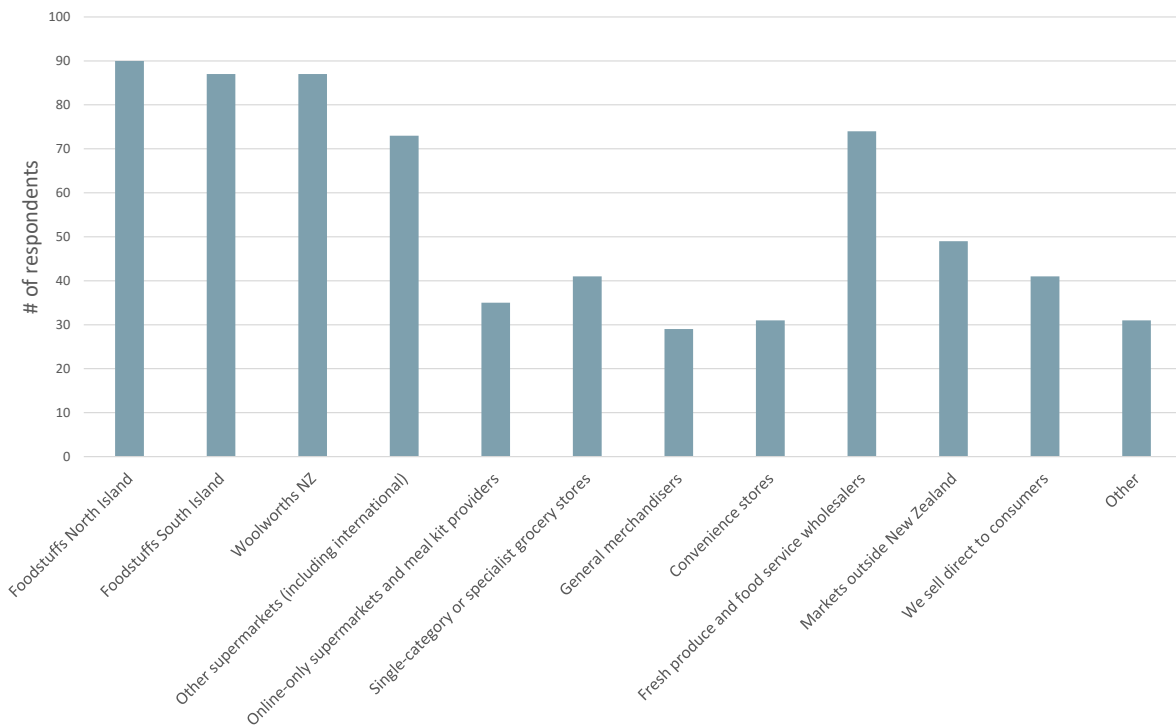
Note: Some respondents supply products across multiple categories, so the number of responses in Figure F1 above is greater than 110.

F20 These 110 respondents also indicated that they supply across a range of New Zealand grocery retailers and wholesalers, as shown in Figure F2 below.

¹⁵⁴⁶

[

].

Figure F2 NZ grocery retailers and wholesalers supplied by survey respondents

Source: Commerce Commission analysis of responses to our supplier survey.¹⁵⁴⁷

Note: Some respondents supply across multiple retailers and wholesalers, so the number of responses in Figure F2 above is greater than 110.

How we have used the results of our supplier survey

- F21 Our supplier survey enabled us to seek the views of a wide range of suppliers. We were able to identify common themes by reviewing the responses received. These themes are described in Chapter 8 of this report, as part of our analysis of competition for the acquisition of groceries by retailers.
- F22 The survey was not designed to be statistically representative. Rather, it was intended to be a simple way of gathering the views of a range of suppliers within a short period of time.¹⁵⁴⁸
- F23 Follow-up meetings were held with some respondents to our supplier survey to seek clarification or further details regarding comments they had made. We were not able to meet with all survey respondents, so we met with a sample of suppliers of different sizes across a range of product categories.

¹⁵⁴⁷ [].

¹⁵⁴⁸ Across the 126 responses we received to our supply survey, the average combined number of words provided in response to all questions which required a free text response was 394, [].

Question script for our supplier survey

Introductory page

Kia ora and welcome

Thank you for clicking through to our supplier survey – it should take you up to 30 minutes to complete (potentially longer if you choose to provide particularly detailed comments).

You have options at the end of the survey to either share your details with us or to remain anonymous.

We have published a [factsheet](#) with more information on why it is important we hear from suppliers, what we want to know, and how we may be able to protect the confidentiality of information you supply us.

We may publish a summary of supplier feedback received via this survey. However, the information will be anonymised and, if we consider there is any risk that information specifically relating to you could identify you, this will be discussed with you prior to publication.

If you wish to provide us with information outside of using the survey or have any questions about the confidentiality of information you want to provide us, please contact us at marketstudies@comcom.govt.nz or ring Market Studies Project Manager Karen Smith on 04 924 3863 to discuss further.

Please note:

- this survey is designed to be completed using a PC or laptop
- if you would prefer not to answer a question, you can click 'next' at the bottom of the page
- if you wish to pause and complete the survey later, your responses will be stored as long as you keep the survey open.

Click 'Begin' below to start the survey.

Begin

Definitions page

Before you begin, here is an overview of some terms used in this survey

Groceries or products means a range of food and drinks, including meat, fruit and vegetables, canned goods and dairy products. Groceries also include a range of other household products, like toilet paper, cleaning products and pet food. These products can usually all be purchased at a supermarket, but are often available through other shops as well.

Grocery retailers means businesses which sell grocery products directly to final consumers in New Zealand. Examples include:

- Major grocery retailers (eg, Foodstuffs North Island, Foodstuffs South Island, Woolworths NZ)
- Ethnic supermarkets (eg, Tai Ping, Japan Mart, Yogijis Food Mart)
- Other supermarkets (eg, Farro Fresh, Moore Wilson's, Bin Inn)
- Single-category or specialist grocery stores (eg, greengrocers, butchers, bakeries)
- General merchandisers (eg, The Warehouse)
- Convenience stores (eg, dairies, petrol stations, Night n Day)
- Meal kit providers (eg, Hello Fresh, My Food Bag)
- Online-only supermarkets (eg, The Honest Grocer).

Major grocery retailers means:

- Foodstuffs North Island (New World, PAK'nSAVE, Four Square, Gilmours)
- Foodstuffs South Island (New World, PAK'nSAVE, Four Square, Raeward Fresh, On the Spot, Trents)
- Woolworths NZ (Countdown, SuperValue, FreshChoice).

Grocery wholesalers means intermediaries who on-sell products to grocery retailers. Examples include:

- fresh produce wholesalers/distributors (eg, Turners & Growers, MG Marketing, Fresh Direct)
- food service wholesalers (eg, Bidfood).

Next

Survey questions

First, some questions about your business

1. Do you currently supply products to grocery retailers or wholesalers in New Zealand?

(Tick the option which most accurately describes your business.)

- 1.1 We currently supply grocery retailers or wholesalers in New Zealand
- 1.2 We do not currently supply grocery retailers or wholesalers in New Zealand, but have done so in the past
- 1.3 We do not currently supply grocery retailers or wholesalers in New Zealand, but hope to in the future
- 1.4 We do not currently supply grocery retailers or wholesalers in New Zealand, and have no intention of doing so in the future

[If 1.1 is ticked, go to Q2]

[If 1.2 is ticked, go to Q18]

[If 1.3 or 1.4 are ticked, go to Q27]

2. Which of the following categories of products do you supply to grocery retailers or wholesalers in New Zealand?

(Tick all relevant product categories below.)

- 2.1 Fresh fruit or vegetables
- 2.2 Meat, poultry or seafood
- 2.3 Dairy or eggs (eg, milk, cheese, eggs)
- 2.4 Frozen goods (eg, frozen vegetables, ice cream, pizza)
- 2.5 Chilled goods (eg, dips, soups, sauces)
- 2.6 Deli goods (eg, salads, small goods, cooked meats)
- 2.7 Baked goods (eg, bread, muffins)
- 2.8 Cereals or grains (eg, flour, rice, breakfast cereals, pasta products)
- 2.9 Food additives or condiments (eg, sugar, dried herbs, mayonnaise, olive oil)
- 2.10 Confectionery, nuts or snacks (eg, chocolate, nuts, potato crisps)
- 2.11 Other food items (eg, canned food, spreads, baby food)
- 2.12 Alcoholic beverages (eg, beer, wine, cider)
- 2.13 Non-alcoholic beverages (eg, coffee, soft drinks)
- 2.14 Pet supplies (eg, pet food)
- 2.15 Cleaning products and other household supplies (eg, dishwashing detergents and powders, paper towels)
- 2.16 Personal care products (eg, toothpaste, shampoo, deodorant)
- 2.17 Other (please specify): [Free text box]

3. Do you supply private label products (eg, home brands or own brands, such as Pams and Essentials) to grocery retailers or wholesalers in New Zealand?

(Tick the option which most accurately describes your business.)

- 3.1 No, we do not supply any private label products
- 3.2 Yes, some of the products we supply are private labels
- 3.3 Yes, about half of the products we supply are private labels
- 3.4 Yes, most of the products we supply are private labels
- 3.5 Yes, all of the products we supply are private labels

4. Approximately how many different individual products (stock keeping units) do you supply to grocery retailers or wholesalers in New Zealand?

(Please type your best estimate in the box using numbers only (ie, not letters or a range).)

[Reponse box (restricted to numbers only)]

5. Who do you supply your products to?

(Tick all relevant options below)

- 5.1 Foodstuffs North Island (New World, PAK'nSAVE, Four Square, Gilmours)
- 5.2 Foodstuffs South Island (New World, PAK'nSAVE, Four Square, Raeward Fresh, On the Spot, Trents)
- 5.3 Woolworths NZ (Countdown, SuperValue, FreshChoice)
- 5.4 Ethnic supermarkets (eg, Tai Ping, Japan Mart, Yogijis Food Mart)
- 5.5 Other supermarkets (eg, Farro Fresh, Moore Wilson's, Bin Inn)
- 5.6 Single-category or specialist grocery stores (eg, greengrocers, butchers, bakeries)
- 5.7 General merchandisers (eg, The Warehouse)
- 5.8 Convenience stores (eg, dairies, petrol stations, Night n Day)
- 5.9 Meal kit providers (eg, Hello Fresh, My Food Bag)
- 5.10 Online-only supermarkets (eg, The Honest Grocer)
- 5.11 Fresh produce wholesalers (eg, Turners & Growers, MG Marketing, Fresh Direct)
- 5.12 Food service wholesalers (eg, Bidfood)
- 5.13 Processors/manufacturers who use your products as an input when producing other grocery products
- 5.14 Markets outside New Zealand (eg, exports)
- 5.15 We sell direct to consumers (eg, we have own our outlet/website)
- 5.16 Other (please specify): [Free text box]

6. Approximately how much annual revenue do you earn from sales of your products in New Zealand?

(Please type your best estimate in the box. When answering this question, please consider a typical year – avoiding the impact of significant global events such as the COVID-19 pandemic which may have distorted revenue or costs.)

\$(Free text box)

7. Approximately what proportion of your total revenues are generated by sales to New Zealand's major grocery retailers?

(When answering this question, please consider a typical year – avoiding the impact of significant global events such as the COVID-19 pandemic which may have distorted revenue or costs.)

7.1 Don't sell to major grocery retailers

7.2 0-20%

7.3 20-40%

7.4 40-60%

7.5 60-80%

7.6 80-100%

8. Please give a brief description of where your products are grown, manufactured, or processed.

(For example, are the products you supply 100% grown in or manufactured in New Zealand, do you import products and use these to manufacture others?)

[Free text box]

[If any of 5.1, 5.2 or 5.3 were ticked, go to Q9. If not, go to Q10.]

9. Please describe what you would do if all of the major grocery retailers you supply were no longer able or willing to stock your products.

(For example, what options would you have for selling any excess stock? What would the impact on your business be?)

[Free text box]

Next, some questions on your trading relationships with grocery retailers and wholesalers in New Zealand

10. What form do your supply agreements with New Zealand's grocery retailers and wholesalers typically take?

(Tick the most applicable option.)

- 10.1 We generally have individualised written supply agreements with each retailer or wholesaler
- 10.2 We generally supply under each retailer's or wholesaler's standard written terms of trade
- 10.3 We generally supply under our own standard written terms of trade
- 10.4 We generally supply under informal, unwritten, arrangements
- 10.5 Other (please specify): [Free text box]

11. Please describe your experience regarding whether the terms on which you supply New Zealand grocery retailers or wholesalers clear and predictable.

(For example:

- *how are the prices and quantities you supply set, and to what extent is this known in advance?*
- *what happens if there are unexpected events (eg, differences in product quality or quantity)?*

[Free text box]

12. Please describe your experience regarding New Zealand grocery retailers' promotional schedules, including any input or influence you have on promotions.

(For example:

- *how often are your products on promotion?*
- *what are the benefits and costs of your products being on promotion (eg, payments you make, how your products are displayed)?*

[Free text box]

13. Please describe your experience regarding where your products are placed on New Zealand grocery retailers' shelves, including any input or influence you have on this.

(For example:

- *where are your products typically located on the shelf?*
- *do you make payments to retailers to access preferred shelf space or displays?*

[Free text box]

- 14. Please describe your experience negotiating with the New Zealand grocery retailers and wholesalers you supply, including whether you are able to negotiate and, if so, on what terms?**

(Please explain your views, including any impact this has on your business.)

[Free text box]

Nearly done, next are some questions on the impact of grocery retailers' and wholesalers' behaviour on your business

- 15. Please describe any behaviour from New Zealand grocery retailers or wholesalers which has positively affected your business, including approximately how often this has occurred and the impact it has had on your business.**

(For example, this behaviour could relate to displays/promotions, distribution logistics etc. In your response, please specify the retailer(s) whose behaviour you are referring to.)

[Free text box]

- 16. Please describe any behaviour from New Zealand grocery retailers or wholesalers which has negatively affected your business, including approximately how often this has occurred and the impact it has had on your business.**

(For example, this behaviour could relate to terms of supply agreements, payment terms, product stocking and display, pricing negotiations etc. In your response, please specify the retailer(s) whose behaviour you are referring to.)

[Free text box]

- 17. Are there any New Zealand grocery retailers or wholesalers you have had particularly positive or negative experiences with?**

(Please explain, including examples where possible.)

[Free text box]

[Go to Q31]

[Introductory questions continued, for respondents who ticked 1.2]

18. Which of the following categories of products did you previously supply to grocery retailers or wholesalers in New Zealand?

(Tick all relevant product categories below.)

- 18.1 Fresh fruit or vegetables
- 18.2 Meat, poultry or seafood
- 18.3 Dairy or eggs (eg, milk, cheese, eggs)
- 18.4 Frozen goods (eg, frozen vegetables, ice cream, pizza)
- 18.5 Chilled goods (eg, dips, soups, sauces)
- 18.6 Deli goods (eg, salads, small goods, cooked meats)
- 18.7 Baked goods (eg, bread, muffins)
- 18.8 Cereals or grains (eg, flour, rice, breakfast cereals, pasta products)
- 18.9 Food additives or condiments (eg, sugar, dried herbs, mayonnaise, olive oil)
- 18.10 Confectionery, nuts or snacks (eg, chocolate, nuts, potato crisps)
- 18.11 Other food items (eg, canned food, spreads, baby food)
- 18.12 Alcoholic beverages (eg, beer, wine, cider)
- 18.13 Non-alcoholic beverages (eg, coffee, soft drinks)
- 18.14 Pet supplies (eg, pet food)
- 18.15 Cleaning products and other household supplies (eg, dishwashing detergents and powders, paper towels)
- 18.16 Personal care products (eg, toothpaste, shampoo, deodorant)
- 18.17 Other (please specify): [Free text box]

19. Did you previously supply private label products (eg, home brands or own brands, such as Pams and Essentials) to grocery retailers or wholesalers in New Zealand?

(Tick the option which most accurately describes your business.)

- 19.1 No, we did not supply any private label products
- 19.2 Yes, some of the products we supplied were private labels
- 19.3 Yes, about half of the products we supplied were private labels
- 19.4 Yes, most of the products we supplied were private labels
- 19.5 Yes, all of the products we supplied were private labels

20. What year did you stop supplying your products to grocery retailers or wholesalers in New Zealand?

[Free text box]

21. Who do you currently supply your products to?*(Tick all relevant options below.)*

- 21.1 Processors/manufacturers who use your products as an input when producing other grocery products
- 21.2 Markets outside New Zealand (eg, exports)
- 21.3 I no longer supply grocery products, my business has been sold
- 21.4 I no longer supply grocery products, my business has closed
- 21.5 We sell direct to consumers (eg, we have own our outlet/website)
- 21.6 Other (please specify): [Free text box]

Next, some questions on your previous trading relationships with grocery retailers and wholesalers in New Zealand

22. Please explain why you no longer supply your products to grocery retailers or wholesalers in New Zealand.

[Free text box]

23. Please describe your experience negotiating with the New Zealand grocery retailers and wholesalers you previously supplied, including whether you were able to negotiate and, if so, on what terms?*(Please explain your views, including any impact this had on your business.)*

[Free text box]

24. Please describe any behaviour from New Zealand grocery retailers or wholesalers which positively affected your business, including approximately how often this occurred and the impact it had on your business.*(For example, this behaviour could relate to displays/promotions, distribution logistics etc. In your response, please specify the retailer(s) whose behaviour you are referring to.)*

[Free text box]

25. Please describe any behaviour from New Zealand grocery retailers or wholesalers which negatively affected your business, including approximately how often this occurred and the impact it had on your business.*(For example, this behaviour could relate to terms of supply agreements, payment terms, product stocking and display, pricing negotiations etc. In your response, please specify the retailer(s) whose behaviour you are referring to.)*

[Free text box]

26. Were there any New Zealand grocery retailers or wholesalers you supplied which you had particularly positive or negative experiences with?

(Please explain, including examples where possible.)

[Free text box]

[Go to Q31]

[Introductory questions continued, for respondents who tick 1.3 or 1.4]

27. Who do you supply your products to?

(Tick all relevant options below.)

- 27.1 Processors/manufacturers who use your products as an input when producing other grocery products
- 27.2 Markets outside New Zealand (eg, exports)
- 27.3 We sell direct to consumers (eg, we have own our outlet/website)
- 27.4 Other (please specify): [Free text box]

28. Which of the following categories of products do you supply?

(Tick all relevant product categories below.)

- 28.1 Fresh fruit or vegetables
- 28.2 Meat, poultry or seafood
- 28.3 Dairy or eggs (eg, milk, cheese, eggs)
- 28.4 Frozen goods (eg, frozen vegetables, ice cream, pizza)
- 28.5 Chilled goods (eg, dips, soups, sauces)
- 28.6 Deli goods (eg, salads, small goods, cooked meats)
- 28.7 Baked goods (eg, bread, muffins)
- 28.8 Cereals or grains (eg, flour, rice, breakfast cereals, pasta products)
- 28.9 Food additives or condiments (eg, sugar, dried herbs, mayonnaise, olive oil)
- 28.10 Confectionery, nuts or snacks (eg, chocolate, nuts, potato crisps)
- 28.11 Other food items (eg, canned food, spreads, baby food)
- 28.12 Alcoholic beverages (eg, beer, wine, cider)
- 28.13 Non-alcoholic beverages (eg, coffee, soft drinks)
- 28.14 Pet supplies (eg, pet food)
- 28.15 Cleaning products and other household supplies (eg, dishwashing detergents and powders, paper towels)
- 28.16 Personal care products (eg, toothpaste, shampoo, deodorant)
- 28.17 Other (please specify): [Free text box]

Next, some questions on your role in the New Zealand grocery supply chain

- 29. Please explain why you do not currently supply your products to grocery retailers or wholesalers in New Zealand.**

[Free text box]

- 30. Please describe the extent to which your products offer an alternative to those sold by grocery retailers or wholesalers in New Zealand.**

[Free text box]

[Go to Q31]

Finally, any other views you would like to share

- 31. Is there anything else regarding New Zealand's grocery sector that you think we should be aware of?**

(Please provide details where possible.)

[Free text box]

[Go to final page]

Final page

Please click 'Submit' below to finalise your response

Thank you for taking the time to complete our survey.

We would like you to identify yourself to us if you feel you can. Identifying yourself improves our ability to investigate any comments you have provided.

Further details regarding how we may be able to protect the confidentiality of information you supply us are contained in our supplier [factsheet](#).

- 32. If you are comfortable with the Commission knowing your identity and potentially contacting you, please provide your details. If not, you may leave this blank.**

32.1 Organisation: [Free text box]

32.2 Contact person: [Free text box]

32.3 Email address: [Free text box]

32.4 Phone number: [Free text box]

Please click on the 'Submit' button to record your responses.

- G6 We have subsequently calculated the number of supermarkets in each of these categories per million people in New Zealand using population data estimates from Statistics New Zealand, which estimated that New Zealand's population was 5,116,300 at 31 March 2021.¹⁵⁵¹
- G7 Our results indicate that, per million people in New Zealand, there are approximately:¹⁵⁵²
- G7.1 88 supermarkets which are 400 square metres or larger (all Small supermarkets, Large supermarkets and Hypermarkets as defined in the Nielsen report);
 - G7.2 68 supermarkets which are 1,000 square metres or larger (all Large supermarkets and Hypermarkets as defined in the Nielsen report); and
 - G7.3 25 supermarkets which are 2,500 square metres or larger (all Hypermarkets as defined in the Nielsen report).

¹⁵⁵¹ Statistics NZ "Estimated population of NZ" [https://www.stats.govt.nz/indicators/population-of-nz?gclid=EAlaIQobChMIqYnQ1ae08AIVwrWWCh16VQmvEAYASAAEgLPivD_BwE.]

¹⁵⁵² [].

G8 Table G1 below compares these New Zealand numbers with the numbers for 19 European countries.

Table G1 Comparison of number of stores per million people

Country	Stores 400 sqm and above per million people	Stores 1,000 sqm and above per million people	Stores 2,500 sqm and above per million people
New Zealand	88	68	25
United Kingdom	105	56	26
Hungary	127	80	17
Portugal	142	58	9
Greece	158	60	5
Czech Republic	160	41	31
Italy	178	41	9
France	190	79	33
Poland	191	9	9
Sweden	208	84	21
Spain	209	91	10
Ireland	214	86	19
Finland	216	144	28
Belgium	240	84	5
Switzerland	242	116	31
Netherlands	275	105	3
Germany	333	94	25
Denmark	438	85	18
Austria	441	46	10
Norway	501	115	10

Source: Commerce Commission analysis of supermarket density.¹⁵⁵³ The New Zealand data was estimated by the Commission, and all other data was taken from a Nielsen report.¹⁵⁵⁴

G9 Out of the 20 countries listed in Table G1, New Zealand has:¹⁵⁵⁵

G9.1 the lowest number of supermarkets (400 square metres and above) per million people; and

G9.2 the sixth-equal highest number of supermarkets that are 2,500 square metres and above per million people.

¹⁵⁵³ [].

¹⁵⁵⁴ Nielsen "Nielsen Grocery Universe 2017" (2017) at 56, available at: <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/nielsen-grocery-universe-2017.pdf>.

¹⁵⁵⁵ [].

- G10 We note the following qualifiers in relation to this analysis, noting that as discussed at paragraph G3, this analysis is not intended to be a comprehensive comparison of store densities.
- G10.1 We have attempted to estimate the number of supermarkets in New Zealand using data which is available to us (primarily provided by the major grocery retailers). These are approximate numbers which we use for the purposes of this comparison and may not include every supermarket that may fall within the size categories.
- G10.2 Some of this data has been provided to us at different points in time (between December 2020 and June 2021), and may not account for subsequent store openings or closures.
- G10.3 The Nielsen store density data we have used as the basis for our comparison is dated 2015, while the New Zealand store data we have used for comparison was received between December 2020 and June 2021.
- G11 The comparison was only conducted in relation to a selection of European countries, and results may differ if a wider range of countries are used for the purposes of this comparison.