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Commerce Commission  
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## **CROSS SUBMISSION on “Market study into the retail grocery sector: Draft report”**

### **1. Introduction**

Thank you for the opportunity to participate in the recent virtual conference and make a cross submission on the market study into the retail grocery sector. This submission is from Consumer NZ, New Zealand’s leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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### **2. Our comments**

Additional comments on the market study into the retail grocery sector, following the Commerce Commission conference, are set out below.

#### *Lack of competition*

During the conference, the two major supermarket chains consistently maintained there is strong competition in the sector and they face competition in many shapes and sizes. We disagree. In our view, there is a lack of real competition in the sector.

Retailers such as Costco, Farro Fresh, Supie, Chemist Warehouse, Circle K and Animates are only competing at the fringes and have a limited impact on competition.

In our recent supermarket survey<sup>1</sup>, we asked shoppers how often they go to the supermarket. Only one person (out of 1030) told us they never shop at a supermarket. Two percent said they mostly shopped at a Four Square or Fresh

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<sup>1</sup> Our data are from a nationally representative survey of 1030 New Zealanders, aged 18 years and older, carried out online in February 2021.

Choice and the remaining 98% mostly shopped at Countdown, New World or Pak'nSave. It's clear supermarkets dominate the grocery industry.

It's also clear there is limited competition between the major grocery retailers.

This lack of competition is resulting in consumers paying higher prices at the checkout. Our recent survey found 81% of Kiwis agree supermarket prices in New Zealand are too high.

Grocery costs were at the top the list of concerns about everyday expenses in our consumer monitor survey.<sup>2</sup> In our latest survey, 63 percent of consumers said food and grocery costs were their biggest worry. Among renters, concern was even higher at 74%. The same survey found 34 percent of consumers had cut back spending on essentials (groceries, energy use, car use etc) in the past 12 months. Among renters, 53% had cut back on essential spending.

We also support the commission's preliminary finding that prices are too high by international standards.

#### *Pricing and promotional practices*

Although we are pleased to hear the two major supermarkets are willing to make their pricing and promotional practices clearer, we do not believe this should be done on a voluntary basis.

Existing laws already prevent misleading conduct but we know from action taken by the Commerce Commission, the complaints we receive and our survey data, that supermarkets continue to mislead consumers on a regular basis.

We consider the commission should recommend a consumer information standard is developed to set requirements for price displays and promotions. Without this intervention, we do not consider supermarkets will do enough on a voluntary basis to improve their pricing and promotional practices.

#### *Loyalty programmes*

At the conference, the two major retailers told us their loyalty programmes offer significant or genuine value. However, in our view, the programmes offer little, if any, real value to consumers.

The rewards for loyalty programme members are minimal. For example, Countdown's Onecard requires a shopper to spend \$2000 to earn a \$15 voucher. New World's Clubcard programme requires a shopper to spend \$2100 to earn a \$15 voucher.

The cost of administering loyalty programmes is likely to be passed on to all shoppers, whether or not they belong to the loyalty programme in question. Concerningly, consumers are required to give up their data in return for these "benefits". The supermarkets have conceded that their privacy policies need improvement.

Consumers do not place a lot of value on loyalty programmes. Our survey data shows loyalty programmes are not high on the list of reasons why shoppers choose a supermarket. In fact, they're at the bottom of the list - only 4% of

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<sup>2</sup> Our consumer monitor survey is a nationally representative survey of 1002 people carried out in November 2020.

shoppers said the loyalty programme determined where they did their regular shopping.

Also, only 42% rated loyalty programmes as very important, a long way behind competitive prices (77%), product quality (75%) and product range (71%). Similarly, only 42% of shoppers were very satisfied with the loyalty programme at the supermarket they shop at most.

As stated in previous submissions, we have significant concerns about these programmes and the data and privacy issues they raise. We consider supermarkets should be prevented from linking loyalty programme benefits to specific price discounts for their products as this practice discriminates against privacy conscious consumers.

#### *Private labels*

During the conference, Foodstuffs and Woolworths both claimed their private labels are pro-competitive. We disagree. Although private brands may benefit consumers in the short term by offering lower prices, we consider they are likely to have an anti-competitive effect overall. In our view, private labels are likely to be setting price floors and preventing the introduction of lower priced goods.

Both major supermarket chains have reported major growth in the use of private labels. In our view, they are increasing the use of their own brands because they offer higher margins for the supermarkets, not because they offer lower prices for consumers.

The use of private labels is also likely to be resulting in less choice because other brands are being squeezed out of the market. We have received complaints about the proliferation of private brands and the consequential reduction in choice this is causing.

One recent complainant said "The choice of goods available to us is increasingly less, thereby resulting in less and less and less choice. For example, I used to shop in Pak'nSave, but that has become untenable because I simply am not interested in house brands – there is no choice whatsoever."

Another consumer said "The supermarkets have too much control of our food – in what brands they allow, what quality they allow, what supplier they allow, what margins they make and what competition they allow. More and more of their own brands on their shelves too."

We therefore support the inclusion of rules around private labels in the code of conduct.

#### *Intervention justified*

During the conference both supermarket chains claimed significant intervention was not justified. We disagree. We maintain the view the market is failing consumers and without significant intervention, it will continue to do so. In our view, such intervention is both necessary and justified.

Although the supermarkets have agreed to some changes, such as the introduction of a mandatory code of conduct, a unit pricing standard, a pledge not to use restrictive and exclusivity covenants and to improve their pricing and promotional practices, we do not consider these changes will go far enough to fix the problems in our highly concentrated industry.

*Timeframes for implementation*

Finally, we'd like to encourage the commission to recommend changes are implemented as soon as possible. Consumers and suppliers will continue to suffer harm until the problems with our market are fixed.

In our view, most of the changes we have suggested can be implemented 3 to 6 months after the final report is released.

*ENDS*