



INTRODUCTORY COMMENTS

- 1 Foodstuffs North Island (**FSNI**) appreciates the importance of the Commerce Commission's market study into the retail grocery sector for New Zealand consumers. FSNI has fully cooperated with the process to date, providing information, data and clarification and seeking to collaborate with the Commission wherever possible, and now engaging with the draft report.
- 2 FSNI accepts the challenge, presented by the Commission in its draft report, for the industry to do better for New Zealand consumers. We have been on our customer driven transformation journey for 2½ years and the study represents an opportunity to gain an additional perspective, go faster and improve.
- 3 However, there are a number of findings in the draft report that FSNI does not agree with, including that the Commission has materially overstated (doubled) FSNI profitability. It is important that the Commission has all necessary information so that its final report is robust. To that end, FSNI's appreciates the opportunity to provide further information to the Commission to improve the accuracy of its analysis.
- 4 This submission sets out a comprehensive action plan which, if implemented, would remove barriers to market entry that are within our control and deliver better competition for the benefit of New Zealanders.
- 5 Specifically, FSNI proposes a number of changes to meaningfully improve customer value, and provide structure for suppliers and improvements to the competitive landscape:

5.1 **delivering value for consumers by improving their ability to make informed purchasing decisions**, by:

- (a) simplifying and clarifying our pricing and promotional practices,
- (b) simplifying and clarifying the terms of our Clubcard reward structure and loyalty programme, and ensuring we provide appropriate information in a straightforward way about our collection and use of data. This will enable consumers to see the value of this scheme transparently, and
- (c) committing to consistent use of unit pricing, providing clarity on value to consumers,

5.2 **improving outcomes for suppliers and consumers**, by working together with suppliers and the Government to develop a consumer focused grocery industry code to guide our dealings with suppliers and to protect their freedom to support other retailers, and

5.3 **encouraging competition and addressing barriers for new entry and expansion**, through immediately starting the process of removing all existing restrictive land covenants and exclusivity provisions in leases and by providing a commitment to make no further use of them. FSNI supports the development and implementation of an industry-wide solution addressing restrictive covenants and exclusivity provisions in leases. We also urge the Government to progress appropriate changes to the Resource Management Act and Overseas Investment Act regime to better encourage and facilitate new entry into the New Zealand market.

- 6 FSNI has sought to engage with the full spectrum of options for recommendations that the Commission has identified in its draft report. Given the significance and complexity of many of the recommendations, and the time available to the Commission,¹ FSNI appreciates that their development is at an early stage. Where that is the case, FSNI has provided feedback and questions, with a view to assisting the Commission and/or Government to consider further the workability of the recommendations, and their potential to improve competition, ahead of the appropriate cost-benefit analysis and any broader policy process.²
- 7 FSNI notes also that its own work is inevitably preliminary, given the short period it has had to consider and respond to the options for recommendations (and from 18 August onwards New Zealand had lockdowns in place, so FSNI's first priority was to meet its responsibilities to New Zealanders to keep staff and customers safe, and to deliver their grocery needs as an essential business).
- 8 By way of example, the recommendation option for FSNI to provide other retailers with access to its wholesale business raises a practical issue for FSNI as to how it might balance its current capacity with any incremental demand (the amount of which is, at this stage, unknown). It also potentially raises costs to consumers and risks agility and surety of supply chain. It has not been possible for FSNI to work through all of these sorts of issues in the time available – time and detailed consideration is required to progress this potential recommendation.
- 9 While it has nevertheless engaged constructively with the full spectrum of options for recommendations, FSNI does not agree with certain of the key findings in the draft report. In short:
- 9.1 **FSNI's profitability is not excessive – it is normal.** The Commission's profitability analysis did not recognise that FSNI is a fully integrated grocery retailing business. As a result, the Commission's estimate of FSNI's profitability was materially overstated:
- (a) FSNI, and its advisors, calculate its Return on Average Capital Employed (**ROACE**) to be less than half of what the Commission calculates it to be i.e. 9% compared with the Commission's figure of close to 24%,
 - (b) as such, FSNI earns a level of returns which is consistent with it operating in a competitive market, being below the average of the Commission's international sample of grocery retailers (11.3%). Considering this, it is

¹ Commerce Commission's Briefing for the Incoming Minister of Commerce and Consumer Affairs (November 2020) (emphasis added), "a study is a significant piece of work for the Commission – a detailed analysis of whether competition in a market is or is not working or could be enhanced. At the conclusion of a study the Commission may make recommendations to Government, business or consumers as to what could occur to make the relevant market work more competitively. Work of this nature requires a detailed evidence base and requires significant work from the sector involved"; MBIE's Briefing for the Incoming Minister of Commerce and Consumer Affairs (4 November 2020), "Our preliminary view is that **a supermarkets study will take approximately 16 months.**"

² This is consistent with the Commission's view at [9.4] of the draft report (emphasis added): "When producing our draft report we have endeavoured to consider options that would most directly address the factors affecting competition that we have identified, are likely to improve competition, and are likely to be feasible. **These are the options for which we consider further investigation may be warranted. We acknowledge the importance of assessing whether the benefits exceed the costs of any recommended changes to the status quo.** However, 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."

unsurprising that there has not been more entry by offshore market participants, and

- (c) for completeness, it should be borne in mind that large changes in returns have only limited impact on prices – the largest component of FSNI's prices are its supplier costs, which comprise approximately 68c in every \$1 on shelf, and

9.2 **workable competition exists in grocery markets in New Zealand**, and there is a range of evidence that supports that view, for example:

- (a) New Zealand grocery prices are not high by international standards. In any event, it is not possible to draw any reliable inference about competition levels from the international price analysis,
- (b) FSNI has invested, and continues to invest, in a wide variety of innovations, which improve consumer shopping experiences and the resilience of FSNI's supply chain,
- (c) the Commission's consumer research demonstrates that consumer shopping behaviours have changed. In particular, consumer shopping behaviour is increasingly characterised by missions shopping, i.e. smaller and more frequent shops at the expense of the main shop. Looking forward, it can be expected that the prominence of missions shopping will continue to grow. FSNI competes strongly with all retailers for the full range of shopping missions, as well as for the size and scope of the main shop, and
- (d) relationships between FSNI and its suppliers are valuable and generally healthy, and suppliers' behaviour also reflects their material bargaining power. In FSNI's survey conducted at its recent May 2021 Supplier Expo, over 80% of suppliers said that FSNI had had a positive impact on their business. The evidence FSNI presents on this point should not be read as FSNI failing to acknowledge any particular supplier on occasion has experienced conduct which is potentially unlawful or falls outside acceptable commercial norms. As above, FSNI is supportive of a consumer focused, well-considered grocery code.