



Wholesale Supply Inquiry:

Preliminary Findings Paper

Woolworths New Zealand Limited Submission

4 August 2025

1. Part 1: Introduction and Executive Summary

1.1. This document provides Woolworths New Zealand Limited's (**WWNZ**) response to the Commerce Commission's Wholesale Supply Inquiry (**Inquiry**) Preliminary Findings Paper (the **Paper**).

1.2. In this document:

1.2.1. We set out that WWNZ supports the Commission's call for voluntary changes in the industry, with the focus on **the Commission's "fundamental concern" about the conduct of suppliers** (not Regulated Grocery Retailers (**RGRs**)). In addition, voluntary (rather than regulated) changes will best reflect that there are significant differences in the progress of RGRs' wholesale offerings to date (with WWNZ far more advanced than others), and will be the "least cost alternative". See **Part 2**.

1.2.2. We set out that **many of the wholesale features the Commission has said it would like to see are already offered by New Zealand Grocery Wholesalers (NZGW) or, in NZGW's experience, are not demanded by customers**. We have already met what could be reasonably expected of our wholesale offering in such a short space of time. The Commission's findings need to accurately reflect the developments already implemented by NZGW, and reflect the requirements in the Grocery Industry Competition Act 2023 (**GICA**) that, in considering whether a feature is consistent with a "competitive wholesale market", consideration should be given to whether there is sufficient market demand for investment in that feature to be viable (it is not sufficient for the Commission to exercise its powers under Part 3 on the basis only of identification of a feature offered by an overseas wholesaler, or on the basis of a submission from a third party that it would like an additional feature). See **Part 3**.

1.2.3. We set out that **there is insufficient evidence to meet the threshold required to recommend or impose further regulation in relation to WWNZ's wholesale offering. WWNZ has already taken significant steps to promote its wholesale offering. The further enhancements that the Commission wants to see require supplier behaviour change and support**. There are also issues with the way that the Paper has sought to assess the development of the RGRs' wholesale offerings. Correcting for those issues, and appropriately reflecting that the Commission's "fundamental concern" relates to suppliers, demonstrates

that the threshold for further regulation of WWNZ has not been met. See **Part 4**.

- 1.2.4. To continue advancing the attractiveness and growth of our wholesale offering, and recognising that the Paper identifies some areas for potential further enhancement, we set out **the additional voluntary steps WWNZ proposes to take in the coming 12 months to continue to promote its wholesale offering**. No further regulation of RGRs is required for those steps to be taken. Rather, **supplier cooperation is required** if WWNZ's efforts to extend its range and the level of promotional funding provided are to be successful, and WWNZ suggests that the Commission communicate clearly to suppliers its expectations regarding their engagement and cooperation over the coming 12 months. See **Part 5**.
- 1.2.5. We reiterate that the changes **the Commission wants to see require support from the supplier community**, including to ensure that those changes do not ultimately result in higher prices for consumers. Given this, it is critical that **the Commission clearly articulates its expectations to suppliers to ensure positive (and not adverse) changes for consumers**. In particular, in the absence of commensurate reductions in suppliers' upfront cost prices to RGRs, the Commission's call for reductions in supplier promotional funding will result in higher retail prices for consumers. See **Part 6**.
- 1.3. WWNZ trusts that this document demonstrates:
 - 1.3.1. the significant progress in WWNZ's wholesale offering in a very short period;
 - 1.3.2. WWNZ's commitment to the further development of that wholesale offering; and
 - 1.3.3. that there are no grounds for the Commission to recommend or impose further regulation on WWNZ.
- 1.4. WWNZ looks forward to continuing its constructive relationship with the Commission in relation to its wholesale offering. We are continuing to consider the preliminary findings raised by the Commission in its Paper, and we will keep the Commission updated on enhancements and additions to our wholesale offering over the next 12 months. We also look forward to the Commission's ongoing engagement with the supplier community to ensure positive outcomes for consumers.

2. Part 2: WWNZ supports the call for voluntary industry changes

2.1. WWNZ agrees with the Commission that, to the extent it wants to see further changes in the grocery sector, it is appropriate those changes be achieved through sector participants voluntarily “chang[ing] their behaviour”,¹ instead of further regulation.

2.2. That is because:

2.2.1. It would not be appropriate for the Commission to recommend any further regulation in relation to WWNZ when **the Commission has confirmed that its “fundamental concern” relates to the conduct of suppliers.**² The legislative history of the GICA demonstrates that it was recognised that there was a role for suppliers to play in negotiating promotional funding arrangements with other retailers:³

“It would not be reasonable to expect major grocery retailers to pass on these supplier funded discounts to wholesale customers without supplier agreement. Instead, I expect that generally suppliers will want to negotiate retail-focused promotional and marketing discounts directly with the wholesale customer. This could result in positive competition between retailers and benefits to consumers in the long-term. In either case, it should be the suppliers’ choice...”

retail-focused promotional and marketing is generally to be negotiated between suppliers and retailers, unless the supplier wants to make them available through wholesale”

The Commission’s finding that there is a competitive wholesale produce market in New Zealand supports this point. Namely, one of the primary features which distinguishes produce from packaged groceries, is the use and control of promotional funding by suppliers in packaged groceries. This demonstrates that:

2.2.1.1. it is not access to scale or logistics that determines the emergence of wholesale options; and

¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [X19].

² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [70].

³ Cabinet Office “Grocery sector reform: regulation of access to grocery wholesale and collective bargaining exemption” (2 September 2022). Retrieved from: <https://www.mbie.govt.nz/dmsdocument/23721-grocery-sector-reform-regulation-of-access-to-grocery-wholesale-and-collective-bargaining-exemption-proactive-release-pdf>. [Emphasis added]

- 2.2.1.2. if suppliers voluntarily change their behaviour in relation to the control of promotional funding, it is very likely that additional wholesale options will emerge (as has occurred with fresh produce).
- 2.2.2. In WWNZ's view, and contrary to X17 of the Paper, on a proper interpretation of GICA's scope and purpose **there is insufficient evidence to meet the threshold required by the GICA to impose or recommend additional regulation.** See further at Part 4 below.
- 2.2.3. A voluntary approach reflects the Paper's findings that **voluntary behaviour change is the "least cost alternative"**⁴, and that further regulatory intervention "will impose costs and may have unintended consequences".⁵ Therefore, seeking voluntary behaviour change is consistent with the GICA's requirements that:
 - 2.2.3.1. the Commission must assess the benefits of applying any additional regulation;⁶ and
 - 2.2.3.2. any recommendations of additional regulation "be the most cost-effective... in the circumstances."⁷
- 2.2.4. A voluntary approach is also consistent with:
 - 2.2.4.1. the **Government Expectations for Good Regulatory Practice** that any regulatory intervention "achieve [its] objectives in a least cost way, and with the least adverse impact on market competition, property rights, and individual autonomy and responsibility";⁸
 - 2.2.4.2. the Government's proposed codification of this in the **Regulatory Standards Bill** ("legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available");⁹ and

⁴ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [X19]. [Emphasis added]

⁵ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [X20].

⁶ Grocery Industry Competition Act 2023, s 57(3)(a).

⁷ Grocery Industry Competition Act 2023, s 57(3)(b).

⁸ New Zealand Government "Government Expectations for Good Regulatory Practice" (April 2017). Retrieved from: <https://www.treasury.govt.nz/sites/default/files/2015-09/good-reg-practice.pdf>.

⁹ Ministry for Regulation "Information Release - Policy Approvals for Progressing a Regulatory Standards Bill May 2025" (7 May 2025). Retrieved from: <https://www.regulation.govt.nz/assets/Publication-Documents/Information-Release-Policy-Approvals-for-Progressing-a-Regulatory-Standards-Bill-May-2025-v2.pdf>.

- 2.2.4.3. the **orthodox “regulatory ladder”** approach to regulation (i.e. that the lowest form of regulatory intervention should be considered first, before any more interventionist options).
- 2.2.5. Reliance on voluntary industry change in the first instance is consistent with the ACCC’s view (in commenting on New Zealand’s wholesale regime) that “[a]ccess regimes are inherently complex, challenging to put in place, and in this instance the likely benefits are unclear.”¹⁰
- 2.2.6. A voluntary approach also appropriately **allows for the Commission’s findings that different RGRs are at different stages in the development of their respective wholesale grocery offerings** (with the Paper outlining that WWNZ has made much greater progress than the other RGRs, see Figure 1 below). A voluntary approach (rather than blanket regulation), is consistent with the GICA framework that any further regulation must be the most cost effective in the circumstances. As we have outlined previously, it would be inconsistent with the GICA framework for any recommendations of further regulation to be made in relation to WWNZ’s wholesale business based on concerns about the progress of the wholesale businesses of FSNI or FSSI, as that would not be the most cost-effective regulatory response.¹¹ That is because it is difficult to see how regulation of one entity, due to concerns about another entity, could be the “most cost-effective in the circumstances”.

Figure 1 - Commission findings regarding the progress and enhancements in WWNZ’s wholesale offering vis-a-vis other RGRs

The Paper included a number of findings that WWNZ’s wholesale offering is more advanced than other RGRs, and that WWNZ has been actively looking to enhance and grow its wholesale offering further - including that:

- WWNZ’s wholesale business, NZGW, accounts for 80% of the reported wholesale sales.¹²
- WWNZ has been taking “proactive measures”¹³ to grow its wholesale business, that “WWNZ appears to be working to improve their wholesale offering in general, and range in particular”,¹⁴ and there has, in fact, been growth in WWNZ’s wholesale offerings.¹⁵

¹⁰ ACCC “Supermarkets Inquiry - final report” (February 2025) at p 145. Retrieved from: https://www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf. [Emphasis added].

¹¹ The mandatory requirement in s 57(3)(b) that the Commission must consider the most cost-effective additional regulation in the circumstances overrides any other provision in the GICA which provides that the Commission (or the Minister) may act in relation to a RGR even if the RGR has complied with the GICA (e.g. ss 66(2), 82(3)).

¹² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B265].

¹³ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B265].

¹⁴ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B92].

¹⁵ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B180.1].

- WWNZ has taken innovative “positive steps”¹⁶ in relation to its wholesale offering (such as development of its “wholesale card”),¹⁷ and “is trialling an online portal to simplify ordering for wholesale customers.”¹⁸
- WWNZ has been responsive to wholesale customers’ requests for specific products (“seeking to bring suppliers into their wholesale offering when their products are sought”),¹⁹ and the Commission is “aware of WWNZ offers to onboard new suppliers to meet demand for products”.²⁰
- “NZGW has also been seeking to pass on some promotional funding to wholesale customers, with some success”.²¹
- WWNZ offers suppliers “more transparency around sales data and insight, into what is being sold through their offering (including some information about larger customers) than other RGRs”.²²

3. Part 3: Many of the wholesale features the Commission has said it would like to see are already offered by NZGW or, in NZGW’s experience, are not sought by customers

- 3.1. Figure 1 above outlines the Commission’s findings that WWNZ has achieved (and continues to achieve) significant growth and development in its wholesale business, NZGW. That progress has been made in a very short space of time (just two years since the GICA’s wholesale regime came into force), and with NZGW continuing to achieve sustained sales growth ([] growth in sales to domestic customers in the year-to-date,²³ [] growth in just the last six months,²⁴ and []). This demonstrates the proactivity and good faith with which WWNZ has approached the Government’s and Commission’s expectations of the development of wholesale offerings.
- 3.2. In addition, WWNZ notes that many of the wholesale features the Commission has said it would like to see in the RGRs’ wholesaler offerings are either (a) already offered by NZGW, or (b) in NZGW’s experience, are not sought by customers. The lack of customer demand for specific features is a critical factor

¹⁶ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B226].

¹⁷ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [97].

¹⁸ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B250].

¹⁹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B93]. And the Commission “recognise[d that] WWNZ has not always been able to provide these products due to supplier decisions.”

²⁰ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B120].

²¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [32].

²² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B260].

²³ FY25 ending 29 June 2025.

²⁴ For six months to 29 June 2025.

that should be taken into account by the Commission under the GICA when assessing the development and features of the RGRs' wholesale offerings, and considering whether to impose further obligations in relation to them. In particular, while section 23(2) sets out that the main principle of Part 3 is "the importance of wholesale offerings to wholesale customers... being consistent with wholesale offerings provided in a competitive wholesale market", section 24 includes additional principles to assist in interpreting section 23(2), which the Commission has noted²⁵ are integral to its task under Part 3 of promotion of the outcomes found in workably competitive wholesale markets. Importantly:

- 3.2.1. section 24(1)(a) sets out that RGRs should be able to expect "a reasonable return on investments made in connection with a wholesale offering"; and
- 3.2.2. section 24(c) sets out that in assessing the range, quantity and frequency of an RGR's wholesale offering, it is necessary to consider the range, quantity, and frequency "that are or are likely to be **demanded** by wholesale customers".²⁶
- 3.3. This means that under the GICA, when identifying the wholesale features that would be consistent with a "competitive wholesale market" (and deciding whether to exercise its Part 3 powers and functions in relation to those features), it is not sufficient for the Commission to simply identify a feature offered by a wholesaler overseas, or to rely on a submission from a third party that it would like an additional feature. Rather, having identified such a feature or received such a submission, the GICA requires that there be, based on probative evidence²⁷, sufficiently widespread market demand for the feature from wholesale customers such that an RGR could expect to make a reasonable return from investing in it.
- 3.4. In light of this context, in Figure 2 below we assess each of the key service / enhancement features that the Commission said it would like to see offered, in comparison to (a) NZGW's existing offerings, and / or (b) NZGW's experience of customer demand for such offerings. This shows that many of the wholesale features the Commission has said it would like to see in the RGRs' wholesaler offerings are either (a) already offered by NZGW, or (b) in NZGW's experience, are not demanded by customers.

²⁵ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [A88].

²⁶ [Emphasis added]

²⁷ In addition to the GICA's requirements, the Commission is also bound by the probative-evidence rule. The High Court has observed that this means "decision-makers cannot fill gaps in evidence with speculation". *Li v Immigration and Protection Tribunal* [2018] NZHC 174 at [57] (citing the 4th edition (2014) of PA Joseph Administrative Law – A to Z of New Zealand Law (online ed, Thomson Reuters) at [2.25.4.8]).

Figure 2 - Comparison of the service / enhancement features identified in the Paper to NZGW's existing offerings / experience of customer demand

Reduced Minimum Order Quantities

The Paper said the Commission would like to see reduced minimum order quantities (MOQ).²⁸ However, NZGW already offers this:

- NZGW's Wholesale Supply Agreement allows for NZGW and a wholesale customer to reach an agreement to supply orders below the MOQ of 60 cartons.²⁹ That can be made available for a fee agreed between NZGW and the wholesale customer; and
- In July 2024, in response to requests by wholesale customers, NZGW updated its Wholesale Supply Agreement to lower the MOQ for chilled and frozen products from 60 to 50 cartons.³⁰

Furthermore, despite offering flexibility to supply below the MOQ, NZGW has not received regular requests for lower MOQs. This is consistent with our understanding that a standard 60 carton MOQ for ambient products is not unreasonable, or inconsistent with what would be expected in a workably competitive market:

- NZGW's MOQ reflects a typical amount required for a single pallet. That can include multiple products and is not a large MOQ, even for a small retail outlet (see Figure 3 below). It is identical to that required by AGW in Australia. []:
 - [];
 - [];
 - []; and
 - []
- In NZGW's experience, in onboarding a potential wholesale customer, the MOQ is either not a barrier for the customer or the customer is seeking to purchase significantly below the MOQ, which is not (in NZGW's view) the type of customer the Wholesale Regime is intended to cater for (as the Commission noted during the Grocery Market Study, trying to develop a wholesale offering for []³¹).

The provision of cross docking and third party logistics

²⁸ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [A70].

²⁹ NZGW Wholesale Supply Agreement cl 6.2(e).

³⁰ NZGW Wholesale Supply Agreement cl 6.2(b).

³¹ []

The Paper said the Commission would like to see the provision of cross docking and third party logistics.³² However, the Paper's statement that "no RGR currently accommodates cross-docking or third-party logistics"³³ is incorrect. NZGW already works with third-party logistics providers in relation to its wholesale offering, as set out below.

- As the Commission is aware, many of NZGW's wholesale customers cannot receive deliveries via WWNZ's standard fleet of larger (26 pallet) trucks. Accordingly, to ensure service for such customers, NZGW freights customer orders from our ambient Auckland Distribution Centres to a third party logistics provider, DHL who then delivers to the customers' stores using DHL's smaller trucks.
- NZGW currently also supplies to a third party who provides efficient wholesale supply to smaller retailers (in particular smaller retailers for whom grocery is a secondary focus). Namely, []³⁴ []³⁵ []³⁶ []

In addition to these current offerings:

- []
- []

Increased delivery days

The Paper said the Commission would like to see increased delivery days.³⁷ However, NZGW's experience is that its current delivery offering is meeting wholesale customers' standard needs. To date NZGW has not received requests for more frequent deliveries, and every wholesale customer has agreed to a regular delivery schedule of once per week. Furthermore, NZGW is open to adapting, where requested, to suit specific wholesale customers' needs:

- When requested over the past financial year, NZGW has delivered [] "rush orders" to [] different wholesale customers (which involve expediting the order so it's delivered before the customer's scheduled delivery date). These rush orders varied in size from [] to [] cartons.
- If a wholesale customer requested a regular order roster schedule for multiple deliveries per week, then NZGW would in good faith attempt to fulfil this. We note the submission [] However, []
- For wholesale customers able to receive a B-train truck, NZGW would be able to supply a wholesale customer any day of the week (including Sunday). If a medium to large scale wholesale customer [] was able to receive deliveries in this fashion NZGW would deliver more frequently.

³² NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [B125] and [B239].

³³ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [97].

³⁴ []

³⁵ []

³⁶ []

³⁷ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [B248].

We consider the above illustrates NZGW's commitment to working with wholesale customers to achieve a more frequent delivery schedule if and when needed.

Implementation of online ordering portals

The Paper said the Commission would like to see implementation of online ordering portals.³⁸ However, since May 2025, NZGW has been rolling out an online ordering portal (**NZGW Order Portal**) in response to our wholesale customers' requests for a more user friendly ordering process. This NZGW Order Portal can be used as alternative to NZGW's existing manual spreadsheet based ordering system:

- As of July 2025 more than 60 NZGW wholesale customers are able to access the NZGW Order Portal.
- We are continuing with data cleansing checks and other further enhancements to move the remaining NZGW customers onto the NZGW Order Portal.

The inclusion of DSD products / a "charge-through" facility

The Paper said the Commission would like to see the inclusion of direct store delivery (DSD) products in wholesale ranges by offering a "charge-through" facility.³⁹ However, as outlined to the Commission previously,⁴⁰ there is not significant wholesale customer demand for, or value to the grocery supply chain in, RGRs facilitating charge-through for DSD products. In particular:

- Many small retailers / potential wholesale customers already source DSD products (such as milk and bread) directly from the supplier.⁴¹ DSD products are often highly perishable and are delivered daily to stores by the supplier.
- To date, NZGW has not received a single request from a wholesale customer for the wholesale supply of bread or milk.
- In a charge-through scenario, DSD suppliers would offer the same products and delivery offering to retail customers, but with the addition of NZGW as "middle person", which would in effect add "double marginalisation" to the transaction (to cover not only the supplier margin, but NZGW's costs of negotiation, and the fact that NZGW would need to account for the risk of non-payment / financial failure of the retail customer). It is WWNZ's view that provision of a charge-through facility in the wholesale context would not result in lower prices, or a better service offering, for end-wholesale customers.

³⁸ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [B251].

³⁹ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [A66] and [B125].

⁴⁰ WWNZ "Wholesale Supply Inquiry: Preliminary Issues Paper - Woolworths New Zealand Limited Submission" (8 November 2024) at [3.6(d)(i)]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0020/363332/Woolworths-New-Zealand-Submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-8-November-2024.pdf.

⁴¹ See Fonterra Brands (New Zealand) Limited "Submission: Wholesale Supply Inquiry" (8 November 2024) at [3]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0019/363322/Fonterra-Brands-New-Zealand-Limited-Submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-8-November-2024.pdf.

In addition, WWNZ expects that suppliers that have invested in their own DSD distribution network are unlikely to want their relationship with wholesale customers disintermediated by RGRs, and we expect they are unlikely to consent to such an approach (i.e. we disagree with the Commission's hypothesis at A40 of the Paper that inclusion of a charge-though facility in RGRs' wholesale offers may incentivise the opt-in of such suppliers). Furthermore, the GICA expressly recognises that "wholesale customers directly arranging supply from suppliers" (section 24(2)) is an alternative to RGRs' wholesale offerings (i.e. the GICA does not expect all wholesaling to include the involvement of RGRs).

Monitoring of retail activation of promotions by third party retailers

The Paper said the Commission would like to see RGRs develop the ability to monitor the retail activation of promotions by third party retailers to facilitate the pass-through on supplier promotional funding. However, the Paper does not appear to consider the complexities and investment that would be required for a third party wholesaler to monitor the retail activation of promotions by a third party retailer - rather, it simply asserts that RGRs "could [develop] systems (akin to scan back in a retail context) that assure suppliers that wholesale customers will use that promotional funding to reduce prices to their retail consumers".⁴² WWNZ estimates that enabling the systems to monitor retail activation accurately by independent third parties would require significant investment (millions of dollars) in POS system linkages between a wholesale customer and NZGW (which would likely require bespoke linkages for each and every wholesale customer), and is not, as far as WWNZ is aware, something that independent wholesalers do overseas (see further in relation to Metcash at paragraph [4.5] below).

For these reasons, WWNZ considers that the issue of negotiating promotional funding, and monitoring retail activation, is something that should properly be managed between suppliers and wholesale customers. To the extent the Commission would like to provide suppliers additional certainty on retail activation, that should be addressed by the Commission communicating its expectations to wholesale customers that promotional funding should be used to activate retail promotions.

On this topic, WWNZ also cannot see the relevance of the Fruju "scratch card" referred to by the Commission at A57 (in support of its assertion that in a competitive market wholesalers would seek solutions to secure RDPs from suppliers) - but we note that it involved a benefit from the supplier being activated at retail by the consumer, consistent with established practice in retail supply chains.

⁴² NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at p 5.

Figure 3 - Visualising a 60 carton MOQ

Picture of a single pallet (70 carton) wholesale offering



Picture of a single pallet (65 carton) wholesale offering



Picture of a two pallet (146 carton) wholesale offering



4. Part 4: We do not agree with the Paper’s approach to assessing the RGRs’ wholesale offerings. The Paper’s approach contains errors, and there are not sufficient grounds to impose further regulation on WWNZ

- 4.1. We are grateful to the Commission for setting out its proposed “legal and analytical framework for the Inquiry” in the Paper. There are a number of aspects of the Commission’s proposed approach that we agree with and, therefore, do not raise further in this submission.
- 4.2. However, there are aspects of the approach outlined in the Paper that we consider are incorrect, and have led the Commission to the erroneous “preliminary view that we have enough evidence to meet the threshold required to impose further regulation” on WWNZ.⁴³
- 4.3. In particular, the Commission has confirmed that its “fundamental concern” relates to the conduct of suppliers.⁴⁴ Absent any change in relation to that “fundamental” issue, it is clear there is insufficient evidence to impose further regulation on WWNZ
- 4.4. There are also other issues and errors with the Paper’s proposed approach:

⁴³ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [101].

⁴⁴ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [70].

- 4.4.1. we are concerned that the Commission's proposed approach to Part 3 appears focused on attaining certain retail outcomes, rather than appropriately applying Part 3's provisions and purpose, which are focused on the wholesale supply of groceries. We appreciate the complexity for the Commission in interpreting Part 3 given WWNZ did not have any separate "wholesale" function prior to the introduction of Part 3; WWNZ's entire business operated on a vertically integrated basis. This includes our WDL business, which is integrated through franchise relationships which differ significantly from relationships with arm's-length wholesale customers. However, despite that complexity we are concerned that the Commission appears to be prioritising assistance for other retailers' retail operations, rather than focusing on wholesale access, as provided for in the purpose statement of Part 3 (section 21), the main principle of Part 3 (section 23) and emphasised in the legislative history. More detail on this is set out in **Appendix One**.
- 4.4.2. the Paper's suggestion at paragraph 27 that the Commission is relying on the statements in its First Annual Grocery (**AGR1**) to underpin the approach to the Wholesale Inquiry⁴⁵ is concerning. We have previously outlined to the Commission the number of flaws with the approach taken in AGR1,⁴⁶ including that while AGR1 purported to find that:
- 4.4.2.1. "[p]rice competition between the RGR banners has weakened",⁴⁷ the evidence demonstrates that WWNZ's retail grocery prices have fallen in real terms over the last decade;
- 4.4.2.2. "[r]etail margins of major supermarket brands increased", the evidence demonstrates that WWNZ's margins have been decreasing;
- 4.4.2.3. "RGR profitability remains high", the evidence demonstrates that WWNZ's grocery profits and returns are not high, with WWNZ making an after tax loss of 0.5c for every \$1 spent in our stores in FY24, WWNZ's NPAT being negative in FY24, WWNZ's profits being in the bottom quartile of supermarkets internationally, and WWNZ's return on capital currently being below its cost of capital; and
- 4.4.2.4. "New Zealand consumers are spending more on groceries than their Australian and UK counterparts", the evidence demonstrates that any price differential is due to New Zealand's taxation policy,

⁴⁵ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [28].

⁴⁶ []

⁴⁷ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [27.2].

in that if New Zealand applied the same GST / VAT exemptions on groceries as Australia or the UK, then New Zealand shoppers would be paying less than Australian and UK shoppers.

For the Paper to repeat those incorrect statements from AGR1, despite the subsequent corrections provided by WWNZ to the Commission, raises concerns that the underlying basis for the Paper's recommendations is based on errors of fact.

- 4.4.3. section 65(3)(b)(ii) of the GICA states that the Commission should not impose additional regulation if a RGR's wholesale agreements are not "materially contribut[ing] towards achieve the purpose of this Part"⁴⁸ of the GICA "because of some other cause beyond A's control". The Paper states that the Commission's "fundamental concern" is supplier use of promotional funding, a factor which is outside WWNZ's control (with another key concern being suppliers opting out of having their products sold at wholesale).⁴⁹ Imposing further regulation on WWNZ for reasons outside of its control would be inconsistent with the statutory basis of the GICA.
- 4.4.4. the Paper's approach, at B17, of not "consider[ing] the desirability that each regulated grocery retailer's wholesale prices reflect efficient costs" is not an approach allowed for by the GICA - it is directly contrary to the section 24(1)(a) pricing principle.⁵⁰ The Commission's rationale for excluding consideration of the pricing principle appears to be its analysis set out at A50 of the Paper, that the pricing principle will become relevant only when RGRs increase their volumes to the point that they achieve a hypothetical level of operational efficiency. In WWNZ's view, there is no statutory or other basis for this interpretation. The main principle of Part 3 set out in section 23 is the importance of wholesale offerings being consistent with wholesale offerings provided in workably competitive wholesale markets. Under section 24(1), the only basis upon which the Commission may exclude consideration of the section 24(1)(a) pricing principle is that it is not relevant to the main principle. We do not see how any economic regulator could reasonably and rationally decide that a principle of wholesale prices reflecting efficient costs is **not** relevant to an assessment of consistency with a workably competitive wholesale market. Such an approach is directly contrary to the Commission's correct statement at A88 that the section 24 "principles all relate to outcomes that would be found to a greater or lesser degree in a workably

⁴⁸ Grocery Industry Competition Act 2023, s 65(2)(d)(ii).

⁴⁹ For example, [B93] states: "We recognise WWNZ has not always been able to provide these products due to supplier decisions."

⁵⁰ Grocery Industry Competition Act 2023, s 24(1)(a).

competitive wholesale market and are therefore integral to promoting the outcomes found in workably competitive wholesale markets.”⁵¹ Such an approach also does not reflect the requirement to consider whether there is sufficient wholesale customer demand to enable a particular feature of a wholesale offering to be viable (see paragraph [3.3] above), which in WWNZ’s view must be relevant to consideration of consistency with a workably competitive wholesale market, in the current context.

4.4.5. the Paper is inconsistent in whether it is assessing the RGRs’ wholesale offerings against the offerings that would be included at their current (nascent) scale, or whether they should be assessed against offerings that would be included in a full-scale long-established wholesale business. For example:

4.4.5.1. B240 to B244 indicate that the Commission expects the RGRs’ wholesale offerings to already include offerings that would otherwise only be expected in a “wholesale market trading higher volumes”;⁵² whereas

4.4.5.2. B250 to B251 indicates that current offerings may be appropriate as they are consistent with the “current limited scale of RGR wholesale offerings”.⁵³

We submit that the Commission’s assessments need to be consistent in relation to this issue, and that the appropriate measure is the service offerings and volumes that the Commission would expect to see in a competitive wholesale market that has been operating for two years and is still scaling up. As we have outlined to the Commission previously, “it is not realistic for the Commission to expect a wholesale business to go from nothing to fulfilling all potential indicators of perfect competition in a competitive wholesale market within 24 months of the wholesale regime coming into force, and it is not in the long-term interests of consumers to propose regulatory interventions before real world market processes and efficiencies have had time to take effect.”⁵⁴

4.4.6. it is not correct for the Paper to assert that the level of RGR wholesale sales is smaller than should be expected after the wholesale regime has been in place for 24 months. As outlined at paragraph [3.1] above,

⁵¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [A88].

⁵² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B240].

⁵³ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [250].

⁵⁴ WWNZ “Wholesale Supply Inquiry Preliminary Issues Paper - Woolworths New Zealand Limited Cross-Submission” (11 December 2024) at [3.5]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0020/364025/Woolworths-New-Zealand-Cross-submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-11-December-2024.pdf.

NZGW has made significant progress in a very short space of time. Furthermore, the Paper does not reflect that some of NZGW's customers used NZGW's wholesale offering as a "springboard" to develop their own direct supply relationships with suppliers, consistent with the objectives of GICA. For example, []⁵⁵ []⁵⁶ [] In evaluating the progress of the wholesale regime, it is necessary for the Commission to take into account such examples.

- 4.4.7. the Paper does not consider the need for scale in developing "white label" product offerings. New Zealand is a very small market (the total New Zealand population is less than the population of Sydney). Even in Australia, [] It is, therefore, not surprising, and not inconsistent with a competitive wholesale market, that the Commission is "not aware of a current, widespread white label offering in New Zealand for retailers".⁵⁷
- 4.4.8. the TRA survey results, referred to at A55, are not sufficient or reliable evidence for the Commission to assert that suppliers do not control who their promotional funding may be provided to, or that somehow the promotional funding dynamics are driven by the RGRs in New Zealand. As outlined at paragraph [3.3] above, the Commission needs to ensure its decisions are based on probative evidence. WWNZ has outlined to the Commission previously that suppliers providing promotional funding is "a practice that benefits and is primarily driven by suppliers (not by WWNZ), and is common across the world (it is not unique to New Zealand). This is because it is a practice that allows suppliers to control the timing of a retailer's promotional programme in relation to the supplier's products."⁵⁸ As the Federal Trade Commission (**FTC**) has observed in the US:⁵⁹

"producers engage in trade promotion by funding discounts. For example, producers may induce shoppers to try new products or to buy in bulk, by temporarily boosting sales with discounted prices. To fund these short-term sales, producers often rebate or otherwise reduce their wholesale prices and provide funds for advertising the promotion."

⁵⁵ []

⁵⁶ []

⁵⁷ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [B151.3].

⁵⁸ WWNZ "Review of the Grocery Supply Code - Woolworths New Zealand Limited Submission" (16 September 2024) at [3.6]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0023/362507/Woolworths-New-Zealand-Submission-on-Review-of-the-Grocery-Supply-Code-Request-for-Views-paper-16-September-2024.pdf.

⁵⁹ Federal Trade Commission "Feeding America in a Time of Crisis - The United States Grocery Supply Chain and the COVID-19 Pandemic" (21 March 2024) at p 18. Retrieved from: https://www.ftc.gov/system/files/ftc_gov/pdf/p162318supplychainreport2024.pdf. [Emphasis added]

In reviewing documents and responses from companies receiving 6(b) Orders, we found that marketing funds from these producer-funded promotions were generating large flows of money from producers to both wholesalers and retailers. The information provided by the respondents showed that grocery retailers across the industry depend on promotional money provided to them as a large and important source of their revenue.”

Across the world, promotional funding arrangements benefit suppliers and are in their interests as they increase sales volumes and brand awareness, enable greater supplier control of the timing and detail of promotional activity, which can then be aligned with suppliers' production, distribution and marketing activities.⁶⁰ An evidence-based decision needs to consider the reasons this practice is prevalent internationally, and reflect how suppliers benefit from such funding, rather than simply relying on assertions in response to a survey to conclude that it is driven by RGRs in New Zealand.

- 4.4.9. the Paper’s reliance on a survey from 2017 to state that the use of promotional pricing “is more pronounced”⁶¹ in New Zealand than other countries is not accurate or appropriate. That survey is out-of-date, and does not reflect current dynamics (nor probative evidence). Current dynamics, as outlined in Figure 4 below, demonstrate that the proportion of products sold on promotion in New Zealand is similar to many other countries, and reinforce that supplier use of promotional funding is common across the world.

[] *Figure 4 - Penetration of promotional sales in various countries*

[

]

- 4.4.10. the Paper’s statement, at A57, that “[w]e do not consider that the grocery supply code precludes RGRs from acting on behalf of wholesale customers and negotiating with suppliers for RDPs to be passed forward to wholesale customers” mischaracterises WWNZ’s previous submission to the Commission. WWNZ’s concern was not in relation to its ability to seek to negotiate with suppliers, but rather that the Grocery Supply Code precludes WWNZ passing on any RDPs to wholesale customers without

⁶⁰ This is also reflected in Fonterra Oceania’s submission that it considers it is difficult for suppliers to allow independent wholesalers (such as the RGRs) to provide discretionary retail scan funding to this party wholesale customers because “suppliers would have no control or ability to monitor whether they are getting the services they are paying for.” Fonterra Brands (New Zealand) Limited “Submission: Wholesale Supply Inquiry” (8 November 2024) at [12]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0019/363322/Fonterra-Brands-New-Zealand-Limited-Submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-8-November-2024.pdf.

⁶¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [X7].

supplier consent. WWNZ has no issue with seeking to negotiate on behalf of its wholesale customers as the Commission would like to see, and has consistently done so, but we cannot force suppliers to provide RDPs to wholesale customers.

- 4.4.11. there was no evidential justification for the assertion, at B205, that any RGR “market power over suppliers could be hindering other retailers access to products in direct supply”.⁶² That statement was a mere unsubstantiated assertion, with the only apparent support being the subsequent reference to “one supplier” perceiving pressure from FSNI.⁶³ If such pressure were exerted, that is an issue that could be enforced under the Grocery Supply Code, and it is not fair or reasonable for blanket statements to be made about all RGRs based on a perception relating to FSNI.
- 4.4.12. the Paper is inconsistent as to which third party retailers the Commission expects could contribute to retail competition by accessing groceries via the wholesale regime. For example:
 - 4.4.12.1. at A23, the Paper states that “[w]e expect that in general, larger sized other retailers with multiple sites may be able to by-pass the wholesale regime” (communicating that the Commission does not expect larger retailers to use the wholesale regime);
 - 4.4.12.2. at B23 the Paper states that “legislative history of the Act is clear that RGR wholesale offerings are intended to support smaller retailers” (communicating that the Commission considers the purpose of the wholesale regime is to support smaller retailers);
 - 4.4.12.3. at paragraph 35, the Paper states that grocery retailers that are already using the wholesale regime, such as Mad Butcher, Reduced to Clear and Circle K, do not “compete with the RGRs”⁶⁴ (seemingly dismissing these smaller retailers’ access to groceries via the wholesale regime); and
 - 4.4.12.4. at B286, the Paper states that “[w]e have seen no evidence that the current wholesale offerings are likely to facilitate larger-scale entry or expansion” (despite having previously said that the regime is intended to support smaller retailers, and is likely to be by-passed by “larger sized other retailers with multiple sites”).

⁶² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B205].

⁶³ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B207].

⁶⁴ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [35].

It is critical that there is a consistent and clear articulation of the Commission's expectations as to who it expects should be accessing the RGRs' wholesale offerings under the wholesale regime. In particular, given the above, it is unclear which "large wholesale customers" the Commission appears concerned (at paragraph 39) are not demanding groceries via the wholesale regime, given it has said that (a) the regime is about supporting smaller retailers, and (b) it would expect larger retailers to by-pass the regime. If the Commission's fundamental concern is that The Warehouse is not purchasing groceries via the wholesale regime [],⁶⁵ then we consider that the Commission should simply be express about that. If so, we also reiterate the evidence we have previously provided to the Commission that []

4.4.12.5. []

4.4.12.6. []

4.4.12.7. []

4.4.12.8. [].

It is also essential that the Commission make clear that the RGRs are not responsible for decisions made by The Warehouse.

- 4.5. We are concerned by the Paper's repeated approach of identifying (from what appears to be desktop research) a feature of a grocery wholesaler overseas, often incorrectly or without context, to suggest that a competitive wholesale market in New Zealand should have the same feature. For example, the Paper makes numerous references to Metcash in Australia, to support suggestions that a competitive independent wholesaler in New Zealand would have certain features. However, many of those references are erroneous, and the approach adopted in relation to such features does not meet the probative-evidence based standard which is required of the Commission. In particular, the following issues need to be corrected for:

- 4.5.1. Metcash began wholesaling groceries in 1935,⁶⁶ whereas the New Zealand grocery wholesale regime has only been in place for two years. It is unrealistic (and not consistent with the concept of workable competition) to expect a two year old business to have developed all the features of a 90 year old business - for example, to have immediately developed charge-through and cross-docking offers.

⁶⁵ []

⁶⁶ Metcash "History". Retrieved from: <https://www.metcash.com/about-us/history/>.

- 4.5.2. The population of Australia is five times larger than New Zealand. That significantly greater scale will inevitably enable the development of additional features that will simply not be viable in New Zealand (the imposition of which would be inconsistent with the GICA's recognition in section 24 that RGRs should be able to recover their efficient costs including a reasonable return on investments made in connection with their wholesale offerings). That is even more so the case when the Commission expects the wholesale regime in New Zealand to develop at least three separate wholesalers for New Zealand's population of 5 million.
- 4.5.3. The Commission comments on Metcash as if it is an "independent" wholesaler to third party retailers, but that does not reflect Metcash's business model. Of Metcash's grocery retailer "customers", 81% are members of Metcash's IGA franchise network (i.e. it is primarily a franchise business, not a wholesaler to independent retailers).⁶⁷ Metcash's business model is akin to Foodstuffs' cooperative franchise model. Given this, it is inaccurate for the Paper to suggest that Metcash "has around 7% market share in Australia" through wholesaling to "independent supermarkets".⁶⁸ It is likely that Metcash's market share through true independent wholesale customers (i.e. excluding franchise stores) is less than 1%.
- 4.5.4. The Commission comments on Metcash as if its business model is the best (or only) way to operate a successful wholesale business. However, the Commission's decision-making needs to reflect that there are alternative, and potentially, better ways for NZGW to operate a successful wholesale business. Indeed, the ACCC, in its recent Supermarkets Inquiry, observed that Metcash's market share is decreasing over time (see Figure 5 below),⁶⁹ which indicates that a simplistic approach of asking NZGW to replicate Metcash is not necessarily a recipe for success.

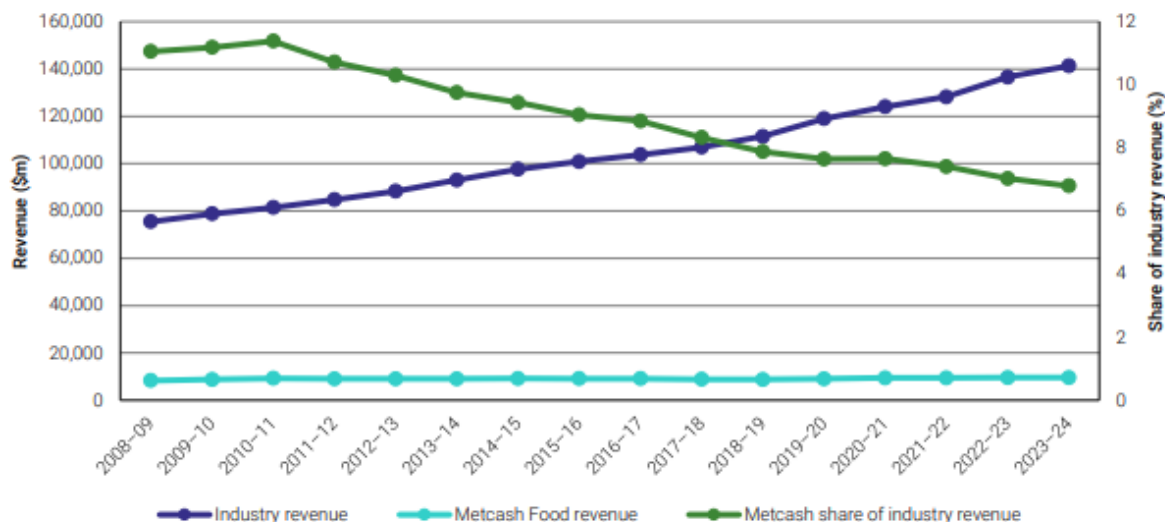
⁶⁷ Metcash Limited "Submission to ACCC Supermarkets Inquiry 2024-25 Issues Paper" (19 April 2024). Retrieved from: <https://www.accc.gov.au/system/files/Metcash.pdf>.

⁶⁸ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [44.1].

⁶⁹ ACCC "Supermarkets Inquiry - final report" (February 2025) at p 128. Retrieved from: https://www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf.

Figure 5 - Metcash's share of industry revenue has contracted between 2008-09 and 2023-24

Figure 3.7: Metcash's share of industry revenue has contracted between 2008-09 and 2023-24



- 4.5.5. While the Commission appears focused on using the wholesale regime to establish non-vertically integrated retailers in New Zealand, the ACCC observed that:⁷⁰

“Metcash has a public strategy to increase vertical integration. Metcash describes this as shifting from a traditional grocery wholesaler to an integrated wholesaler, banner-operator and retailer... Metcash considers this will bring benefits including greater efficiency to roll out initiatives for retail outlets (such as loyalty programs) and will better enable network growth through access to Metcash’s scale and its capital... A vertically integrated supermarket will also benefit from the elimination of double marginalisation, the alignment of incentives.”

- 4.5.6. While the Commission states that Metcash has “had some success in securing supplier funding support for long-term price promotions for its wholesale customers”,⁷¹ that statement does not appear to reflect public statements about Metcash’s business model.⁷² It is understood that rather than Metcash passing on supplier promotional funding to retailers, suppliers offer Metcash (and by extension, Metcash retailers) discounted wholesale pricing for a particular period to allow for the delivery of retailer

⁷⁰ ACCC “Supermarkets Inquiry - final report” (February 2025) at p 139. Retrieved from: https://www.accc.gov.au/system/files/supermarkets-inquiry_1.pdf.

⁷¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [70].

⁷² Metcash Limited “Submission to ACCC Supermarkets Inquiry 2024-25 Issues Paper” (19 April 2024) at p 9. Retrieved from: <https://www.accc.gov.au/system/files/Metcash.pdf>.

promotional programs. As the Commission is aware, NZGW has sought to negotiate similar discounted pricing / wholesale promotional programs with suppliers in New Zealand, with the lack of progress on that front due to supplier reluctance. []

4.5.7. The Commission's comment that Metcash operates a "charge through" offering to wholesale customers is not correct. [] []

4.5.8. The Commission comments on Metcash's inclusion of "Black & Gold" white label products to some wholesale customers, without reflecting that (a) private label products are only a very small proportion of Metcash's sales (only 7%), and (b) that Metcash does not wholesale to other third party grocery retailers products branded with Metcash's own retail brand (i.e. IGA or even "Community Co"). Metcash's "Black & Gold" products are more similar to a "fantasy" brand (some of which are already included in NZGW's wholesale range) than a private label product.

4.6. WWNZ has similar concerns in relation to the Commission drawing adverse inferences about the RGRs' market shares based on comparisons to the share of Tasmania's Statewide Independent Wholesalers (**SIW**) and the Netherlands' Superunie.

4.6.1. To use SIW's "70% share of the Tasmanian grocery"⁷³ as a benchmark of the "potential size of an effective wholesale market" in New Zealand is misleading.

4.6.1.1. First, SIW is 60% owned by Woolworths Group, and it is estimated that []% of its sales are to Woolworths stores (in effect, an internal distribution service for a vertically integrated retailer). Tasmanian Independent Retailers (**TIR**) owns the remaining 40%, which accounts for the bulk of the rest of SIW's sales.

4.6.1.2. Second, while "SIW procures the goods directly from suppliers, Woolworths and TIR are responsible for negotiating trading terms and managing the relationship with their respective suppliers".⁷⁴ In particular, WWNZ understands:

4.6.1.2.1. [].

4.6.1.2.2. []

⁷³ NZCC "Wholesale Supply Inquiry - Preliminary Findings Paper" (5 June 2025) at [44.3].

⁷⁴ Statewide Independent Wholesalers Limited "Customer Manual" (18 April 2024) at p 2. Retrieved from: https://pub.joel.net.au/dumps/myigatas.com.au/volumes/documents/SIW/Customer-Manual/SIW_Customer-Manual_APR_2024.pdf.

4.6.1.2.3. []

4.6.1.2.4. []

Accordingly, rather than being an “independent wholesaler”, SIW is a logistics / distribution joint venture for two otherwise separate vertically integrated retailers that negotiate directly with suppliers themselves. SIW is not involved in supplier negotiations and does not make decisions on range, prices or RDPs.

4.6.2. To use the Netherlands’ Superunie as the benchmark of the “potential size of an effective wholesale market” in New Zealand is also misleading. Superunie is “a cooperative buying group of which the members are predominantly regionally active but in some cases compete with each other where their regions overlap”.⁷⁵ Superunie’s business model is more akin to the Foodstuffs cooperative business model, than an independent wholesaler.

4.7. The comments regarding delivery frequency were also unclear. Namely, the Paper states that the Commission cannot conclude that deliveries “more frequently than once a week... would be cost effective for groceries”, but nonetheless suggests that RGRs delivery frequencies “could be improved” by being more frequent than once a week.⁷⁶ The GICA requires that any RGR wholesale offering should be “cost effective”, so it is not appropriate for the Commission to target a delivery frequency that it does not consider would be cost-effective.

4.8. WWNZ also notes that the Paper states that the Commission has been “unable to make a judgement on whether meat is accessible, competitively available and with a sufficiently diverse range of suppliers for other retailers” due to a lack of information.⁷⁷ In response, WWNZ notes that:

4.8.1. FreshChoice and SuperValue franchisees, for the most part, source their fresh meat requirements from third party wholesale sources, not from WDL or WWNZ; and

4.8.2. independent butchers, including the Mad Butcher chain, source their fresh meat requirements from third party wholesale sources.

⁷⁵ Global Retail Brands “The Food Retail Landscape and Private Label in the Netherlands” (25 May 2017). Retrieved from: <https://globalretailmag.com/food-retail-landscape-private-label-netherlands/#sthash.putF1Mh4.dpbs>.

⁷⁶ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B246].

⁷⁷ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B173].

WWNZ considers that the above demonstrates that, like fresh produce, there is already a competitive wholesale market for fresh meat.

5. Part 5: Additional steps that WWNZ will take over the coming 12 months

- 5.1. Part 3 above demonstrates that WWNZ's wholesale offering already has many of the features sought by the Commission. No further regulation of WWNZ is required or would be helpful. Nevertheless, to further enhance the attractiveness and growth of its wholesale offering, and recognising the areas for further potential improvements identified in the Paper, over the next 12 months WWNZ intends to take the following steps:
 - 5.1.1. WWNZ's Managing Director will seek to meet with senior leaders at WWNZ's top suppliers in the coming months, to seek better product range and promotional funding support for NZGW's wholesale offering. WWNZ considers that this level of engagement will demonstrate to the supplier community WWNZ's commitment to enhancing its wholesale offering, while encouraging behavioural change from suppliers. WWNZ is also hopeful that the communication of the Commission's expectations of suppliers, as outlined in the Paper, will assist those negotiations to be more successful than they have been to date.
 - 5.1.2. In addition to those meetings, NZGW will continue to reach out to suppliers to seek support for supplier promotional funding / programmes that can be offered to NZGW's wholesale customers (for example, by negotiating a "wholesale promotional calendar" with suppliers). NZGW will also make clear to suppliers that (with wholesale customer consent) it is happy to provide suppliers with the details of the wholesale customers purchasing their products, so that they can enter into direct "supplier / end retailer" discussions in relation to promotional support.
 - 5.1.3. WWNZ's Managing Director will also seek a meeting in the coming months with [].
- 5.2. WWNZ trusts that the intentions outlined above demonstrate WWNZ's commitment to advancing its wholesale offering, and the success of the GICA's wholesale regime. However, supplier cooperation is required if NZGW's efforts to extend its range and the level of promotional funding provided are to be successful (see further immediately below).

6. Part 6: It is important that the Commission clearly articulates its expectations to suppliers to ensure positive (and not adverse) outcomes for consumers

- 6.1. The Paper states that the Commission considers “suppliers need to... reduce their use of promotional funding”,⁷⁸ while also noting that the Commission estimates that “the levels of promotional funding ranged between 10% to 20% of revenue across RGRs”.⁷⁹ As the Commission is aware, WWNZ is already a very low margin business,⁸⁰ which means the increased costs to WWNZ of removal of promotional funding could not be viably absorbed.
- 6.2. Accordingly, if the Commission wants suppliers to “reduce their use of promotional funding”, it is critical that the Commission communicate clearly to suppliers the need to reduce their upfront (everyday) costs to retailers, such as WWNZ, to ensure that overall net cost prices do not increase. Otherwise, there will necessarily be an increase in grocery prices to New Zealand consumers (and an increase in returns to suppliers, which are already much higher than WWNZ’s).⁸¹
- 6.3. The Commission also needs to carefully consider the costs / benefits of recommending that suppliers reduce their use of promotional funding given the ubiquitous nature of supplied-led promotional funding arrangements across the world - evidencing that they are an efficient market mechanism (see paragraph [4.4.8] above).

7. Part 7: Concluding comments

- 7.1. In summary, in our submission:
- 7.1.1. WWNZ is complying with its obligations under the GICA in promoting its wholesale offering;
- 7.1.2. there is no basis for further regulation of WWNZ in the context of the Commission’s “fundamental concern” about supplier conduct - the Commission’s focus should be on suppliers;

⁷⁸ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at p 5.

⁷⁹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [X7].

⁸⁰ Demonstrating this:

- in FY24 WWNZ made an after tax loss of 0.5c for every \$1 spent in our stores; and
- for every \$1 spent in WWNZ’s stores, the amount suppliers charge WWNZ for groceries has a 50 times greater impact on the retail prices of those groceries than WWNZ’s profits [].

Based on WWNZ’s audited accounts for the FY24 period, adjusted for the after tax impact of one-off costs, impairments (Goodwill and Property, Plant and Equipment) and inventory valuation adjustments. On average, suppliers’ prices have had 50 times the impact on retail prices than that of WWNZ’s profits for the 5.5 years from FY20 to H1 FY25.

⁸¹ []

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- 7.1.3. WWNZ has made significant progress in its wholesale offering in a very short period;
 - 7.1.4. WWNZ is committed to the further development of that wholesale offering;
 - 7.1.5. the Commission must assess WWNZ's wholesale offering consistently with the approaches provided for by the GICA; and
 - 7.1.6. there is a critical need for clear engagement and guidance from the Commission in relation to its expectations of the supplier community.
- 7.2. For these reasons, no further regulation of WWNZ's wholesale offering is appropriate. Rather, WWNZ looks forward to continuing its constructive relationship with the Commission in relation to its wholesale offering, and we will keep the Commission updated on enhancements and additions to our wholesale offering over the next 12 months.

APPENDIX ONE

THE REQUIRED FOCUS OF PART 3 OF THE GICA

- 7.3. As we have previously outlined to the Commission, prior to the introduction of Part 3 of the GICA, WWNZ did not have any separate “wholesale” function - its entire business operated on a vertically integrated basis (with end-to-end operations and product flows, including in relation to buying, warehousing, and logistics). That includes its WDL business. While SuperValue and FreshChoice outlets are owner-operated, they are franchises, meaning their operational framework includes a range of mutual obligations, including terms of supply, that differ from an arms-length wholesale relationship.
- 7.4. This context (i.e. that aside from NZGW, WWNZ is a vertically integrated retailer) gives rise to challenges in interpreting Part 3 of the GICA, which is premised on regulation of RGRs’ “wholesale” operations.
- 7.5. However, notwithstanding those challenges, it is important the Commission remains focused on the purpose of Part 3 of the GICA (relating to the wholesale supply of groceries)⁸² and the main principle of Part 3.⁸³ In particular, many aspects of the approach outlined in the Paper appear premised on the Commission “goal seeking” outcomes to assist other retailers’ retail operations. However, while WWNZ agrees that the GICA aims to promote retail competition, Part 3 is focused on the wholesale supply of groceries:
- 7.5.1. section 21 states that the purpose of Part 3 is to enable wholesale customers to “have reliable and cost effective wholesale supply of groceries” and “reasonable access to the benefits of the scale, and the efficiency, of operations” of the RGRs; and
- 7.5.2. section 23(1) requires the Commission to “take into account the main principle” of Part 3 in all its decision making, which is “the importance of wholesale offerings to wholesale customers (including by regulated grocery retailers) being consistent with wholesale offerings being provided in a competitive wholesale market”.⁸⁴
- 7.6. It is not correct for the Commission, as suggested at paragraphs A5 to A12, to treat the purpose of Part 3 as subservient to the purpose of the GICA in section 3. Section 21 is the primary purpose statement for any and all Commission decision making under Part 3, and means the Commission’s focus should be on the RGRs’ wholesale supply and the scale of their wholesale operations (and not

⁸² Grocery Industry Competition Act 2023, s 21.

⁸³ Grocery Industry Competition Act 2023, s 23(2).

⁸⁴ Grocery Industry Competition Act 2023, s 23(2).

on how wholesale access seekers may compete downstream at retail with RGRs, or how wholesale access seekers can access the benefits of RGRs' retail operations). That the intended focus is on wholesale operations is reflected in the legislative history of Part 3 - for example:

7.6.1. *"in response to the commission's findings, we will implement a wholesale access regime and develop a regulatory backstop for that. Alongside the retail stores, **supermarkets have wholesale arms. We are calling on the duopoly to open these up to would-be competitors at a fair price.** Do this knowing Government is determined to get a regulatory backstop finalised by the end of this year [sic]. If supermarkets do not strike good-faith wholesale deals with their competitors, our regulatory measures will make it happen for them. We are not afraid to unlock **the storeroom door** to get a fair deal for consumers."*⁸⁵

7.6.2. *"Through the regulation of access to grocery wholesale I want to enable other grocery retailers (also referred to as wholesale customers) to take advantage of the **major grocery retailers' scale and efficiencies in purchasing and distributing groceries**, and as a result provide more competitive offerings to consumers."*⁸⁶

7.7. The Commission's improper focus on achieving certain retail outcomes, instead of wholesale customers' access to competitive, reliable and cost effective wholesale groceries is manifest in a number of places in the Paper:

7.7.1. at A15, while it is appropriate to suggest that a "thriving wholesale regime" may support the entry and expansion of other retailers, it is not necessary or appropriate under Part 3 for a primary focus to be on whether decisions will promote retail competition with RGRs. The focus under section 21 is wholesale reliability, cost-effectiveness and access.

7.7.2. at A16 to A17, it is appropriate to focus on reliable and cost-effective wholesale supply. If that is achieved then wholesale customers will have the opportunity to compete at retail. However, it is not the role of regulation under Part 3 to ensure they can compete (for example, by requiring RGRs to sell to wholesale customers at a loss or to subsidise their businesses).

⁸⁵ Hon David Clark, see Office of the Prime Minister "Post-Cabinet Press Conference: Monday 30 May 2022 - Hansard Transcript" (30 May 2022) at p 2. Retrieved from: <https://www.beehive.govt.nz/sites/default/files/2022-05/Press%20Conference%2030%20May.pdf>. [Emphasis added].

⁸⁶ Cabinet Office "Grocery sector reform: regulation of access to grocery wholesale and collective bargaining exemption" (2 September 2022). Retrieved from: <https://www.mbie.govt.nz/dmsdocument/23721-grocery-sector-reform-regulation-of-access-to-grocery-wholesale-and-collective-bargaining-exemption-proactiverelease-pdf>. [Emphasis added]

- 7.7.3. while RGR wholesale scale is related to, and can be a product of, retail scale, for regulation under Part 3, the Commission needs to be careful to focus on wholesale scale, and how that scale would or could be used for the benefit of wholesale customers in a competitive wholesale market. Contrary to A22, the GICA does not direct RGRs to make decisions regarding their own retail operations to benefit other retailers, rather the focus of Part 3 is competitive wholesale supply.
- 7.7.4. at A46 and A47, Part 3 requires a focus on efficient wholesale costs, which is why WWNZ considers that the “Commission’s approach of assessing the margin between wholesale and retail prices”⁸⁷ is not an approach provided for by Part 3. The Paper’s proposed approach (of looking at a wholesale customers’ desired mark-up) instead, reflects an improper focus on both RGRs’ and access seekers’ retail operations. In particular:
- 7.7.4.1. sections 21 and 23 do not state that wholesale access seekers must be able to compete at retail, they simply state that wholesale customers should have reliable and cost-effective wholesale supply that is consistent with wholesale offerings in a competitive wholesale market;
- 7.7.4.2. section 24(1)(a) states that the prices of such wholesale groceries should reflect the RGRs’ efficient costs in wholesaling (“including a reasonable return on investment made in connection with a wholesale offering”),⁸⁸ and
- 7.7.4.3. the legislative history of the GICA expressly noted that “retail prices at some major grocery stores may be lower than their wholesale offering prices due to the impact of retail-focused promotional and marketing discounts which are funded by suppliers”, and that it was expected that this issue would be resolved through direct promotional funding relationships between suppliers and wholesale customers.⁸⁹

Accordingly, the Commission is required to focus on the RGRs’ efficient costs of wholesale (including a reasonable return on investment), not the access seekers’ desired retail mark-up. To put this another way, the wholesale pricing principle in the GICA is focussed on reflecting the

⁸⁷ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [A47].

⁸⁸ Grocery Industry Competition Act 2023, s 24(1)(a)(iii).

⁸⁹ Cabinet Office “Grocery sector reform: regulation of access to grocery wholesale and collective bargaining exemption” (2 September 2022). <https://www.mbie.govt.nz/dmsdocument/23721-grocery-sector-reform-regulation-of-access-to-grocery-wholesale-and-collective-bargaining-exemption-proactiverelapse-pdf>. [Emphasis added]

efficient costs of RGRs and access by wholesale customers to discounts, payments and rebates. A48 appears to apply a different pricing principle, being that the wholesale price should be low enough to enable an efficient wholesale customer to apply “to apply a margin at least as [sic] equal to that of an RGR retailer (eg, 20-25% markup)”. However, that is not an approach provided for by the GICA. Furthermore, the Paper’s suggestion, at A48, that there is a standard retail mark-up that access seekers should have access to is also inconsistent with the acknowledgements elsewhere in the Paper that different access seekers will have different costs to serve and different cost bases.⁹⁰ On this issue, we also note that even if it were appropriate to assess RGRs’ wholesale prices to avoid a presumed “margin squeeze”:

- 7.7.4.4. there does not appear to be any quantified analysis as to why the Commission considers that WWNZ’s ~18% store expenses ratio requires other retailers to earn a mark-up of 20 to 25%.⁹¹ The Commission’s statement that they have used “a range of 20% - 25% to assess whether there is a *sufficient gap* between wholesale and retail prices to recover retail related costs”⁹² lacks sufficient economic and quantitative rigour;
- 7.7.4.5. it should be on the basis that it is the efficient costs of RGRs that should be incorporated, rather than the retail costs or margins of third party wholesale customers^{93,94} and
- 7.7.4.6. the Commission’s allowance for other retailers to obtain a “return on capital”⁹⁵ is inconsistent with the approach the Commission applied to the RGRs during the Market Study. In the Market Study, the Commission treated any returns above the cost of capital obtained by the RGRs as “excess returns”,⁹⁶ whereas here it would be seemingly seeking to ensure that other retailers obtain a positive return on capital. While we agree businesses need to make a positive return on capital to be viable, it is important that the Commission applies consistent approaches to RGRs and

⁹⁰ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [A27].

⁹¹ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [A48].

⁹² NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B34]. [Emphasis added].

⁹³ See discussion in WWNZ “Wholesale Supply Inquiry Preliminary Issues Paper - Woolworths New Zealand Limited Cross-Submission” (11 December 2024) at [11.2]. Retrieved from: https://comcom.govt.nz/_data/assets/pdf_file/0020/364025/Woolworths-New-Zealand-Cross-submission-on-Wholesale-Supply-Inquiry-Preliminary-Issues-Paper-11-December-2024.pdf.

⁹⁴ Furthermore, WWNZ / NZGW cannot be expected to know the costs of a third party wholesale customer that will likely structure its business differently to WWNZ.

⁹⁵ NZCC “Wholesale Supply Inquiry - Preliminary Findings Paper” (5 June 2025) at [B33].

⁹⁶ NZCC “Market Study into the retail grocery sector – Final Report” (8 March 2022) at [3.54].

other retailers (and it is neither reasonable nor principled to do otherwise).

- 7.7.5. at A58, the Paper recognises that there are differentiated retail business models (from small limited range stores to large full-service supermarkets) and states that “as such we consider that other retailers should have access to RDPs that an equivalent RGR retail operation would receive”.⁹⁷ The Commission’s approach at A58 would suggest that NZGW’s wholesale customers should receive significantly lower RDPs than WWNZ’s retail business because none of NZGW’s wholesale customers are “equivalent” in terms of retail scale to WWNZ’s retail business. However, that approach appears inconsistent with the Commission’s indication at paragraph 29.3 that RGRs should pass on “an equivalent level of promotional funding to that enjoyed by the RGRs in their own retail operations.” Whichever statement represents the Commission’s actual position (which requires clarification), we are concerned that the Commission appears to be interpreting the Part 3 wholesale regime to be focused on achieving retail equivalence with the RGRs, when as outlined above, it is focused on the RGRs’ wholesale operations.
- 7.7.6. at A51 to A58, the Commission’s approach needs to recognise that, if suppliers refuse consent for WWNZ’s wholesale business to pass on certain RDPs to its wholesale customers, then it is beyond WWNZ’s ability to require suppliers to pass on those RDPs, and WWNZ’s wholesale business must still charge a margin on the cost it faces from the suppliers for those goods for wholesale supply (as anticipated in the GICA’s section 24(1)(a)(iii) pricing principle, which refers to an RGR’s reasonable expectation of recovering its efficient costs). This means that if the Commission wants these RDPs provided to (passed onto) wholesale customers, then that is a matter it needs to address with suppliers.

⁹⁷ [Emphasis added].