

# Government response to the Commerce Commission’s final report on the New Zealand retail grocery sector

## *Improving the conditions for entry and expansion by grocery retailers to introduce more competitive pressure into the market*

	Commerce Commission recommendation	Government response
1	<p><b>Improve the availability of sites for retail grocery stores under planning law</b></p> <p>Several changes to planning law should be made to support competition. In particular:</p> <ul style="list-style-type: none"> <li>• 1A: District plans should include sufficient land that is zoned to enable choice in sites for the development of retail grocery stores.</li> <li>• 1B: The new planning system should require Regional Spatial Strategies to provide sufficient spare capacity to enable choice in sites for the development of retail grocery stores.</li> <li>• 1C: The new planning system should require every Natural and Built Environments Act (NBA) Plan to include a minimum proportion of urban land that is zoned for retail grocery stores.</li> <li>• 1D: The new planning system should limit the discretion available to decision-makers regarding the approval of retail grocery stores.</li> <li>• 1E: The positive outcomes of trade competition should be considered in</li> </ul>	<p><b>AGREE IN PRINCIPLE</b></p> <p>In relation to recommendation 1A, the Ministry for the Environment will assess how to achieve system shifts to urban planning rules via resource management reform to make it easier for new retailers (including supermarkets) to enter the market with lower land costs.</p> <p>In relation to recommendations 1B to 1D, this will be considered by the Ministry for the Environment as part of the development of the National Planning Framework (NPF), noting that the NPF will incorporate the policy intent of the NPS-UD and MDRS.</p> <p>In relation to recommendation 1E, the proposed legislative architecture of SPA and NBA will improve efficiency and effectiveness of the system, and thereby better enabling activities that have positive economic benefits. MfE will also continue to take a ‘systems’ view to consider how positive outcomes (including trade competition) could be better met through the NBA or use of a secondary instrument such as the National Planning Framework directing an outcome.</p>

	<p>planning instruments under the Natural and Built Environments Act.</p> <ul style="list-style-type: none"> <li>• 1F: Retail grocery store development should not be declined based on adverse retail distribution effects on existing commercial centres.</li> </ul>	<p>In relation to recommendation 1F, this will be considered by the Ministry for the Environment as part of the development of the Natural and Built Environments Act. The NBA is intended to provide for a stronger framework to consider positive effects, and how they will contribute to specified outcomes. It is anticipated that the future NPF or RSS will provide additional direction for these outcomes.</p>
2	<p><b>Prohibit restrictive and exclusive covenants that inhibit retail grocery store development</b></p> <p>Covenants on land and leases should be prohibited where these inhibit:</p> <ul style="list-style-type: none"> <li>• the development of retail grocery stores</li> <li>• the operation of retail grocery stores.</li> </ul> <p><b>Monitor land banking by the major grocery retailers</b></p> <p>The grocery sector regulator should monitor land banking by major grocery retailers.</p>	<p><b>AGREE</b></p> <p>The Government agrees that the use of covenants by major grocery retailers inhibits supermarket competition by reducing availability of sites for new entrants or current businesses looking to expand.</p> <p>The grocery sector regulator will monitor land banking by major grocery retailers.</p>
3	<p><b>Require the major grocery retailers to consider requests for wholesale supply in good faith and meet associated disclosure obligations</b></p> <p>The Government should develop a monitored wholesale access regime to enable better access to wholesale supply by:</p> <ul style="list-style-type: none"> <li>• requiring that major grocery retailers consider all requests for commercial wholesale supply in good faith</li> </ul>	<p><b>DISAGREE</b></p> <p>The Government will progress a monitored wholesale access regime in line with the Commission's recommendations as a first step towards improving wholesale access.</p> <p>However, the Government finds the Commission's recommendation necessary but not sufficient and will develop an additional mandatory wholesale grocery access regime to</p>

	<ul style="list-style-type: none"> <li>requiring major grocery retailers to put in place and disclose principles and terms and conditions of wholesale supply</li> <li>establishing a formal dispute resolution scheme for wholesale supply disputes.</li> </ul>	provide a backstop for the voluntary regime proposed by the Commission.
4	<p><b>Review potential barriers to competition in other Acts</b></p> <p>The next reviews of the Overseas Investment Act and Sale and Supply of Alcohol Act should consider whether they unduly impede entry or expansion by grocery retailers.</p>	<p><b>AGREE</b></p> <p>A review of the Overseas Investment Act 2005 has just been completed and the Act now strikes the right balance between managing risks posed by foreign investment while supporting productive, sustainable and inclusive foreign investment. No further review of the Act is planned, but Treasury will monitor the performance of the Act.</p> <p>The Minister of Justice has signalled an intention to commence a review the Sale and Supply of Alcohol Act 2012 this parliamentary term. The Ministry of Justice will consider the impacts of this Act on retail grocery competition.</p>
5	<p><b>Monitor strategic conduct that affects the conditions of entry and expansion</b></p> <p>The new grocery regulator should monitor both the use of best price clauses and exclusive supply agreements by major grocery retailers.</p>	<p><b>AGREE</b></p> <p>The Government will include this monitoring function in the design of the new retail grocery regulator.</p>

	Commerce Commission recommendation	Government response
6	<p><b>Introduce a mandatory grocery code of conduct to govern relationships between the major grocery retailers and their suppliers.</b></p> <p>A mandatory code of conduct should be implemented to underpin retailers' negotiating relationships with suppliers. This code would include:</p> <ul style="list-style-type: none"> <li>• an overarching principle of good faith</li> <li>• provisions to improve the transparency of supply agreements</li> <li>• prohibitions or limits on certain forms of conduct</li> <li>• an independent dispute resolution scheme to address any issues that arise under the Grocery Code of Conduct.</li> </ul>	<p><b>AGREE</b></p> <p>The Government agrees to implement a mandatory Grocery Code of Conduct for major grocery retailers and their suppliers.</p> <p>MBIE has been developing a draft code with input from an industry advisory group to ensure the code is workable from a practical perspective.</p> <p>This code will draw on similar examples from the United Kingdom and Australia.</p>
7	<p><b>Consider a statutory authorisation or exception for collective bargaining by grocery suppliers.</b></p> <p>An authorisation or exception should be implemented to enable collective bargaining by grocery suppliers as part of rebalancing negotiating relationships with retailers.</p>	<p><b>AGREE</b></p> <p>The Government agrees to implement an exception from relevant provisions in the Commerce Act to allow grocery suppliers to collectively bargain.</p>
8	<p><b>Amend the Fair Trading Act to strengthen the business-to-business unfair contract terms regime.</b></p> <p>Changes should be progressed to the Fair Trading Act to extend provisions as they relate to retail grocery to allow private action in respect of unfair contract terms, simplify the</p>	<p><b>AGREE</b></p> <p>The Government will implement changes to the Fair Trading Act unfair contract terms regime to allow private action in respect of unfair contract terms and raise the transaction value cap for grocery supply contracts.</p>

	mechanism for imposing penalties and remedies and raise the transaction value cap of \$250,000.	Ways to simplify the mechanism for imposing penalties and remedies will be considered later to enable this recommendation to be considered for other industries.
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***Improving the ability of consumers to make informed purchasing decisions***

	<b>Commerce Commission recommendation</b>	<b>Government response</b>
9	<p><b>Pricing and promotional practices</b></p> <p>The major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand.</p>	<p><b>AGREE</b></p> <p>The Government agrees that major grocery retailers should ensure their pricing and promotional practices are simple and easy to understand. The Government expects the major grocery retailers to respond to this recommendation and implement any actions needed.</p>
10	<p><b>Mandate the consistent display of unit pricing</b></p> <p>Mandatory unit pricing for supermarket goods should be implemented to improve consumers' ability to make informed purchasing decisions and to compare products.</p>	<p><b>AGREE</b></p> <p>The Government considers there is value for consumers in implementing mandatory unit pricing. A consultation paper will be released in late May 2022 to seek views on how unit pricing could be designed and implemented.</p>
11	<p><b>Loyalty programmes and consumer data collection and use</b></p> <p>The major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use practices is clear and transparent.</p>	<p><b>AGREE</b></p> <p>The Government agrees that major grocery retailers should ensure disclosure relating to loyalty programmes and data collection and use is clear and transparent. The Government expects the major grocery retailers to respond to this</p>

		recommendation and implement any actions needed.
12	<p><b>Price comparison services</b></p> <p>The major grocery retailers should cooperate with price comparison services that offer consumers with information on how to compare the value of different supermarket goods.</p>	<p><b>AGREE</b></p> <p>The Government agrees that major grocery retailers should cooperate with price comparison services. The Government expects the major grocery retailers to respond to this recommendation and implement any actions needed.</p>

***Introducing a monitoring and oversight regime and reviewing competition again in three years based on information gathered by a regulator***

	Commerce Commission recommendation	Government response
13	<p><b>Establish a grocery regulator and dispute resolution scheme</b></p> <p>A regulator should be established for the purpose of providing oversight of the retail grocery sector and monitoring and reporting. A dispute resolution scheme should be established to consider disputes relating to both the code of conduct and disputes regarding commercial wholesale supply arrangements.</p>	<p><b>AGREE</b></p> <p>The Government will establish a retail grocery regulator to oversee and monitor the retail grocery sector and one or more dispute resolution schemes to hear disputes relating to wholesale access and the Grocery Code of Conduct.</p> <p>The Government will consider options for establishing the regulator. The Commerce Commission would act as interim regulator while the final design of the regulator is completed and implemented.</p>
14	<p><b>Reviewing the state of competition</b></p> <p>The Government (via MBIE or the grocery sector regulator) should review the state of competition in the grocery sector three years</p>	<p><b>DISAGREE</b></p> <p>The Government agrees to enable the collection of information from grocery retailers and for a review of competition in the retail grocery sector.</p>

	after implementation of the recommendations and collect information in the interim to support this review.	However, the Government proposes that the grocery sector regulator review the state of competition annually, rather than three years after implementation of the recommendations.
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### **Further matters – structural options**

The Government is committed to promoting effective competition in the grocery sector for the benefit of consumers and recognise that further steps may be needed to improve competition. MBIE will undertake further research and policy analysis on structural options, such as retail divestment, to understand the costs and benefits of such options and how they could be implemented to improve competition. This research and policy analysis will be completed before any decisions on these potential actions are made.