

民以「鮮」為食

街市 vs 超市：

食品及家居日用品零售市場競爭



Wet Markets vs Supermarkets:

Competition in the Retailing Sector



消費者委員會
CONSUMER COUNCIL

COMPETITION IN THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR

食品及家居日用品零售市場的競爭研究報告

TABLE OF CONTENTS

目錄

	Page 頁
結論及建議	I-XVII
FINDINGS AND RECOMMENDATIONS	i
Preface	i
Industry Overview	i
Government Policy in the Retailing of Foodstuffs and Household Necessities ...	iii
What Needs to be Done	iv
<i>To improve efficiency in the foodstuffs and household necessities retailing sector</i>	
<i>To ensure diversity whilst maintaining traditional strengths in fresh produce retailing</i> – <i>Government's facilitation role</i>	
<i>To maintain a level playing field</i>	
<i>To ensure consumer trust in the market place</i>	
Concluding Remarks	xii
CHAPTER 1	
INTRODUCTION	1
Background	1
Objective of Study	1
Scope of this Study	1
Previous Council Study on Supermarkets	1
CHAPTER 2	
INDUSTRY OVERVIEW	3
Growth of Supermarkets in Early 1990s	5
Development of Supermarkets After 1993	5
<i>Supermarket development</i>	
<i>New business models other than supermarket</i>	
Industry Rationalisation	8
<i>adMart</i>	
<i>Carrefour</i>	
<i>KK, GrandMart, USA & Co</i>	
<i>Wet markets</i>	

Possible Reasons for the Rationalisation / Change	9
<i>Change in economic environment</i>	
<i>High operating cost</i>	
Industry Efficiency	12
<i>Supply chain management and information technology</i>	
CHAPTER 3	
GOVERNMENT POLICIES INFLUENCING THE RETAIL MARKET	14
Licensing Policy	14
Land Planning Policy	15
<i>Role of Planning Department</i>	
<i>Planning standard of market facilities</i>	
<i>Planning of supermarkets</i>	
Supply of Retail Space by Housing Authority	18
<i>HA policy on wet markets</i>	
<i>Recent policy relating to supermarkets</i>	
Role of the FEHD in Market Provision	21
<i>Problems encountered at management of public wet markets under FEHD</i>	
Tendering Policy	22
Industrial Policy	22
<i>Small and medium enterprises (SMEs)</i>	
Competition Policy	24
CHAPTER 4	
COMPETITION STUDIES ON THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR IN OTHER COUNTRIES	27
United Kingdom	27
<i>Definition of the market</i>	
<i>Pricing practices</i>	
<i>Relationship with suppliers</i>	
<i>Market concentration</i>	
European Union	30
Australia	30
CHAPTER 5	
ANALYSIS OF THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR IN HONG KONG – MARKET DEFINITION	32
One-stop Shopping	32
Packaged Foodstuffs and Household Necessities	33
Wet Markets	33

Consumer Preferences – Supermarkets versus Wet Markets	34
<i>Study by the Planning Department</i>	
<i>Study by the Census and Statistics Department</i>	
<i>Study by Consumer Council</i>	
<i>Secondary school survey</i>	
<i>Geographic Locations of Supermarkets and Wet Markets</i>	
Conclusion	39
CHAPTER 6	
MARKET POWER	41
Market Concentration Ratios	41
Oligopoly	42
Oligopolistic Price Leader	42
The Relevant Market	43
Fresh Produce Market Shares	43
Packaged Foodstuffs and Household Necessities Market Shares	44
<i>Number of operators and retail outlets</i>	
<i>Turnover shares</i>	
<i>Convenience stores</i>	
Summary on Market Concentration	48
Entry Barriers	48
<i>Availability of retail space</i>	
<i>Bargaining power</i>	
Market Conduct	50
<i>Effect of brand name on consumer purchasing decisions</i>	
<i>Relative price changes of products</i>	
<i>Price differentials between supermarket chains</i>	
<i>Co-ordination of pricing behaviour</i>	
<i>Effect of market exits</i>	
<i>Pricing during the SARS crisis</i>	
Non-price Competition	57
Conclusion	57
CHAPTER 7	
MISLEADING AND DECEPTIVE CONDUCT	59
Advertising Claims by Supermarkets	59
<i>Lowest price claims</i>	
<i>Advertised price and store price comparisons</i>	
Defrauding Consumers and Harming Reputations	61

Misleading Conduct in the Sale of "Chilled" and "Fresh" Meat	62
<i>Allegations of deceptive practices</i>	
Remedies for Deceptive Marketing Conduct	63
<i>Trade Descriptions Ordinance</i>	
<i>Food regulations</i>	
<i>Trading on corporate goodwill</i>	
<i>Labelling</i>	
Conclusion	65
CHAPTER 8	
ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT	66
Refusal to Supply	66
<i>Allegation by adMart</i>	
<i>Allegation by chain store</i>	
<i>Allegation by supermarket</i>	
Price Fixing Agreement between Competitors	69
Abuse of Market Power	69
Conclusion	70
ANNEXES	
ANNEX 1: Summary of Previous Council Study and Government Response	72
ANNEX 2: Consumer Council Benchmark Corporate Performance Pledge	76

食品及家居日用品零售市場的 競爭研究報告

結論及建議

充滿活力的食品零售市場，能容納多種類型的經營者，為消費者提供富競爭的選擇，讓香港整體獲益。

因此，我們認為政府應採取積極行動，重新檢討其在街市（鮮活食品市場）所扮演的角色，藉著再培訓有關行業的員工，減低街市營運規模日漸收縮對經濟帶來的影響。

前言

1. 報告旨在：

- (a) 分析食品及家居日用品零售市場行業的趨勢及發展，研究政府的規例，各有關市場的競爭情況，包括違反公平競爭和不正当經營行為的投訴；
- (b) 提出值得更深入探討的事項，以供公眾討論；及
- (c) 就研究所得，提供實際建議，適當地回應過去數年間行業內所出現的課題，前瞻未來。

行業整體狀況

2. 本會於 1994 年發表首份有關食品零售及分銷市場研究報告，該報告著重於評估當時超級市場的競爭環境。至今，有關行業和市場經已有極大的變化和發展。

3. 本報告的研究分析顯示：

- (a) 儘管街市現時在售賣鮮活食品上有相當大的市場佔有率，隨著大眾對購物環境日漸關注，特別在環境清潔及舒適度

上，有跡象顯示光顧街市的消費者有下降的趨勢。面對提供相同貨品及服務的超級市場的興起，加上缺乏相應措施，街市的抗衡能力日漸下降。

(b) 在乾貨方面(包裝食品及家居日用品)，兩大連鎖超級市場所擁有的市場佔有率一直引起公眾關注：

i. 由 1996 年至 2001 年六年間，小型超級市場經營者的數目大幅下降 41%。

ii. 由 1993 年至 2003 年，兩大連鎖超級市場的分店數目上升 29%(惠康上升 31%，百佳 28%)。縱觀各項因素，例如分店數目及品牌市場佔有率等，行業內任何合併或收購，都足以達到外地規管競爭的機關所訂的關注門檻，因而有需要進一步關注這市場的競爭。

iii. 單憑經營者的佔有率，並不代表其所具有的市場力量。市場參與者的行爲，特別在價格上的表現，更爲重要。據消委會定期進行的主要超級市場價格分析，顯示超級市場一籃子貨品的零售價格在某些時段有上升，與近年經濟疲弱和其他零售業不景的情況背道而馳。消委會 2002 年進行的價格調查顯示，由 2000 年 1 月至 2002 年 6 月，以每半年劃分，一共 5 個時段，連鎖超級市場的貨品價格顯示了上升的趨勢。消委會的分析顯示，整段調查期的貨品平均正價上升了 3.6%，而平均售價(包括特價因素)的升幅則爲 1.5%。2003 年度的價格調查顯示，上半年的一籃子貨品平均正價，比 2002 年同期上升了 1.5%，而平均售價(包括特價因素)則輕微下調 0.8%。有超市表示，消費者可從「贈券」和「特惠

包裝」得到優惠。

- iv. 在非典型肺炎肆虐香港的初期，有無良商人趁口罩短缺，乘機大幅提高售價，主要連鎖超級市場及其他具規模的零售商，發揮了穩定市場價格的力量。他們迅速備有充足的口罩應付本港市場的需求，售價大幅低於那些無良商人的訂價，這行為值得稱許。
- v. 另一方面，一如其他已發展的經濟體系，香港也有不少投訴牽涉主要的連鎖超級市場。例如，有供應商投訴指受制於連鎖超級市場的市場力量，結果令：
 - a) 現存的市場競爭者沒有激烈的價格競爭；更使，
 - b) 未進入市場的新經營者能否成功成爲疑問。

4. 在與消委會的通信中，兩大連鎖超級市場否認曾向供應商施壓。消委會並不是規管公平競爭的機構，更沒有調查權力，因此未能查証投訴是否屬實。政府無意制訂全面公平競爭法，寧願就每個行業來處理。因此，與食品及家居日用品零售有關的政策局及部門有責任審查這些指稱。¹

5. 然而，當消委會與有關方面討論這些問題時，一般的反應是這類投訴或指控不時出現，過了一段時間便沈寂下來。政府認爲這可能表示市場的功能正在有效地在運作，令事情得以解決。

¹ 競爭政策諮詢委員會 2000 - 2001 工作報告指出，與競爭有關的投訴，「一般的做法，是由有關的局和部門負責投訴個案的調查和跟進工作」。見網頁：www.compag.gov.hk.

可是，投訴人可能因為某些原因，中止投訴或不欲公開地指証，因此，消委會認為應由一個有權威的機構對這些不公平競爭行為的投訴進行客觀的審查，並研究零售分銷網絡的控制對小商戶和供應商的影响。消委會認為該審查機構應：

- (a) 得到行業的信心支持；及
- (b) 有權追查指稱，以確定消費者的權益是否受到損害。

6. 如本報告第四章所述，其他國家規管公平競爭的機構，亦曾詳細審查食品及家居日用品零售行業，當中亦有審視濫用市場力量的指控及研究市場高度集中的問題。

政府對食品及家居日用品零售業的政策

7. 政府在食品及家居日用品零售行業上的干預並不多，然而，政策局及部門的決定，足以影響各行各業。例如食品零售的發牌制度、透過商業用地的分配、公共屋邨內超級市場及街市零售設施的規劃、及興建和管理公眾街市設施等。

街市(鮮活食品市場)

8. 街市不單是食品零售行業中的重要競爭元素，更是香港傳統文化的重要部分，為我們這個城市添加特色。街市亦提供大量就業機會，除了市場商販及其僱員外，也包括了提供後勤及其他支援服務的人士。
9. 多項調查顯示公眾街市及私營市場仍然有不少捧場客。很多的消費者表示他們樂意到街市購物。然而，消費者的意願又會受到購物環境的影響。連鎖超級市場看準了消費者購買鮮活食品的意欲，加上超級市場的舒適購物環境，開始在超級市場內銷

售鮮活食品。要維持競爭力，街市經營者必須改善他們的銷售環境。

10. 爲了實踐徒置的承諾，一些食物及環境衛生署(食環署) 管理的街市內攤檔過多。加上當初興建這些街市時，當局可能未有評估街市的實際需求；及考慮附近私人發展的街市或超級市場的競爭。
11. 因此，同一地區或也許會有多個街市群集在一起；而整體上更似乎供應過盛。這不單影響街市攤檔的出租率，有些情況更出現攤檔面積不合標準。此外，大多數的租戶從前是街上的小販，遷徙至食環署管理的街市後，未必能適應密封的市場環境。某些經營者更有困難適應新的經營方式，例如環境整潔及顧客對清楚的價格標籤要求等。攤檔經營者和他們的後代有權永久地在公眾街市內經營，加上只需付低於市值的租金，某些人對提升競爭能力的意欲不大。

應做的事情

12. 面對當前的經濟困難，香港人愈來愈理解有需要作出有創意的改變。超級市場與街市的競爭便是其中需要適當處理的挑戰。假若街市的經營繼續大幅度地收縮，而香港的經濟又持續在「低潮」中，恐怕在街市謀生的大量非技術勞動人口，會把現時歷史性高的失業率推升至更高。
13. 我們要討論的是：
 - (a) 消費者需求的改變，而街市的經營者又未能與財雄勢大的超級市場抗衡，我們應否接納街市營運規模日漸收縮是無

可避免的結果？若是如此，行業的存亡問題是否應留待街市經營者自行解決？或

(b) 我們應否採取一些措施去協助傳統街市經營者迎合改變，及維持他們的競爭能力？這樣既可減低轉型對勞動人口的影響，又可保留香港傳統文化特色，雖然新的形式可能會帶來一些改變。

14. 毫無疑問，與其事後處理不良的後果，不如儘早預計改變，及促使轉型過程順暢。某個程度上，今天食品零售市場的轉型，跟十多年前香港的經濟從製造業為主轉型至今天以服務為主的道路相類似。當年很多企業家將生產基地移向內地後獲得重大成功，然而卻帶來低技術勞工就業及再培訓等問題，待政府解決。勞動市場轉型不屬於消費者問題，但街市營運規模日漸收縮勢將影響消費者在貨品選擇、價錢及質素上的利益；因此消委會負責任指出這問題。
15. 消委會認為有足夠理據支持政府採取積極行動，在經濟許可的情況下，透過街市的革新及鼓勵有關勞動力的再培訓，減低街市營運規模日漸收縮對經濟所帶來的影響。
16. 政府可承擔輔助角色以協助市場參與者創造具有活力的競爭環境。這相當於政府在道路興建及基本建設發展方面所擔當的角色，例如開發及平整土地，以作住宅、商業樓宇用途，甚至興建機場、貨柜碼頭設施等。同樣地，政府也應採取措施，透過一些扶助小企業的政策措施，為食品零售行業提供有利的競爭環境。

17. 這正符合政府在 2002 年 3 月財政預算案演辭內所提出的經濟展望：

「一些與市民日常生活息息相關的本土經濟活動十分重要。本土經濟涵蓋的範圍很廣，包括文娛、體育、社會和個人服務等，從事本土經濟活動的人士包羅萬有，例如小商販、家務助理和健身教練等。促進本土經濟發展，可以推動內部消費，創造更多就業機會，亦可發揮本地文化特色。」²

18. 本會認為食品及家居日用品零售行業有四方面值得關注：

- (a) 改善行業的效率。
- (b) 在維持傳統零售市場優點的同時，確保多樣化的鮮活食品供應。
- (c) 維持公平競爭的市場環境，回應各競爭者的需求。
- (d) 增加消費者對市場的信心。

19. 為了達到上述的目的，消委會提出下列建議。要強調的是，消委會所作的建議並非要求政府直接提供資助或增加市場的干預。消委會亦無意針對和窒礙成功經營的連鎖超級市場。我們提倡的是公平競爭的市場環境，令經營者與消費者達到雙贏的局面。

建議 1：改善食品及家居日用品零售行業的效率的方法

20. 大型連鎖零售商所擁有的資源和技術與小經營者的大為不同，為迎接行業發展的挑戰，超級市場已作好部署，中小型企業，例如街市經營者，還未作出準備。

² 2002 年 3 月財政預算案演辭第 31 段。

21. 先進經濟發展的體系，會向中小型企業提供援助，以面對擁有龐大市場力量的競爭者，而不是只讓他們自生自滅。例如澳洲政府曾向中小型農業企業施以援助³，而澳洲的競爭政策機構 ACCC (Australian Competition and Consumer Commission) 也在各方面協助中小企業，例如在集體談判技巧方面，當他們在交易上遇到不合情理的行為時，也會施以援助。⁴ 英國政府在 2003 年 2 月發表的報告，提出政府應研究怎樣提升小零售商在供應鏈及其他營商的技巧。⁵
22. 此外，一些大都會城市，例如紐約和波士頓，市政府透過鼓勵私人投資、減低空置率、改善營商環境及增加經營者的利潤等計劃和措施以振興當地經濟。數年前，波士頓市政府為革新小型企業的營運，成立特別工作小組制定計劃，以資金及技術支援小經營者，使行業復甦。⁶ 為了改善城市形象，上海市政府協助汽車清潔工人成立合作社。經過訓練，他們成為現代化的工作隊伍，從前主要街道因抹車工人未經訓練、及沒有紀律造成不潔景觀，不復存在，面目一新。1979 年，台北市政府推行現代化計劃，改善有 105 年歷史的南門市場。今天，南門市場的設施新穎，管理現代化，而且環境清潔。市場的攤檔排列整齊，有一式一樣的顯示板，全個市場皆採用可靠的食物冷藏系統。經過各種改善工程後，南門市場攤販的生意明顯上升。1998

³ 報告 "Securing the Future of Australian Agriculture" 見網頁：
<http://www.ncc.gov.au/pdf/CIComAg-001>.

⁴ 見 Australian Trade Practices Act 1974, Section 51AC 及 ACCC Small Business Program, 網頁：<http://www.accc.gov.au>.

⁵ 報告 "Competitive Analysis of the Retail Sector in the UK" 見網頁：
<http://www.dti.gov.uk/retail/index.htm>.

⁶ 1995 年波士頓市長 Thomas M. Menino 成立「波士頓主要街道計劃」提供資金及技術支援予波士頓市內 21 個相鄰主要街道區域。計劃主要向商戶及社區住戶提供技術支援使他們富歷史性的商業地區能在今日的市場內競爭。這計劃協助地區利用本身獨有的文化及歷史資產發展社區經濟：包括小企業吸納，企業保存及致力對抗來自商場及折扣商店的競爭。

年台灣省政府經濟部，提出一項五年計劃，提升傳統食品及蔬菜市場，並解決非法擺賣的問題。南門市場為是現代化運動的模範。⁷

23. 既然消費者希望有競爭選擇，而小型企業亦為香港帶來不少的就業機會，消委會認為政府應提供一些特定支援，令街市經營變有效率及創新的行業。⁸
24. 目前，食環署有為街市經營者提供訓練，目的是改善攤檔與顧客的關係及加強他們對食品安全和環境衛生的意識。此外，政府工業貿易署屬下的中小型企業辦公室(SMEO)及貿易發展局亦有為中小型企業提供商業推廣及訓練活動。消委會相信這些服務及其他機構的努力，例如透過推廣管理資訊系統的應用，能夠改善食品及家居日用品零售行業經營者的競爭能力。
25. 因此，消委會建議中小型企業辦公室及其他有關機構擬定特定計劃，協助食品及家居日用品零售行業內的小經營者。
26. 街市的商販亦應醒覺，他們的經營，正受到威脅。此外亦須知道他們有責任去改變經營手法。例如：
 - (a) 所謂「濕」貨市場不表示他們售賣鮮活食品要在「濕漉漉」的環境下進行，令消費者不安甚至抗拒；
 - (b) 經營者必需提升他們的科技知識及技能，以有效地處理在供應管理方面所遇到的問題；

⁷ 見網頁：<http://www.taiwanheadlines.gov.tw/20000418/20000418f1.htm>.

⁸ 「亞太經濟合作組織」(APEC) 每年皆舉行以中小企業政策發展為題的 APEC 中小企業部長會議。會議主要討論中小企業工作小組(SME Working Group)的建議，更成立 APEC 中小企業網絡中的網絡(APEC SME Network of Networks)方便區內中小企業交換資訊。

- (c) 經營者必需改善服務，提升他們的競爭能力。例如發收據予顧客、延長營業時間等，以廣增客源。

建議 2: 政府擔當輔助角色—維持傳統優點並確保新鮮食品零售市場多樣化

- 27. 具活力的食品零售市場，能容納多種類型的經營者，為消費者提供富競爭性的選擇，讓香港整體獲益。為此，有需要在政府的政策中加入新思維。

- 28. 房屋委員會(房委會)及食環署皆需要維持街市的傳統職能，以提供鮮活食品予消費者，滿足他們對鮮活食品的需求。以食環署為例，他們的街市主要安置領有小販牌照的人士，這些個體戶沒有能力支付私人店舖昂貴的租金，故須依賴政府所提供的設施及較廉宜的街市攤檔謀生。事實上，兩個部門一直負責街市發展商及企業管理的角色。

- 29. 政府長久以來在街市肩負責任，及一直以公帑維持有關設施，因此，政府有需要協助有關人仕解決行業當前所面對的問題。再者，街市屬於公共設施，政府更應考慮下列的處理方式：
 - (a) 假若認為街市營運規模日漸收縮的情況是無可避免的，政府應有系統地處理此情況。
 - (b) 假若認同街市是重要的及需要保留，應有效地處理其蛻變。

- 30. 過去，政府的重點在於為經營者提供較廉宜的市場設施。然而，今天成功的食品零售需要配合市場推廣策略、有成本效益的貨品採購、以及加強顧客服務等。消委會知悉房委會及食環署均意識到有需要提升他們的街市設施，均有計劃投入資源進行改

善工程，以維持商業前景。

31. 消委會明白房委會和食環署的情況不同。房委會和攤檔經營者的關係是業主和租戶的關係；而食環署所負責的街市則有徙置無牌小販的歷史任務。任何的改變都會對攤檔的承租人/擁有人有所影響。再者，改善經營環境，必需有攤檔經營者的支持及投入參與。
32. 消委會認為政府宜採用私人市場的創新動力及企業技巧來處理街市所面對的問題。
33. 消委會注意到房委會在2003年7月公佈的分拆出售轄下零售及停車場設施的計劃。根據房委會的聲明，這計劃有助其將來成立的新公司在上市時取得回報。消委會亦認為這計劃有助維持及發展這些零售設施，使之可以與超級市場競爭。
34. 在房委會公佈其計劃前，消委會已有下列構想：

選擇一：出售政府持有的街市設施

35. 公開出售食環署及房委會屬下的公眾街市設施(包括其他非鮮活市場的商用設施)⁹，其用途由新買家決定。或先以批租形式，假若在試驗期內新買家表現理想，可考慮由租約形式改為最終的業權轉移。

⁹ 食環署的情況或可能有法律上的障礙。

36. 這安排跟房委會現時將租約批給單一經營者相類似。分別在於經營者一旦取得街市的擁有權，他便要全權負起市場裝修，保養，管理及投入所須資源。

選擇二：在街市成立合作社

37. 向個別攤檔經營者出售食環署或房委會屬下街市的攤檔，當所有攤檔經營者成為業主(政府則為其他公眾地方的業主)，他們便以合作社形式及根據公契規定管理街市。這建議的好處是攤檔經營者會全心全意投入經營，達至最好的效果，從業員繼而能夠保存原有的工作。

選擇三：成立街市專營發展公司

38. 政府可以成立法定公司，專門負責傳統街市的長遠發展。¹⁰ 公司的法定職能是發揮傳統街市的優點例如新鮮、選擇多樣化等作為發展基礎，化為新的購物經驗，以滿足消費者現時及將來的期望。這公司應：
- (a) 具有法定職權範圍確保傳統街市得以延續，策劃發展以配合香港消費者及社會現時及將來的期望；
 - (b) 擁有現時食環署及房委會屬下的街市及商用設施作為資產；
 - (c) 利用現時兩署¹¹管理有關物業的員工及資源；
 - (d) 在未來日子進行私營化。

¹⁰ 同樣的例子可見於資訊科技行業。政府成立法定公司(香港科技園公司，以商業經營方式)，發展香港成為資訊科技樞紐。

¹¹ 食環署及房屋署。根據《公營房屋架構檢討報告書》的建議，前房屋局與房屋署已於2002年7月1日合併為新的房屋署。重組後的房屋署繼續為房委會提供行政方面的支援服務。

39. 除上述的建議外，可能還有其他可能方案。消委會希望藉此拋磚引玉，鼓勵公眾討論各項方案的優點或缺點。如前文提及，街市的經營者和政府，在政策措施上和思維方面都需要有所改變。政府或可以考慮試行上述一至兩個方案，所得到的經驗或會成為將來的導向。
40. 值得注意的是不應讓超級市場經營者獲得這些街市的經營權或參與運作，否則會影響鮮活食品市場多樣化的目標。

建議 3：維持公平競爭的市場環境，回應競爭者的需要

41. 消委會收到來自不同方面投訴超級市場的不公平競爭行爲，包括規定零售價格(維持再銷售價格 resale price maintenance)及拒絕供應等。消委會曾與投訴人及被投訴公司聯絡及會面，以了解投訴的真確性。然而，消委會不是調查機構，並沒有取得資料的權力，因此只能作出的結論是：未有確據顯示供應商曾受到壓力，令其他競爭者未能與被投訴的公司進行真正的價格競爭。但根據政府的《競爭政策綱領》指示，維持再銷售價格及拒絕供應等行爲，可能已經違反公平競爭，值得更深入研究。¹²
42. 假如香港與其他先進經濟體系一樣，設有具備調查權力的公平競爭機構，這機構便可運用其搜集資料的權力，審視所得的証據，是否足以達到「有理由相信」或「有理由懷疑」的結論。

¹² 見《競爭政策綱領》第 7(c)段：「規定供應某些特定產品...而這些限制，並非爲了保證質素，符合安全規定，提供足夠服務或達致其他合理的目的。」《競爭政策綱領》可於網頁：www.compag.gov.hk 下載。

43. 只有這樣，有關機構才可以搜集資料以確立指控的真實性。若沒有執法機構去搜集資料及調查，食品及家居日用品零售行業將不斷流傳著各式各類的投訴，及含沙射影的指稱有不公平競爭行為的存在。

自我規管機制，處理不公平競爭投訴

44. 政府的《競爭政策綱領》支持行業自我規管以「保持和促進自由競爭」。香港總商會亦在其《自由競爭聲明》促請其會員「避免推行限制競爭的措施，例如串通或掠奪性的行為，以免損害經濟效益或自由貿易」。並鼓勵個別行業透過各自的行業組織制訂守則，守則應包括處理不公平競爭的機制，以及懲處違紀會員的條文。¹³
45. 因此，有關行業或香港總商會可以考慮成立自我規管機制，並賦與該機制權力以調查有關食品及家居日用品零售行業內不公平競爭行為的指稱。
46. 另一方面，作為良好企業公民，超級市場經營者亦可考慮擴大其營商行為守則的範圍，除關注客戶關係以外，亦宜包括與供應商的關係等。透過具透明度的良好營商手法守則，經營者可更有效地回應一些未有實質證據的指稱。
47. 消委會現正編制《保障消費者權益及維護公平競爭行為守則指引》。指引包括「維護公平競爭」及「處理違反競爭行為投訴的機制」的守則。消委會相信這些守則有助行業發展自我規管機

¹³ 見《自由競爭聲明》第六條文。聲明可於香港總商會網頁：<http://www.chamber.org.hk> 下載。

制。消委會亦樂於在這方面提供協助。

48. 為處理違反競爭行為的投訴，消委會希望香港和其他先進經濟體系一樣，制定可應用於各行各業的公平競爭法。鑑於政府對全面公平競爭法的保留，消委會建議行業先行引入上述的自我規管機制，這正符合政府在《競爭政策綱領》內所提出的行業自我規管政策。
49. 作為長遠的解決方案，消委會仍然主張制定公平競爭法，以明文訂出立法範圍，使人清楚知道行為的規範標準。在公平競爭法的規章下，透過具透明度的規條和程序，有關人士就可以作出澄清、申辯，並可就市場力量是否存在等問題作出公眾討論。
50. 再者，超級市場行業的市場參與者愈來愈見集中，我們期望政府會進行評估，並制定措施以防止市場進一步集中化，假設兩大連鎖超級市場一旦提出合併，目前並沒有機制去評估對市場的影響。誠如本報告第三章所述，政府已於電訊行業中引進公平競爭措施以防止壟斷性的合併（事實上，有電訊行業參與者曾表示不滿他們被作針對性的看待）。故此，從宏觀的政府競爭政策來看，我們看不出為何不能引進同樣的公平競爭措施，去處理食品及家居日用品零售行業的競爭問題。引進及制定全面性的公平競爭法，既可以處理有關競爭的問題，又可以公平地應用於各行各業中，一視同仁。
51. 至於違反競爭行為的指稱，在沒有審查這些行為的規條和機制的情況下，那些擁有市場力量的人士或企業便可以自行決定是否利用其市場力量影響競爭。換句話說，違反競爭行為是否出現，全

在於擁有市場力量的一方。在這環境下，無論是供應商與購買者之間的爭議、或競爭者之間的爭議，最終均會以弱者離開市場，或屈服於處於市場領導地位者要求的方式來獲得解決，因為持續爭議或中斷供應對雙方也沒有好處。然而，問題經由雙方私下解決，公眾利益並不在考慮之列。

建議 4：確保消費者對市場的信心

52. 市場上若充斥誤導陳述及不正當的營商行爲，消費者的權益必然受到損害。若競爭者都有誤導行爲，良性競爭亦不能生存。

53. 從近日有人舉報市面上有不法商人將雪藏豬肉當作新鮮豬肉¹⁴售賣，可見市場上確實存在誤導營商行爲，這些行爲必須遏止。食環署已採取預防措施透過食品標籤協助消費者辨別鮮雞和冰鮮雞。這種積極主動的處理手法值得表揚。消委會相信若當局能繼續執行適當的法例和規則，應可有效控制市場上誤導的行爲。

54. 我們認為政府執法的同時行業亦要加以配合。例如，若零售商能遵照批發商訂下的標準，批發商應嘉許甚至公開認可該零售商，這做法可以保護批發商的商譽，亦能增加消費者信心。消委會支持以行業自行規管的機制，並鼓勵更多的批發商，採用相類似的措施，確保經營者以公平競爭方式，維持市場高水準的營商行爲。

¹⁴ 2002 年消委會接到肉類及牲畜入口商五豐行的投訴，投訴指部分經營者及超級市場將冰鮮豬肉當作新鮮豬肉售賣。根據五豐行的資料，不法商人把從泰國入口的冰鮮豬肉混入新鮮豬肉內售賣，這牽涉很多街市店舖/攤檔和最少一間超級市場。

結語

55. 在本研究中，消委會分析了食品及家居日用品零售市場行業的變化，並指出街市經營規模可能出現日漸收縮的趨勢。消委會強調有活力的食品及家居日用品零售市場，可容納多種類型的經營者，可為消費者提供富競爭的選擇，達到經營者與消費者雙贏的局面，本會並非針對或窒礙超市的成功。
56. 消委會認為街市的經營者有需要改變思維。消委會支持政府決策局採納新的政策目標和策略，令街市的運作得以發展。若財政上許可，應革新街市的運作模式及對有關行業的員工提供再培訓。雖然勞動市場轉型不屬於消費者問題，但街市營運規模日漸收縮勢將影響消費者的貨品選擇、價錢及質素。
57. 消委會在本報告內所提出的建議，目的是引起公眾對超市及街市的經營作出更多討論。消委會必須重申這些建議並非是解決問題的萬應靈丹，亦不是唯一可行的方案。消委會希望強調的是我們必須立即採取行動，以正視食品及家居日用品零售行業的競爭情況及應付可能帶來的失業問題。只有這樣才能維持香港的競爭能力及使香港成為真正亞洲的世界城市。

COMPETITION IN THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR

FINDINGS AND RECOMMENDATIONS

Hong Kong will benefit from a vibrant food retailing market with multiple operators and where competitive choices are available.

There is a strong case for government to take proactive action in order to minimize the economic impact of the gradual decline of wet markets through re-engineering the government's involvement in the wet market sector and retraining of the workforce.

Preface

1. This Consumer Council study seeks to:
 - (a) examine the various areas in the foodstuffs and household necessities retailing sector, focussing on industry trends and development, government regulations, the state of competition in various markets, and allegations of unfair and anti-competitive conduct;
 - (b) raise questions for public debate on issues that the Council has identified as worthy of further discussion; and
 - (c) offer some practical suggestions as to how the issues that have arisen over the past few years can be appropriately addressed, as Hong Kong enters the first decade of the 21st century.

Industry Overview

2. Since the Council released its first study into food retailing and distribution in 1994, with special reference to supermarkets, there have been a number of significant developments in the industry.
3. The Council's analysis has revealed (amongst other things) that:
 - (a) Whilst wet markets currently have a significant share of the fresh food sector, there are indications of a gradual decline in consumer patronage due to a concern with the shopping environment, in terms of cleanliness and comfort that can be addressed. In the absence of appropriate measures there will be a difficulty for this sector to counter the increasing market share by supermarkets offering similar products and services.
 - (b) There is a prima facie concern with the market share held by the two largest supermarket chains in the packaged foodstuffs and household necessities sector.
 - i. In the six years from 1996 to 2001, there has been a substantial decline of small supermarket operators by approximately 41%.

- ii. From 1993 to 2003, the two major supermarket chains have grown 29% by number of retail outlets (31% for Wellcome and 28% for Park n Shop respectively). Having regard to a number of variables, such as the number of outlets and share of brand names (turnover), they can be considered at the threshold level of market concentration standards in guidelines issued by overseas competition authorities that warrant further attention should any mergers or acquisitions occur in the sector.
 - iii. Market share alone is not by itself indicative of market power. The conduct of market participants, particularly pricing behaviour, is also pertinent. The Council regularly performs pricing surveys of a basket of goods in supermarkets, and these have indicated that supermarket retail prices increased at certain time periods, despite the general downturn in the economy and the retail market. For example, the Council's price survey in 2002, covering five half-yearly periods from January 2000 to June 2002 indicated that there was an upward price trend at supermarket chains. The Council's analysis showed that over these periods, there had been an increase of 3.6% in average list prices of a selected basket of goods, and a relatively smaller 1.5% increase in prices for the same goods when the discount price was taken into account. In the most recent Council price survey for 2003, the average list prices of a selected basket of goods went up by 1.5% during the first half of 2003 compared with the same first half of 2002. Taking discount prices into account a slight decrease of 0.8% was recorded. One supermarket chain suggested that consumers might have benefited from the use of coupons and from multi-pack discounts.
 - iv. Notwithstanding the above pricing observations, it has been pleasing to note that during the recent SARS crisis when some traders exploited the early scarcity of protective masks by charging exorbitant prices, the major supermarket chains and other well established retailers acted as a stabilising force in the market for the public good. They achieved this by quickly meeting demand for the masks and offering them at prices substantially lower than the exploiting traders. This is to be commended.
 - v. Similar to the experience of other comparable advanced economies, complaints have also been levelled at major supermarket chains by other businesses. For example, there have been complaints that market power is being exerted over suppliers to the effect that:
 - a) existing competitors may be deterred from engaging in vigorous price competition, and which
 - b) raises doubts as to the probable success of future new entry.
4. In correspondence with the Council, both supermarket chains denied exerting market power over suppliers. The Council is not a competition authority with powers of investigation and is therefore unable to establish the veracity of the allegations. Rather than having a competition authority with general oversight of

the economy, the Government takes a sector specific approach to addressing complaints of anti-competitive behaviour. The relevant government bureaux and departments involved with administering policy with regard to the retailing of foodstuffs and household necessities would therefore have a role in examining the allegations.¹

5. Nevertheless, when these issues have been discussed between the Council and the relevant parts of Government, the response from Government suggests a view that because the complaints or allegations which emerge from time to time usually die down after a while, this may indicate a proper functioning of market forces that has sorted things out. However, a complainant may discontinue pursuing a complaint or dare not publicly come forward, due to other reasons. The Council suggests that an objective examination of complaints of anti-competitive conduct and the extent of control of the retail distribution network and its implications to small traders and suppliers needs to be undertaken by an authoritative body that:
 - (a) has the confidence of sector participants; and
 - (b) will pursue allegations to ascertain whether there are actually detriments to consumer welfare that are going unchecked.
6. As indicated in Chapter 4 of the Council's report, the foodstuffs and household necessities retailing sector has been the subject of detailed examination by competition authorities in other countries which have examined similar allegations of misuse of market power and concerns with high levels of concentration in relevant markets.

Government Policy in the Retailing of Foodstuffs and Household Necessities

7. Whilst there is limited government intervention in the foodstuffs and household necessities retailing sector, government bureaux and departments still exercise a role that has some influence. For example, through licensing various methods of food retailing, allocating land for commercial use, planning retail space for supermarket type retailing operations and wet markets in public housing estates, and in constructing facilities for and managing the operation of public wet markets.

Wet markets

8. Apart from the fact that wet markets are an important competitive element in food retailing, wet markets can also be seen as an integral part of the cultural fabric of Hong Kong and one of the defining features that gives the city its unique character. Importantly, wet markets are also a large source of employment, not only for the actual wet market traders and their assistants, but the many goods and service providers who provide logistical and other support.
9. Various surveys indicate that public and private wet markets enjoy considerable patronage, and substantial numbers of consumers indicate a preference for them. However, this preference is tempered by the concern over the shopping environment. Supermarket chains have taken the opportunity to develop wet

¹ For example, the Government's Competition Policy Advisory Group Annual Report of 2000 – 2001 notes in regard to complaints of anti-competitive conduct that "As a general rule, investigations into and follow up actions on the complaints are carried out by the relevant bureaux and departments." See www.compag.gov.hk.

market type facilities within their premises, recognising the preference that consumers have for wet market produce and the supermarket's ability to satisfy consumer demands for a comfortable shopping environment. Clearly, there is a need for wet market operators to recognise the necessity of improving the shopping environment in order for them to remain competitively viable.

10. Nevertheless, due to the need to fully meet re-siting commitments, some markets managed by the Food and Environmental Hygiene Department (FEHD) have been over-provided with stalls. At the time of their construction there was no critical assessment of how many wet markets were actually required. Little regard was paid to competition posed by nearby markets; either in private developments or by supermarkets in the vicinity.
11. As a result, there is most likely an oversupply of markets across the territory and clustering of a number of markets in the same location. This has also affected the occupancy rates and in some cases led to sub-standard stall sizes in some markets. In addition, most of the tenants, being former hawkers re-sited into the public markets managed by FEHD, have not been able to adapt to the enclosed market environment. They find it difficult to compete with the new format and style of business practices, such as tidiness and clear price labelling. Since they and their offspring have the right to operate their business in the public market in perpetuity and as they are only paying below market rent, this gives little incentive to enhance their competitiveness.

What Needs to be Done

12. Hong Kong is becoming increasingly aware of the need to creatively manage the changes necessary to meet the economic challenges it now faces. One of those challenges is finding the appropriate way to address the disadvantage in the wet market sector as a competitor to supermarkets. If the sector was to contract by a large degree, whilst Hong Kong remains in the current economic "low tide", the consequential large-scale dislocation of the unskilled workforce will add to the current historically high unemployment rate.
13. Questions therefore arise as to:
 - (a) whether a decline should be accepted as an inevitable consequence of changing consumer demands and the current operators' inability to match the resources of supermarkets; and hence it should be left to those small traders to struggle for their survival; or
 - (b) whether some measures should be taken to assist the traditional wet market sector to adapt to change and remain viable competitors, thereby reducing the dislocation that could occur and ensuring that a cultural characteristic of Hong Kong remains; albeit in a somewhat altered form.
14. Needless to say, managing and facilitating the process of change is a better strategy than having to deal with unwanted and undesirable outcomes in the future. In a way, the evolutionary process of the food retailing sector today appears to be taking a similar course to the restructuring of Hong Kong's economy ten or more years ago; from a manufacturing-based to its current service-based economy. Many entrepreneurs have attained great success moving their manufacturing bases to the Mainland. However, the issue of retraining and employment of the dislocated low skilled labour force has emerged and remained the responsibility of the government. While dislocation

of workforce as emerged from the study is not a consumer issue, the decline of the wet market industry will affect consumer interest in product choice, price and quality. Hence, the Council is obliged to point this out.

15. The Council puts forward the view that there is a strong case for proactive action to be taken to minimize this dislocation through, where economically feasible, the re-engineering of the wet market sector and retraining of the workforce.
16. Government could perform a facilitation role to help create a vibrant and competitive environment for market participants. The Government currently plays an important proactive role through investing in road construction and developing other infrastructure. For example, the preparation of land intended for residential and commercial developments, and for the airport and container terminals. In the same way, measures can be taken to provide a favourable environment, through pro-small business policy initiatives and other measures for market participants, in the foodstuffs and household necessities retailing sector.
17. This is in line with the Government's vision as noted in the 2002 Budget speech where it was noted that:

".....economic activities in the local community closely linked to our daily life are also important. This local community economy covers a wide range of activity, including cultural, recreational, sports, social and personal services; and there are many different types of players, such as small traders, local domestic helpers and fitness instructors. Development of the local community economy can promote domestic consumption, create employment opportunities and highlight Hong Kong's unique characteristics".²

18. There are four areas of concern in the foodstuffs and household necessities retailing sector that the Council believes should be addressed. They are as follows:
 - (a) Improving the efficiency of the Hong Kong foodstuffs and household necessities retailing sector.
 - (b) Ensuring diversity, whilst maintaining traditional strengths, in fresh produce retailing.
 - (c) Maintaining a level playing field, responsive to the needs of all competitors.
 - (d) Ensuring that consumers can have trust in the market place.
19. The Council's recommendations in this regard are addressed below. It is to be emphasized that the Council is not calling for direct subsidy; nor is it advocating direct government intervention in markets, beyond what Government is currently doing. Neither does the Council intend to penalize success in the supermarket sector. The Council is advocating for an environment that ensures a vibrant marketplace and a win-win situation for business and consumers alike.

² Budget Speech March 2002, paragraph 31.

QUESTION 1. – WHAT ARE THE BEST MEANS TO IMPROVE EFFICIENCY IN THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR?

20. There is a disparity in resources and expertise available between large retailing chains and small traders insofar as their means to improve efficiency. While supermarkets appear to be readily adapting to the challenges ahead for the sector, the same cannot be said for small to medium enterprises such as wet market traders.
21. There is a trend in advanced economies to target assistance to small and medium enterprises (SMEs) rather than leaving them entirely to their own devices when faced with substantial market power held by other larger competitors. For example, the Australian government has issued a report regarding assistance to be given to SMEs in the agricultural sector *Securing the Future of Australian Agriculture*³ and the Australian Competition and Consumer Commission (ACCC) assists SMEs in a number of ways, such as developing their collective bargaining skills and providing assistance when SMEs are subjected to unconscionable conduct in business transactions.⁴ The United Kingdom (UK) also issued in January 2003 a report *Competitive Analysis of the Retail Sector in the UK* where it is suggested that government should investigate how best to enhance the skill set of smaller retailers in terms of the supply chain and other practices.⁵
22. Further, in other large metropolitan economies, such as New York and Boston, the city governments have schemes to revitalize commercial streets by stimulating private investment, reducing vacancies, improving the commercial environment and increasing profits for local businesses. Some years ago, the Boston municipal government saw the need to reform the small business sector and appointed a specific task force to come up with a plan to revitalise the sector, and funding and technical assistance to help small operators.⁶ To improve its city image, the Shanghai government helped car cleaners in setting up a co-operative. After having gone through training, a modernized workforce emerged and major streets were rid off the untidy scene created by an untrained and disorderly workforce. Under a project dating as far back as 1979, the Taipei City Government has been modernizing the Nanmen market, a 105-year-old traditional wet market. Today the place is seen as a clean shopping emporium with new facilities and a modern style of management. The booths are orderly and have standardized signboards, and the entire market utilizes a reliable food refrigeration system. After the improvements were made, Nanmen vendors saw their sales increase. In 1998, Taiwan's Ministry of Economic Affairs launched a five-year program to upgrade the traditional food and vegetable markets and

³ The report can be downloaded from website <http://www.ncc.gov.au/pdf/CIComAg-001>.

⁴ See Section 51AC of the Australian *Trade Practices Act 1974* – Unconscionable conduct in business transactions, and the ACCC's Small Business Program. See www.accc.gov.au.

⁵ The report, issued in January 2003, can be downloaded from website <http://www.dti.gov.uk/retail/index.htm>.

⁶ In 1995, Mayor Thomas M. Menino created Boston Main Streets, the first urban, multi-district Main Streets program that provides funding and technical assistance to 21 neighbourhood-based Main Streets districts throughout the City of Boston. The program focuses its effort on providing merchants and community residents with the tools for their historic commercial districts to compete in today's market. The Main Streets program helps the local districts capitalize on their unique cultural and historical assets while focusing on the community's economic development needs. Examples include small business recruitment, business retention and addressing competition from shopping malls and discount retailers.

solve the problem of illegal markets throughout Taiwan. The Nanmen market serves as a model for the island wide modernization campaign.⁷

23. The Council is of the view that some specific targeted assistance could be given to revitalize the wet market sector into an efficient and innovative industry, given the desire by consumers for competitive choices and the level of employment that these small enterprises bring to Hong Kong.⁸
24. The Council is pleased to note that FEHD is providing training to wet market operators. The purpose of the training is to improve the customer service aspect of market stall lessees' interaction with their customers, and to sharpen their awareness as to the importance of food safety and environmental hygiene in a market setting. In addition to this, the Government's Small and Medium Enterprise Office (SMEO) under the Trade and Industry Department and the Trade Development Council have both developed commendable business promotion and training activities for SMEs. The Council believes these initiatives, and efforts of other institutions, can be utilised to assist in improving the competitive position of participants in the foodstuffs and household necessities retailing sector. For example, by promoting the utilisation of state of the art management information systems.
25. The Council recommends that the SMEO or other relevant institutes develop specific programmes aimed at assisting small traders in the foodstuffs and household necessities retailing sector.
26. Wet market operators should be alerted to the threat to their continued survival and their responsibility to understand the need to make a paradigm shift in the way they operate. For example,
 - (a) a "wet" market for fresh produce need not always be so wet as to irritate and deter consumers from patronising the area;
 - (b) operators must upgrade their knowledge and skills on technology that can provide efficient business solutions for supply side management;
 - (c) identify what service levels are necessary to improve competitiveness, such as issuing receipts and longer opening hours, in order to increase the customer base.

QUESTION 2. – HOW TO ENSURE DIVERSITY WHILST MAINTAINING TRADITIONAL STRENGTHS IN FRESH PRODUCE RETAILING – GOVERNMENT'S FACILITATION ROLE?

27. Hong Kong will benefit from a vibrant food retailing market with multiple operators, where competitive choices will be available. A rethink of government policy is warranted at this critical point.
28. The Housing Authority (HA) and FEHD are both involved in maintaining the traditional role that wet markets have in serving Hong Kong consumers with fresh produce. A major reason for their involvement is to serve the public desire

⁷ See website <http://www.taiwanheadlines.gov.tw/20000418/20000418fi.htm>.

⁸ Asia Pacific Economic Cooperation every year has Small and Medium Enterprise Ministerial Meetings on policy development towards small enterprises, discuss the suggestions from the SME Working Group. It also creates APEC SME Network of Networks to facilitate information exchange for SME in the region.

for buying fresh market produce. In the case of FEHD, wet markets serve to house those persons holding a hawker's licence. The sector is characterised by many individual operators who cannot afford to rent private shop premises. They rely on government to ensure that there is the necessary infrastructure and availability of low cost market facilities for them to continue to offer a service. In effect, both government departments have for some time taken on a role as major developers, or entrepreneurs for the maintenance of the wet market sector.

29. The fact that government has historically played a role in maintaining wet markets, and continues to allocate government expenditure in maintaining related assets, means that from a public policy point of view it has a justifiable role in addressing the questions now being posed. Moreover, because the wet market assets are publicly owned, the Council believes it is incumbent on the Government to ensure that:
 - (a) the decline of the wet market sector (if it is accepted to be inevitable) is managed in an orderly fashion; or
 - (b) if it is agreed that wet markets are important and should be preserved in some way, that the evolution is efficiently managed.
30. There should be a change in focus which goes beyond the mere provision of low cost space for stalls, because successful food retailing now calls for upmarket promotion strategies, cost efficient sourcing of products, and a strong emphasis on customer service. Information available to the Council indicates that HA and FEHD have devoted efforts in devising new strategies for wet markets and recognize the need for, and are planning to improve and upgrade facilities for their wet markets so as to maintain the commercial prospects for these developments.
31. The Council recognizes that the situation is different between HA and FEHD. Whereas the relationship between the small store operators and HA is that of lessee and landlord, FEHD carries with its market the legacy of re-housing unlicensed hawkers. Changes in these markets will have implications of tenure. The move to revitalize business need the support and ownership of the store operators.
32. The Council believes that Government should employ the creativity and entrepreneurial skills found in the private sector to manage the current markets, for this purpose.
33. The Council notes the proposal by HA announced in July 2003 to sell its shopping malls (which include wet market facilities) and car park assets. The HA's stated intention behind its proposal is to divest the assets in the interests of realising the monetary value in those assets. The Council sees this as a good opportunity to ensure that the assets are used in such a way that their current important role in providing competition to supermarket chains is maintained and developed in a way that ensures continued strong competitive pressure on supermarkets into the future.
34. Prior to the announcement by HA, the Council had formulated the following options in mind:

Option one – unencumbered sale of government owned assets

35. The publicly owned wet market assets of FEHD and HA (including its other non wet market commercial properties)⁹, could be sold on the open market and their use left to the new owners as they see fit. A modification would be to grant a lease with eventual transfer of ownership upon satisfactory demonstration of leadership within the trial period.
36. This is similar to HA's current arrangement of granting a lease to a single operator. The difference lies in ownership; as once the market is in the hands of a commercially oriented owner, the owner will assume full responsibility towards the decoration, maintenance and management of the market; and make appropriate investments.

Option two – establish wet market co-operatives

37. The individual retail areas of wet market complexes owned and operated by FEHD and HA could be sold to wet market traders. As owners of their units (with the Government remaining as the owner of the common areas) they could operate the wet market complex as a co-operative under a Deed of Mutual Covenant. The merit is the total involvement of the stall operators who would try their best to succeed. In so doing, the workforce will also be retained.

Option three - creation of wet market development corporation

38. A statutory corporation could be created to act as an incubator for the continued development of the traditional wet market in Hong Kong.¹⁰ The statutory responsibility of the entity would be to develop wet markets into a new type of shopping experience that uses the strengths of wet markets, i.e. freshness, multiple choices in fresh produce, as a basis for successfully evolving this mode of shopping into a form suited to meet current and future consumer aspirations. The corporation could:

- (a) have a statutory term of reference to ensure the continuation of traditional wet market shopping, and manage its evolution to meet the current and future aspirations of Hong Kong consumers and society;
 - (b) have as its asset base current wet market and commercial properties infrastructure owned by FEHD and HA;
 - (c) utilise existing staff resources of both departments¹¹ that are currently deployed for management of commercial activities; and
 - (d) be privatised at a future date.
39. **The above options are raised to stimulate public discussion on the pros and cons of the options and is by no means exhaustive. As discussed earlier, there is a need for a paradigm shift by wet market operators as well as the government's policy objectives. The Government may consider running a pilot project for one or two of the above options, or to have the**

⁹ The Council recognises that FEHD assets would most likely encounter legal encumbrance problems.

¹⁰ For example, an analogy can be drawn with the proactive policy that government has taken in the information technology sector where it is using private sector initiatives through a statutory corporation, the Hong Kong Science and Technology Parks Corporation, in its attempt to develop the Hong Kong economy into an IT hub.

¹¹ FEHD and Housing Department (HD). As recommended by the Review of Institutional Framework for Public Housing Report, the former Housing Bureau and the former HD merged on 1 July 2002 to form the new HD. The re-constituted HD continues to provide executive support to HA.

pilot projects co-exist in parallel. Experiences gained will point to the way forward.

40. An important point is that the operators of the large supermarket chains must not be awarded the tender for these markets or involved in managing the evolution; otherwise it would defeat the objective of increasing the diversity in fresh food retailing.

QUESTION 3. – HOW TO MAINTAIN A LEVEL PLAYING FIELD?

41. The Council has received complaints from various parties concerned with alleged anti-competitive conduct in the supermarket sector. It has exchanged correspondence and held meetings with related parties in attempts to establish the veracity of the allegations. The allegations have ranged from attempts to induce resale price maintenance, and refusals to supply. Not being an investigative body with powers to obtain information, the Council can only conclude at best that there is anecdotal evidence to indicate that pressure has been exerted on suppliers to discipline competitors that threaten a preferred level of price competition in the market. Such conduct has been considered, in the Government's *Statement on Competition Policy*, to be a category of anti-competitive practice that may warrant further examination.¹²
42. If Hong Kong had a competition authority that had investigative powers, similar to those existing in other comparable advanced economies, the authority could activate its information collecting powers, where the necessary prima facie evidence and therefore "reason to believe" or "reason to suspect" has emerged.
43. In these circumstances, the authority would be in a better position to obtain information that could establish the veracity of the allegations on refusal to supply, or inducement of resale price maintenance, one way or the other, to a higher standard of proof. In the absence of such an authority, and its regulated information gathering powers, the industry will continue to be subject to innuendo and uninformed opinion, as far as allegations of anti-competitive conduct is concerned.

Self regulatory complaints mechanism

44. The Government has indicated in its *Statement on Competition Policy* a support for industry self regulation as one means to "preserve and enhance free competition". The Hong Kong General Chamber of Commerce (HKGCC) in its *Statement on Competition* urges its members to "refrain from restrictive practices, such as collusive or predatory behaviour that impair economic efficiency or free trade" and encourages specific industries, where possible, to develop through their respective associations, a complaints-handling procedure as well as provisions to deal with non-compliance of their members.¹³
45. Therefore, an option for the industry, or for the HKGCC to consider, is to develop a self regulatory complaints handling body that has the authority to examine allegations of anti-competitive conduct in the foodstuffs and household necessities retailing sector.

¹² See sub section 7(c) of the *Statement on Competition Policy* at www.compag.gov.hk which lists "conditioning the supply of specified products...to the acceptance of certain restrictions other than to achieve assurance of quality, safety, adequate service or other justified purposes".

¹³ See Hong Kong General Chamber of Commerce website www.chamber.org.hk *Chamber Statement on Competition* Clause 6.

46. Alternatively, supermarket operators, being good corporate citizens may consider expanding their current good conduct code, which is principally directed towards customer relations, to include other dimensions, e.g. relationships with suppliers etc. With transparent rules on good practice, the operators would be in a better position to answer what they consider to be unfounded allegations about their conduct.
47. The Council is in the process of creating a *Consumer Protection and Competition Model Code*. The Model Code will comprise "Competition Rules" and "Rules on Structure of a Complaints Handling Committee and Procedure for Assessing Complaints Alleging Anti-competitive Conduct". The Council considers these might serve an appropriate basis for developing such a self regulatory scheme. The Council is happy to offer its assistance in this regard.
48. The Council's preferred option for assessing allegations of anti-competitive conduct is the creation of a general competition law that applies to all economic sectors, similar to that existing in other advanced economies. The above self regulatory mechanism is suggested pursuant to the Government's preferred option as outlined in its *Statement on Competition Policy*, and the realisation by the Council that the Government's current position is not to introduce a general competition law.
49. As a long term solution, the Council is in favour of introducing a competition law framework in Hong Kong; similar to that which exists in other comparable advanced economies. A general competition law would establish legislative boundaries, within "black letter law", as to what standard of behaviour is expected in relation to the range of conduct complained of. Under a competition law framework, with transparent rules and procedures, the various protagonists would be in a position to clarify their concerns, and defences, and there would be public debate on issues such as whether market power actually exists.
50. Moreover, given the increasing concentration of market participants in the supermarket sector, it is reasonable to expect that some government assessment should be made as to what safeguards should be in place to prevent further concentration; particularly if either of the two largest supermarkets should merge. In fact, as noted in Chapter 3, the Government is introducing competition law safeguards to prevent anticompetitive mergers in the telecommunications sector (in the face of telecommunications industry concerns that they are being unfairly targeted). Therefore, from a government competition policy point of view, there is no apparent reason why similar safeguards could not also be put into place for the foodstuffs and household necessities retailing sector. Introducing a general competition law framework would address both the competition safeguard concern and the need for the rules to apply fairly to all in the economy.
51. Problems also arise with regard to allegations of anticompetitive conduct. In the absence of a general framework for examining such practices, it is those with market power who will decide whether and how anti-competitive practices exist in the marketplace. In these circumstances, the disputes that arise between suppliers and purchasers, and competitors, will invariably be settled through withdrawal from the market or the weaker party succumbing to the demands of the dominant market player. The reason being that it is in neither party's interests to prolong a dispute and disrupt supply. Because the peace is negotiated in private, the public interest is not represented.

QUESTION 4. – HOW TO ENSURE CONSUMER TRUST IN THE MARKET PLACE?

52. Consumers suffer if misleading claims and trade malpractices exist in the market place. If the marketing environment is characterised by rivals engaging in misleading conduct, then healthy competition in the market will not exist.
53. It is apparent from reported allegations of frozen pork being passed off as fresh pork¹⁴ that there is a problem with misleading practices in the market place and these practices must be curbed. The Council notes the precautionary measures taken by FEHD in respect of the labelling of imported chilled chicken that will assist consumers to differentiate chilled chicken from fresh chicken. Such proactive measures are to be commended. The Council trusts that continual enforcement of appropriate laws and regulations will curb the problem of misleading conduct in the marketplace.
54. The Government's efforts are also being complemented by industry. For example, a wholesaler accredits a retailer that sells fresh meat on the condition that the retailer observes the wholesaler's standard which is aimed at protecting its corporate goodwill. The Council supports these industry measures as a means of enhancing consumer confidence, and encourages more wholesalers to operate on a similar basis, to ensure that competition can play its part in maintaining high standards of marketplace behaviour.

Concluding Remarks

55. In this study the Council has examined the dynamics that exists in the foodstuffs and household necessities retailing sector and pointed to the gradual decline of the wet market sector. The Council does not intend that success should be penalized in the supermarket sector, rather the Council is putting forward a case that Hong Kong will benefit from a vibrant food retailing market with multiple operators where competitive choices will be available, and a win – win situation can be attained for all.
56. The Council has identified the need for a paradigm shift by wet market operators. It supports government policy makers to adopt new policy objectives and strategies for wet market development, and where financially feasible, the re-engineering of wet market operation and retraining of the workforce. While dislocation of workforce as emerged from the study is not a consumer issue, the decline of the wet market industry will affect consumer interest in product choice, price and quality.
57. We have put forward recommendations and options on these and other issues with a view to stimulating public debate. The Council is not saying these are a panacea for all the problems. Nor is it saying that they are the only options. What the Council is emphasising is that something must be done now if Hong Kong is truly concerned with competition within this sector; with the need to contain our unemployment problem; and in maintaining Hong Kong's competitiveness and truly unique characteristic as Asia's World City.

¹⁴ In 2002, the Council received a complaint by the meat and livestock importer Ng Fong Hong (NFH) alleging misleading sales practices in relation to wet market traders and supermarket operators selling chilled pork as fresh pork. According to NFH, "chilled" pork from Thailand had been mixed together with fresh pork and sold to consumers as fresh pork. NFH stated that this had occurred in many wet market stalls, as well as in at least one supermarket.

Competition in the Foodstuffs and Household Necessities Retailing Sector

食品及家居日用品零售市場的競爭研究報告

“ Hong Kong will benefit from a vibrant food retailing market with multiple operators and where competitive choices are available. ”

攪「活」鮮活食品市場加強競爭

CHAPTER 1

INTRODUCTION

Background

1.1 The Consumer Council (the Council) issued a study into the foodstuffs and household necessities retailing sector in 1994; with special reference to supermarkets.¹ It also issued a research paper on the practice of resale price maintenance in Hong Kong in 1997.²

1.2 Since that time, there have been changes in Hong Kong consumers' buying behaviour, and there has been new entry into, and exit from the sector. Consumers have witnessed several price wars between supermarket chains and new retailing concepts. There have also been a number of public allegations of anti-competitive conduct made directly to the Council.

1.3 The foodstuffs and household necessities retailing sector is an important area of concern to consumers. Accordingly, the Council has an ongoing programme of monitoring prices of a basket of fast moving products sold in supermarkets, and trade practices in the sector. In view of the information collected over the past years, the Council considers there is a need to update its analysis of the industry, and disseminate the research and survey work it has done subsequent to its past reports.

1.4 This study had been prepared over a lengthy period of time, and was due to be released in early 2003. However, due to the upheaval caused by the Severe Acute Respiratory Syndrome (SARS) epidemic at the time, its release was delayed until now.

Objective of Study

1.5 This study seeks to inform the Government and interested persons on the extent of competition in the sector and offer some practical suggestions as to how the issues that have arisen over the past few years can be appropriately addressed, as Hong Kong enters the first decade of the 21st century.

Scope of this Study

1.6 Accordingly, this study examines:

- (a) industry trends and development;
- (b) government regulations;
- (c) the state of competition in various markets;
- (d) allegations of undesirable trade and anti-competitive conducts; and
- (e) makes recommendations for the Government and industry to consider.

Previous Council Study on Supermarkets

1.7 The Council's previous study made a number of observations on the conduct, structure and performance of the foodstuffs and household necessities retailing sector. Importantly, the report noted that there were significant entry barriers such as

¹ Consumer Council report, *Report on the Supermarket Industry in Hong Kong*, November 1994.

² Consumer Council research paper, *The Practice of Resale Price Maintenance in Hong Kong*, September 1997. The paper can be downloaded from the Council's website <http://www.consumer.org.hk>.

difficulties in accessing prime sites and suppliers and matching the economies of scale of the larger operators.

1.8 The report also provided some evidence of the imbalance of market power between suppliers and the large supermarket chains. It was noted that because of their market share, the two large supermarket chains had strong bargaining power over suppliers and were able to impose more favourable trading terms when compared with other smaller supermarkets.

1.9 The Council's report proposed six recommendations to enhance consumer interests:

- (a) Monitoring of the supermarket industry;
- (b) Establishment of a complaint avenue against restrictive trade practices;
- (c) Special conditions for the operation of supermarkets in remote districts;
- (d) Information disclosure;
- (e) Improvement of customer services; and
- (f) Prohibition of the sale of "out-dated" products.

1.10 In relation to these recommendations, the Government issued a report *A Government Response to the Consumer Council Study on the Supermarket Industry* in May 1995.³

1.11 In response to the Council's recommendation that a body should be designated to monitor the supermarket industry in order to keep track of any growth in market power that might be harmful to competition and consumer interests, the Government believed that there was no need for special monitoring.

1.12 In response to the Council's recommendation that the Government should generate a planning standard for the establishment of supermarkets in remote districts, the then Director of Planning commissioned a study on the possibility of a planning standard for the provision of supermarkets. The Planning Department's conclusion was that it was impractical to generate such a planning standard because of the difficulty in defining and testing "remoteness".

1.13 The Council's report also recommended that the Government should implement an open tender policy for granting operational rights for supermarkets in remote areas. It was suggested that an operator should only be allowed to bid for the operating right of one or a limited number of supermarkets in the same development.

1.14 In response, the then Secretary for Planning, Environment and Lands was of the view that imposing such lease conditions was impractical and unreasonable. The reasons being that there was little retail space provided in separate and free-standing buildings in most multi-purpose development projects. Moreover, it was noted that there was no reason to restrict ownership that might affect the site value. The Government also noted that in any event, a bidder could overcome any restriction on granting supermarket rights in the same development by using associated companies.

1.15 A more detailed summary of the Council's previous recommendations and the Government's response is found in Annex 1 of this report.

³ Government report, *A Government Response to the Consumer Council Study on the Supermarket Industry*, May 1995, by the then Trade and Industry Branch, Hong Kong Government.

CHAPTER 2

INDUSTRY OVERVIEW

2.1 Foodstuffs and household necessities include a wide variety of food and non-food items such as confectionery, fresh food, canned or pre-packaged food, household cleaning products, personal care products, etc. Within Hong Kong, foodstuffs and household necessities are supplied by a range of different retail outlets. For example, supermarkets, convenience stores, provision stores, grocery stores, drug stores and wet markets. The classification of different outlet types does not have any statutory or formal definition.

2.2 For the purposes of this study, which focuses on foodstuffs and household necessities, the Council has identified the relevant distributive trades and key players, product categories and suppliers (see Table 2.1). As the major product items sold in certain outlets such as drug stores or pharmacies are not foodstuffs or household necessities, these retail outlets are not included in the study.

Table 2.1: Retail Distribution of Foodstuffs and Household Necessities in Hong Kong (in Chronological Sequence of Development)

Distributive Trades	Key Retailers	Major Product Categories	Suppliers
Traditional Wet Markets	As at 30 June 2003, 15,427 market stalls* (excluding cooked food stalls), As at the end of June 2003, 8,367 licensed hawkers* (7,479 fixed pitch and 888 itinerant)	Mainly fresh meat, fish, vegetables and fruits	Livestock mainly imported through middlemen from PRC and slaughtered locally, with 3 private slaughterhouses as at 30 June 2003; Supply of fresh fish from Wholesale Fish Markets (A Kung Ngam, Aberdeen, Castle Peak, Cheung Sha Wan, Kwun Tong, Shau Ki Wan, Tai Po, etc); Supply of vegetables from Cheung Sha Wan Wholesale Vegetable Market and Kam Tin Vegetable Collecting Centre; Supply of fruits from Wholesale Markets (Cheung Sha Wan, Western, etc).
Rice & Grocery Stores	Rice stores (around 110 retail stores), Grocery stores (over 2,483 outlets)**	Rice, oil, ingredients, kitchenware and household products	Simple procurement structure with fewer suppliers; Purchase through sales representatives of brand products, wholesalers and manufacturers.
Food & Household Product Section within Department Stores (in prime sites or inside shopping malls)	Chinese Goods Centre, CRC Department Store, Jusco, Marks & Spencer, Seibu, Seiyu, Sincere, Sogo, Uny, Wing On, Yue Hwa Chinese Products Emporium	Foodstuffs, household products and small electrical appliances	Supply chain comprises distributors of foreign-brand products, wholesalers, overseas, PRC and local manufacturers; In case of Japanese supermarkets, substantially high portion of new products imported from Japan; Vertical integration in supply of own-brand products.

Distributive Trades	Key Retailers	Major Product Categories	Suppliers
Supermarkets (self-service retailing)	CRC, Guangnan KK (all 39 stores closed in June 2001), Park n Shop, Wellcome	General provisions including a variety of food and non-food items	As high as 600 – 700 suppliers*** for large supermarket chains; Supply chain comprises distributors of foreign-brand products, wholesalers, overseas, PRC and local manufacturers; Vertical integration in supply of own-brand products.
Convenience Stores ("fill-in" store with 24-hour service)	7-Eleven, Circle K Park n Shop (24 hour operations within its supermarkets)	Confectionery, foodstuffs and limited household products, magazines and newspapers	Supply chain comprises distributors of foreign-brand products, wholesalers, manufacturers and publishers.
Chain Stores (small outlets)	DCH Food Marts, Yu Kee (52 outlets in secondary locations)	Foodstuffs, fruit, vegetables, frozen sea foods and limited household products	DCH Food Marts' supply chain comprises distributors of foreign-brand products, wholesalers, overseas, PRC and local manufacturers; In case of Yu Kee, mainly direct import from Far East, limited purchase from local distributors.
Superstores (self-service, one-stop shopping, area of outlet around 4,000-8,000 sq metres)	Park n Shop, Wellcome	Dry packaged foodstuffs and household products, as well as fresh food produce	Supply chain comprises distributors of foreign-brand products, wholesalers, overseas, PRC and local manufacturers; Vertical integration in supply of own-brand products.
Discount Stores (bulk selling on differential pricing to members and non-members)	GrandMart (has exited market)	Foodstuffs, household products and small electrical appliances (limited product lines)	Direct import from overseas manufacturers (mainly through Price Club in the US).
Hypermarkets (self-service, one-stop shopping, free parking, low prices, and area of outlet above 8,000 sq. metres)	Carrefour (all 4 outlets closed in September 2000)	Foodstuffs, household products, small electrical appliances (wide assortments)	Supply chain comprises distributors of foreign-brand products, wholesalers, overseas, PRC and local manufacturers.
Direct Distributor (remote selling with delivery service)	adMart (operation ceased in December 2000)	Foodstuffs, household products and electrical appliances (wide assortments)	Supply chain comprises distributors of foreign-brand products, wholesalers, manufacturers; Certain degree of parallel imports.

Notes:

* Figures from the Food and Environmental Hygiene Department.

** Figures estimated from Yellow Pages Business Directory.

*** Estimate furnished by a supermarket operator in correspondence with the Council in the 1994 Study.

2.3 Since the Council issued its study into the foodstuffs and household necessities retailing sector in 1994, there have been important changes in the sector. This chapter outlines some of those key developments in the sector, also reflecting changes from the early 1990s to the present date.

Growth of Supermarkets in Early 1990s

2.4 As noted in the Council's 1994 report, supermarkets are a major force in the retailing of foodstuffs and household necessities. Nevertheless their importance to consumers of fresh produce was still second to that of wet markets in early 1990s.⁴

2.5 Supermarkets were first introduced into Hong Kong in the 1950s. At that time, they were relatively small in size and were targeted at expatriates and high-income households. In 1974 supermarkets started to sell rice (upon recommendation of the Council to combat monopolisation of rice stores) and this marked a turning point to traditional household shopping behaviour that previously relied on small corner grocery stores.⁵ For the period from 1974 to 1985 there was accelerated expansion of supermarkets.

2.6 Between 1985 and 1993, the growth of sales and outlets of supermarkets started to slow down except for the two largest supermarket chains. During the period, the annual growth rate in the number of outlets for Park n Shop was 5.4% and 7.5% for Wellcome. In the same period, the number of supermarket outlets in the industry, excluding Park n Shop and Wellcome, declined at an annual rate of 4.3%.⁶ These figures indicated that the expansion of Park n Shop and Wellcome was most likely at the expense of other small and single-outlet supermarkets, and that there was a steady trend in supermarket consolidation.

2.7 In 1993, there were about 560 supermarket outlets in Hong Kong, of which 165 were Park n Shop outlets and 185 Wellcome outlets. Industry estimated that these two chains together accounted for approximately 70% of supermarket sales and 62% of outlets in Hong Kong. The third and fourth leading supermarket operators, CRC and KK had 37 and 19 outlets, respectively.

Development of Supermarkets After 1993

Supermarket development

2.8 As shown in Table 2.2, all the major supermarket chains expanded their number of outlets after 1993.

Table 2.2: Development of Key Supermarkets - Number of Outlets

Supermarket	1993	2000	2001	2002	2003
Wellcome	185	235	250	247	242*
Park n Shop	165	189	210	207*	211*
CRC	37	66	70	78	79
KK	19	39	-	-	

Notes:

1. 1993 figures are extracted from the Council's 1994 report, *Report on the Supermarket Industry in Hong Kong*.
2. 2000 - 2001 figures are collected from the supermarket companies themselves and press reports.
3. * are figures calculated from address lists of respective company's websites.
4. KK closed all its 39 outlets in June 2001.

⁴ Op Cit, Consumer Council report, 1994, p. 6.

⁵ The establishment of Consumer Council in April 1974 was closely related to rice sales. At that time, there was an inflationary price of rice and widespread public concern about profiteering of rice and grocery stores. The then Government therefore set up the Consumer Council to investigate the issue. The Council's study indicated that there were significant market competition issues such as limited number of importers and lack of distribution channels. Accordingly, the Council suggested that, as part of its recommendations, supermarkets to sell rice in small packets as in the past rice could only be sold by bags of tonnes, or in an un-packaged way by catty.

⁶ Op Cit, Consumer Council report, 1994, p. 11.

2.9 In late 1996, the concept of "one-stop shopping" was further enhanced as Park n Shop opened its first "superstore" in Hong Kong that sold a multitude of products including various fresh products, which in the past were only sold in wet markets. Park n Shop is one of the retail operations of the A S Watson division of Hutchison Whampoa Limited. In the company's 2001 & 2002 Annual Reports, the division reported that:

".....Park n Shop's supermarket operation in Hong Kong and Southern China reported an 11% growth in sales and an improvement in EBIT, a result of successful store expansion in both regions. In Hong Kong, Park n Shop continued to expand its larger format superstores with more fresh food offers and a 'one stop shop' concept."⁷

"Despite continuing deflation in food prices, Park n Shop in Hong Kong reported improved results and maintained its leading market share, continuing to expand its offer by introducing more fresh food, new product lines and concepts such as '\$8 mart'.⁸

2.10 In a report by the Hong Kong University of Science and Technology (HKUST) the average size of a superstore was considered to be around 4,000 – 5,000 square metres, which was substantially greater than an average supermarket.⁹

2.11 In August 2003, from the company web sites, there are 50 Park n Shop and 16 Wellcome superstores. The development of the supermarket and the "one-stop shopping" superstore concept has had a significant impact on Hong Kong consumers' buying behaviour. According to the *"Study on Shopping Habits and the Revision of Chapter 6 of the HKPSG"* (i.e. the Hong Kong Planning Standards and Guidelines) commissioned in 1995 by the Planning Department and completed in 1997, more households used supermarkets (58%) as their major shopping outlet for grocery items than wet market (39%).¹⁰

2.12 There were also other new developments. In 2001, some Wellcome stores started to open 24 hours, targeting customers of convenience stores.

2.13 In response, convenience stores started to provide different services such as Octopus card add-value service, bill settlement service, mailing service, and as UPS authorised dispatching outlets etc. This appeared to reflect a move by convenience stores to distinguish themselves from supermarkets, by developing a multifunctional format rather than just functioning as a food and daily necessities retailer.

2.14 In November 2002 Park n Shop started operating six convenience stores¹¹ within supermarket premises, selling newspapers, stationery, household products and instant food. Park n Shop was reported as saying that it would consider expanding these kind of convenience stores in other areas; with some possibly being in corner areas of superstores.¹²

⁷ Hutchison Whampoa Limited, 2001 Annual Report, p. 43.

⁸ Hutchison Whampoa Limited, 2002 Annual Report, p. 56.

⁹ Arieh Goldman, Seshan Ramaswami and Robert Krider, *Supermarket Shopping Adoption and the Modernization of Food Retailing: Theory, Method and Application*, 1999.

¹⁰ Roger Tym and Partners, *Study on Shopping Habits and Revision of HKPSG*, Chapter 6, Final Report, February 1998.

¹¹ Park n Shop convenience stores operating 24 hrs : Kwun Tong, Central District (Queens Road Central) and Ma Wan; stores operating 6am-12am : Pokfulam, Central District (Des Vouex Road Central) and Tin Hau.

¹² Economic Times, 23 November 2002, p. A22.

New business models other than supermarket

2.15 Throughout the 1990s, there were other business models developed in the foodstuffs and household necessities retailing sector in Hong Kong. For example, the grocery chain store concept and the speciality store concept. In general, grocery chain stores focus on a low-price strategy with a limited product range. Speciality stores on the other hand usually adopt a particular product strategy by concentrating on special categories of goods.

2.16 A representation of the grocery chain store is "Yu-Kee Food". In 1990, Yu-Kee established its first store in Hong Kong. At that time, in addition to being a wholesaler, it also retailed fresh fruit at its store. In the middle 1990s, Yu-Kee closed its wholesale business and concentrated on its no-frills and zero-decoration food retailing business. It then focused on selling locally sourced foods including fresh products, Chinese grocery, confectionery and drinks, at low prices. In 2001, Yu-Kee has expanded to 52 stores and its network covers different districts. Unlike supermarkets, Yu-Kee stores usually do not operate in shopping malls or commercial areas.

2.17 Apart from the grocery chain store, a number of speciality stores¹³ have also appeared specialising in frozen food, household supplies, confectionery, wine & beer, and healthy & natural products.

2.18 An example of speciality store is the household appliance chain store "Japan Home Centre" (JHC), which first appeared in 1991. Up to 2002, JHC had over 100 outlets throughout Hong Kong, under franchise operations. JHC established its first "one price" store in 1993, which was selling mainly household appliances at a fixed price of HK\$10. This one price per item concept has spread and been adopted by some local retailers as a promotion strategy. Park n Shop for example, has expanded into this form of one price retailing by operating "\$8 mart" in 25 of its stores offering a limited range of products within its supermarket outlets.¹⁴

2.19 In the 1990s, large international discount stores started foodstuffs and household necessities retailing in Hong Kong. For example, GrandMart launched its Hong Kong operation in 1993 and Value Club began business in February 1995.

2.20 In 1996, the French supermarket chain, Carrefour, which owns and manages over 300 hypermarkets in 134 countries, began operations in Hong Kong. At its peak, Carrefour operated four outlets; one being a 30,000 square feet store in Hong Kong, one in Kowloon and two in the New Territories. By pursuing an aggressive discount marketing strategy, Carrefour was expected to become a major player in the industry.

2.21 Carrefour stores generally sold goods in bulk quantities with limited product range and brands, which were directly imported from overseas. There was a subsequent modification to its initial operating style with the dismantling of the original large package into smaller packs, and increases in product range.

2.22 In June 1999, adMart began retailing foodstuffs and household necessities by way of direct sales over the internet. The attraction of its innovative strategy lay in aggressive pricing and home delivery services. Its emergence triggered fierce price

¹³ The pioneer speciality store is "DCH Food Marts" (DCH). DCH is a chain store specialising in selling frozen meat, poultry and seafood, and has provided a retail service to the public since the late 1980s. There were 40 stores in Hong Kong by the end of 2001. The majority of its stores are located inside residential estates, and mainly in estate shopping malls.

¹⁴ Hutchison Whampoa Limited, 2002 Annual Report, p. 57.

competition by the two largest supermarket chains, Park n Shop and Wellcome. Moreover, adMart's home delivery service can also be seen as the impetus for Park n Shop and Wellcome to offer and refine similar services.

Industry Rationalisation

2.23 Growing or profitable industries will attract new entry. Firms which cannot perform as well as others will eventually either be forced or will choose to leave. Due to various reasons, the following industry participants closed their businesses or departed from the industry during the past two years.

adMart

2.24 adMart experienced logistics and product problems. Subsequent to its entry in June 1999, there were allegations against adMart that it had imported parallel goods and counterfeit products.¹⁵ adMart eventually ceased operations on 11 December 2000.

Carrefour

2.25 The French supermarket chain Carrefour closed all its 4 hypermarket outlets on 18 September 2000. Carrefour publicly blamed a lack of space as the reason for its inability to effectively develop the hypermarket concept in Hong Kong.¹⁶

KK, GrandMart, USA & Co

2.26 On 20 June 2001, Guangnan closed all its 39 KK supermarket outlets due to unsustainable losses. According to Guangnan's Chairman, the major reasons for its losses were high rents and operating costs as well as intense retail competition.¹⁷ Amongst the American supermarkets that attempted entry in the middle 1990s, the two largest, GrandMart and USA & Co, also subsequently closed.

Wet markets

2.27 Wet markets have long played a vital part in the retailing of fresh produce in Hong Kong. Moreover, wet markets can be seen as an integral part of the cultural fabric of Hong Kong, and one of the defining features that gives the city its unique character. Importantly, wet markets are also a large source of employment, not only for the actual wet market traders and their assistants, but the many goods and service providers who provide logistical and other support.

2.28 Information from the press and other media has indicated that in recent years wet market facilities have shut down in some housing estates; both private and public. For example, Telford Gardens in Kowloon Bay, Laguna City in Lam Tin, Kornhill and Taikoo Shing near Quarry Bay, and Jat Ming Chuen in Shatin. In most cases, the wet market facility within the housing estate was converted to a supermarket facility.

2.29 The guidelines drawn up by the Government for the approval of a Deed of

¹⁵ South China Morning Post, 13 October 1999, p. 1, and Hong Kong Economic Journal, 20 March 2002, p. 4.

¹⁶ South China Morning Post, 21 June 2001, p. 4.

¹⁷ HK iMail, 21 June 2001, p. A4 and Ming Pao, 21 June 2001, p. A3.

Mutual Covenant (DMC) under land grant conditions for private developments¹⁸ (with particular reference to residential development¹⁹) do not require the inclusion of provisions for these facilities. According to the Legal Advisory and Conveyancing Office (LACO), the main function of a DMC is to provide a system of property management in which the owners and the manager covenant to comply with the terms of the land grant. DMC guidelines do not have the authority to bind the developer to use the land in a particular way. In other words, in the absence of such a requirement in lease conditions, developers are not obliged to include the provision of market facilities when they draw up a DMC.²⁰

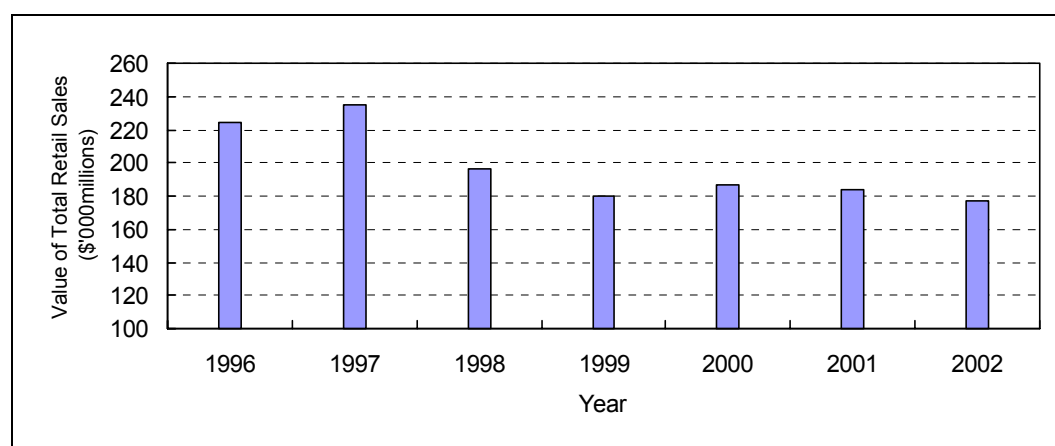
2.30 In general, the policy basis behind Food and Environmental Hygiene Department's (FEHD) decision to develop public wet markets, is to re-site hawkers. Housing Authority (HA) also has a policy of developing wet markets in its estates. However, in mid-2000 it began to adopt a "widen trade policy" which permitted supermarkets of not less than 800 square metres to operate service-style provision of fresh food. In addition, it has undertaken a policy that allows fresh food produce retailers to terminate their rental contract without the required three months notice. As a result, it is expected that there will be an increase in the number of public housing estates with supermarkets selling fresh food, and a reduction in the number of wet market stalls. For more details on retail planning policy of various government departments, please refer to Chapter 3 of this report.

Possible Reasons for the Rationalisation / Change

Change in economic environment

2.31 Since 1997 the Hong Kong economy has undergone a recession and major economic restructuring with significant effects on the business environment. The turnover in the overall retail sector decreased from \$235 thousand millions in 1997 to \$177 thousand millions in 2002, a decline of 25% (see Figure 2.1).

Figure 2.1: Value of Total Retail Sales (\$ thousand millions)



Source: HK Monthly Digest of Statistics, Table 9.1 Retail Sales

2.32 In 1998, the Hong Kong economy was affected by the financial turmoil in East

¹⁸ Legal Advisory and Conveyancing Office, Circular Memorandum No. 41: *Revised Guidelines for Deeds of Mutual Covenant ("DMCs")*, June 1999.

¹⁹ For pure commercial or industrial development, the guidelines for DMC are drawn by the Law Society.

²⁰ Extracted from Lands Department's correspondence with the Council on 6 May 2003.

Asia. Weak internal and external demand with speculative pressure on the Hong Kong dollar led to a rapid drop in property prices and rapid increase of uncertainty in employment prospects. These weakened consumer sentiment, brought about negative growth of -7.4% in private consumption and -7.6% in private investment.²¹

2.33 Despite the adverse economic factors affecting the economy, there were increases in the number of people employed and floor area rented in the supermarket sector (see Table 2.3). As stated in an IMF report, sales of durable goods and non-durable goods other than food fell during the 1998 recession, but there was only a modest decline in sales for the food/grocery sector.²²

Table 2.3: Principal Statistics for Supermarkets, 1995 – 2001

Principal statistics	1995	1996	1997	1998	1999	2000	2001
No. of employees	14,402	14,389 (0)	15,670 (+9%)	15,754 (+1%)	15,133 (-4%)	17,131 (+13%)	19,313 (+13%)
The following figures in HK\$ million							
Compensation of employees	1,523.1	1,641.7 (+8%)	1704 (+4%)	1,869.1 (+10%)	1,712.3 (-8%)	1,989.3 (+16%)	1,951.7 (-2%)
Operating expenses	3,222	3,431.2 (+6%)	3,646 (+6%)	4,109.7 (+13%)	4,137.2 (+1%)	4,449.4 (+8%)	4,638.4 (+4%)
Changes in stocks	-50.9	79.3	165.5	-4.9	129.5	204.1	-34.4
Gross margin	5,572	5,929.7 (+6%)	6,350.4 (+7%)	7,150.1 (+13%)	6,225 (-13%)	6,954.4 (+12%)	7,295.7 (+5%)
Gross additions to fixed assets	449.7	412.6 (-8%)	638.1 (+55%)	908.2 (+42%)	511.9 (-44%)	987.9 (+93%)	1,011.3 (+2%)
The following figures in sq. m							
Floor area	484,219	505,719 (+4%)	492,257 (-3%)	614,940 (+25%)	579,467 (-6%)	601,328 (+4%)	693,571 (+15%)

Source: Census and Statistics Department, Report on Annual Survey of Wholesale, Retail, and Import and Export Trades, Restaurants and Hotels, 1997 (p. 98 Table 1); 1999 (p. 96 Table 1); 2001 (p.98 Table 1)

Notes:

1. Area used for shop floor purpose refers to permanently built-up enclosed spaces where goods for sales to displayed.
2. Figures do not include sales in supermarket sections of department stores.
3. () Year ago percentage change.

2.34 Moreover, regular price surveys conducted by the Council indicated that supermarket retail prices of a basket of goods increased at certain time periods, despite the general downturn in the economy and the retail sector.²³

2.35 For example, the Council has conducted price surveys in August 2002 and 2003.²⁴ Analysis of the Council's price survey in 2002, covering five half-yearly periods

²¹ Census and Statistics Department, Economic Report 2000.

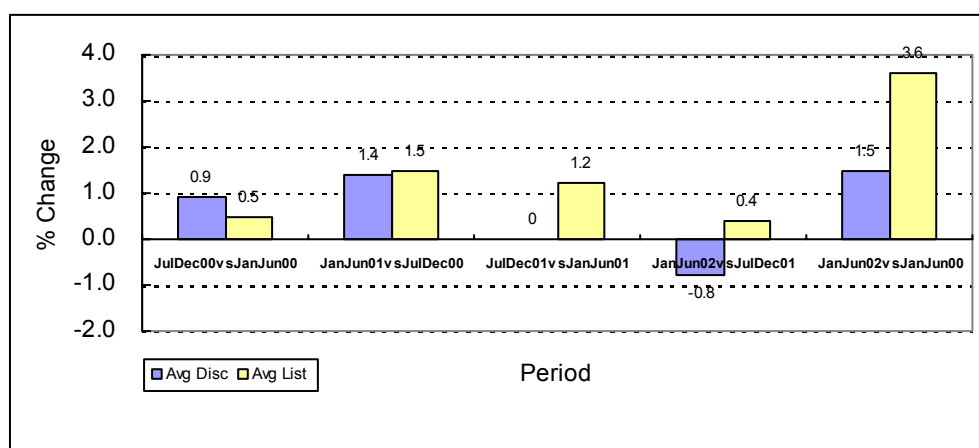
²² IMF Staff Country Report No. 99/34.

²³ The Council conducts regular price surveys of goods available at Park n Shop, Wellcome and CRC supermarket chains. The prices of a basket of goods are recorded twice a month at one outlet of each supermarket chain. Prior permission must be obtained from the store manager before staff of the Council are allowed to enter the store and take the prices. The basket of goods constructed by the Council is a combination of "fast moving products" as considered by the three supermarket chains.

²⁴ Consumer Council *Choice Magazine*, 310, 15 August 2002, p. 38 – 41. Details of 2003 survey to be released in 15 August 2003 issue of Choice magazine.

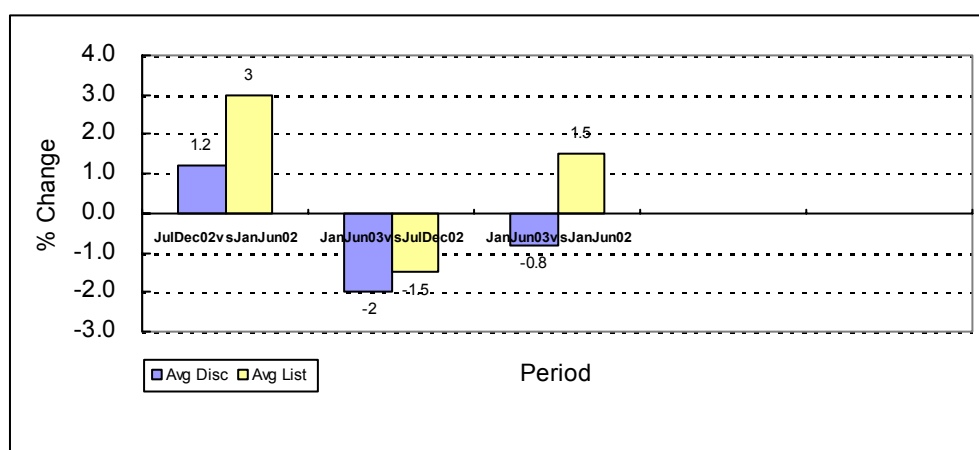
from January 2000 to June 2002 indicated that there was an upward price trend at the supermarket chains. The Council's analysis showed that over these periods, there had been an increase of 3.6% in average list prices of a selected basket of goods, and a relatively smaller 1.5% increase in prices for the same goods when the discount price was taken into account (see Figure 2.2). In terms of the Council's price survey in 2003, the average list prices of a selected basket of goods (not the same basket of goods in 2002) went up by 1.5% during the first half of 2003 compared with the same first half of 2002. Taking into account the discount prices which the supermarket chains offered, a slight decrease of 0.8% was recorded (see Figure 2.3). One supermarket chain suggested that consumers might have benefited from the use of coupons and from multi-pack discounts.

Figure 2.2: Change in Average List and Discounted Prices of a Selected Basket of Goods, 2002



Source: Consumer Council Choice Magazine, 310, 15 August 2002, p. 38 – 41

Figure 2.3: Change in Average List and Discounted Prices of a Selected Basket of Goods, 2003



Source: Consumer Council Choice Magazine, 322, 15 August 2003

2.36 In a separate exercise, the Council selected those categories of goods that 65%²⁵ of households purchase from supermarkets and convenience stores to construct a price index of products reflecting the cost of shopping for those products in supermarkets and convenience stores. Price information was extracted from the monthly report of the Consumer Price Index. As shown from the following table (Table 2.4), there was a relative increase in prices of surveyed products sold in supermarkets and convenience stores since 2001.

²⁵ Information on percentage of categories of goods purchase in supermarket / convenience stores is provided by the Census and Statistics Department. Details can be found in Chapter 5.

Table 2.4: Relative Price Change of Products Mainly Purchased in Supermarkets and Convenience Stores

	Jan/2000	Jul/2000	Jan/2001	Jul/2001	Jan/2002	Jul/2002	Jan/2003
Price Changes of products mainly bought in supermarkets and convenience stores	-9.52%	-7.09%	-0.33%	1.39%	0.87%	0.82%	0.20%
Inflation / Deflation (Composite CPI)	-5.30%	-3.20%	-1.50%	-0.90%	-3.50%	-3.40%	-1.60%

Source: Census and Statistics Department, Monthly Report on the Consumer Price Index

High operating cost

2.37 Large supermarket chains have economies of scale requiring large capital investment to cover operating costs. For new entrants, access to prime locations in terms of rental cost of retail business are relatively high in Hong Kong. Moreover, expenditure on advertising and marketing, such as full page advertising in a number newspapers every week, is necessary to gain market share.

Industry Efficiency

Supply chain management and information technology

2.38 Over the past decade, participants in mature retail markets, such as in the United States (US), Europe and Japan have identified supply chain management (SCM) as an important strategic focus. SCM is a business strategy that attempts to increase the efficiency of business processes and eliminate all non-value adding activities.

2.39 The two largest supermarket chains in Hong Kong have begun to adopt SCM concepts in more advanced stages since 1999. For example, Park n Shop and a manufacturer Johnson & Johnson (HK) Ltd. undertook a project to jointly explore the opportunities to improve the management of their supply chains, partnerships and eliminate the non-value-added costs associated with their current trading relationships. Wellcome piloted "Flow Through", which is a key element of SCM, as an alternative method of handling product through a distribution system that results in greater efficiency and cost effectiveness.²⁶

2.40 However, a survey conducted by the Hong Kong Article Numbering Association (HKANA)²⁷ in 1999 in assessing the SCM level of maturity based on a range of best practices SCM concepts, showed that average maturity scores for both manufacturers and retailers in Hong Kong are below world average.

2.41 The majority of Hong Kong companies tend to focus on front-room activities such as promotion, store formats, advertising and merchandising, and put less priority on back-room processes. The end result being that they are less competitive. Especially for smaller local industry players, advancements in business processes have fallen behind on the priority scale.

2.42 One example of such a failing, that on its face appears insignificant, is the failure to provide customers with a receipt. Wet market traders for example, do not

²⁶ Case study of FMCG industry applications of SCM, *Flow Through*. The case can be downloaded from HKANA's website <http://www.hkana.org>.

²⁷ Details of the survey can be downloaded from HKANA's website <http://www.hkana.org>.

generally provide customers with a receipt. Given that a not insignificant percentage of consumers purchasing food in Hong Kong are domestic servants, whose employers usually require the servants to account for food expenditure, any trader that does not provide a receipt would be denying itself the custom of a significant percentage of customers.

2.43 The Council considers there is opportunity for foodstuffs and household necessities retailers, in particular small to medium enterprises, to improve existing practices.

CHAPTER 3

GOVERNMENT POLICIES INFLUENCING THE RETAIL MARKET

3.1 Government policy plays an important role in the operation of foodstuffs and household necessities retailing in Hong Kong. The Government's involvement can range from influencing production development through licensing requirements, site location through land planning, the supply of retail space through its public housing policy and relocation policy of street hawkers, general support to retail traders through the Small and Medium Enterprise (SME) industrial policy and application of its competition policy. This chapter examines various aspects of Government policy that influences the development of the sector, especially that of supermarkets, and competing forms of retailing such as wet markets.

Licensing Policy

3.2 Hong Kong follows a policy of free enterprise and free trade. Except in the very broadest sense, economic and commercial planning is not practised by the Government. According to the Trade and Industry Department, "the Government's major role is to provide a suitable and stable framework for commerce and industry to function efficiently and effectively with minimum interference."²⁸

3.3 As such, any person is free to operate a business such as a supermarket or foodstuffs and household necessities retailing outlet if he wishes. However, under the provisions of the Business Registration Ordinance (Cap. 310), any person carrying on any business must register his business with the Inland Revenue Department. In addition, the Environmental Protection Department requires a supermarket or related business operator to apply for a Licence for Discharge from Industrial, Commercial and Institutional Premises.²⁹

3.4 Subject to conditions, a supermarket or related business operator may also require additional licences shown as follows (see Table 3.1).

Table 3.1: Other Licensing Requirements for a Supermarket or Relevant Business Operator

Business subject to Conditions	Licence Required	Issuing Department
Import, manufacture, repackage, supply, store, label or sell registered pesticides	Pesticide Licence	Agriculture, Fisheries & Conservation Department (A&FD)
Import any plants or plant materials (including seeds)	Plant Import Licence	Agriculture, Fisheries & Conservation Department (A&FD)
Operate a kiddie ride on premises	Permit to use and operate kiddie ride	Electrical & Mechanical Services Department (E&MSD)
Bake bread or prepare other bakery product for sale	Bakery Licence and provisional bakery Licence	Food & Environmental Hygiene Department (FEHD)
Sell bottled milk, e.g. milk, reconstituted milk or milk requiring storage under refrigeration	Milk Permit	Food & Environmental Hygiene Department (FEHD)

²⁸ Trade and Industry Department, *Hong Kong: The Facts*, March 2002. The paper can be downloaded from the following website <http://www.info.gov.hk/tid/commercial/hkti.pdf>.

²⁹ Business Licence Information Centre, January 2002.

Business subject to Conditions	Licence Required	Issuing Department
Sell frozen confections, and/or frozen yoghurt by means of ice-cream dispensing machine from pre-packed product into either biscuit cone or disposable paper cup for consumption off premises	Frozen Confection Permit	Food & Environmental Hygiene Department (FEHD)
Sell cut fruit or fresh shell fish for consumption off the premises	Restricted Food Permit	Food & Environmental Hygiene Department (FEHD)
Sell sashimi/sushi/oyster & meat supplied by approved source for consumption off the premises	Restricted Food (Sale of Sashimi/Sushi/Oyster & Meat to be eaten in raw) Permit	Food & Environmental Hygiene Department (FEHD)
Prepare, manufacture, further process or pack food for sale for human consumption off premises	Food Factory Licence and Provisional Food Factory Licence	Food & Environmental Hygiene Department (FEHD)
Sell fresh/chilled/frozen beef/mutton/pork/snake/fish/ poultry which includes live snake/fish/poultry at premises	Fresh Provision Shop Licence and Provisional Fresh Provision Shop Licence	Food & Environmental Hygiene Department (FEHD)
Have retail sale of siu mei & lo mei supplied by licensed food factory	Siu Mei and Lo Mei Shop Licence/ Provisional Siu Mei and Lo Mei Shop Licence	Food & Environmental Hygiene Department (FEHD)
Sell food/drinks except those in original sealed bottles/cans/wrappers by slot machine	Coin-operated Automatic Vending Machine Permit	Food & Environmental Hygiene Department (FEHD)
Import chilled meat, frozen meat, chilled poultry or frozen poultry	Import Licence (Frozen meat, chilled meat, frozen poultry and chilled poultry)	Food & Environmental Hygiene Department (FEHD)
Use any boilers, pressure vessels (such as receivers and cement tanks, other than pressurised fuel container) or steam containers	Registration of Boilers and Pressure Vessels	Lands Department (LD)

Source: Business Licence Information Centre, January 2002

3.5 The Council understands that these licensing requirements are independent of the outlet type of the business (i.e. whether it is a supermarket, grocery store, wet market stall, or etc.). Any retail outlet that sells or stocks product subject to a license is by definition required to have the appropriate license as listed.³⁰

Land Planning Policy

3.6 According to the Hong Kong Planning Standards and Guidelines (HKPSG) the total stock of retail property in Hong Kong in 1996 was about 9.2 million square metres internal floor area (IFA). Of which, around 90% was in the private sector and the remainder was owned by the Government under the Food and Environmental Hygiene Department (FEHD), the Housing Authority (HA) and the Housing Society (HS).

³⁰ However, there have been allegations made by wet market operators that different standards have been applied to wet market versus supermarket in terms of meeting licensing requirements for selling chilled meat and fresh meat. The wet market operators claimed that the use of different standards would undermine their competitive position to supermarkets. However, the Food and Environmental Hygiene Department responded that the same licensing conditions will be applied to any application, irrespective of whether it is an application from a wet market or supermarket operator.

Role of Planning Department

3.7 The Planning Department (PD) is responsible for formulating, monitoring and reviewing urban and rural planning policies for the physical development of Hong Kong. It is subject to policy directives from the Housing, Planning and Lands Bureau (HPLB) and deals with all types of planning at the territorial, sub-regional and district levels. In addition, the Town Planning Board is a statutory body established under section 2 of the Town Planning Ordinance (Cap. 131) with a view to promoting the health, safety, convenience and general welfare of the community through the systematic preparation of plans for the layout of such areas of Hong Kong as the Chief Executive may direct; as well as the types of buildings suitable for erection therein. The Board considers objections to these plans under section 6 of the Ordinance; and submits draft plans together with any un-withdrawn objections to the Chief Executive in Council under section 8 of the Ordinance for a final decision. It also considers applications and conducts reviews of applications under sections 16 and 17 of the Ordinance respectively.

3.8 According to PD, the current approach adopted by the Government to the planning of retail facilities is to keep intervention to the minimum. To a large extent, it relies on market forces to determine the scale and distribution of retail facilities within the various land use categories permitting retail use. The planning system is flexible to allow the development of retail centres to meet different hierarchical demand, subject to normal planning standards, controls on development and support facilities, as well as market viability assessments. Major retail developments are usually associated with major housing developments by the public or private sector. In the case of public housing projects, retail provision is generally determined by the Housing Department (HD)³¹, based on its experience of local market conditions and using its own expenditure-based methodology.

3.9 PD informed the Council that insofar as planning for retail provision is concerned, land use considerations remain planners' prime concerns, which mainly includes land use compatibility, planning intention, and concerns on environmental/traffic/drainage impacts as well as infrastructure capacity, etc. PD considered that competition is a market phenomenon outside the purview of legitimate planning concerns.

Planning standard of market facilities

3.10 Wet markets are provided either by the Government or the private sector. Markets provided by the Government are built and managed by either the HD or FEHD. In the case of HD, markets are constructed as part of HD's public housing projects. FEHD on the other hand has constructed wet market facilities as part of a programme to relocate street hawkers.

3.11 Although the HKPSG has provided the standards on provision for FEHD's markets (but no set standards for HD's markets) they are based on the previous Municipal Council's policy and are meant to serve as guidelines for reference purpose only. The standards were last updated in August 1989.

3.12 The Council notes that FEHD commissioned a "*Consultancy Study on the*

³¹ HD provides executive support to the Housing Authority which is a statutory body determining and implementing Hong Kong public housing programmes.

Operation and Management of Markets" in September 2001. One of the objectives of the study was to review the existing planning standards and guidelines for market facilities, and to propose revision to the HKPSG if necessary. Before the findings and recommendations of the study are endorsed by the Health, Welfare and Food Bureau (HWFB) and FEHD, the current standards for market facilities will be applied flexibly, having regard to factors such as the size of the concerned development, availability of market and supermarket facilities in the vicinity, and planned provision of market in the area, etc.

3.13 Provision of market facilities by the private sector is fundamentally market-driven. The approach to private market provision is considered in the same manner as the current approach adopted by the Government to the planning of retail facilities, that is, to leave the amount and location of retail provision and mix of trades largely to market forces by keeping planning intervention to the minimum.

3.14 The Lands Department (LD) has advised that whilst land lease conditions will set out the broad user restriction of the lot being disposed of, it is not normal practice to specify detailed requirements governing the specific purposes for which any commercial floor space to be provided in the lot must be occupied / utilized. Indeed, to the contrary, within the parameters of the statutory framework on planning and development, lease conditions are normally drawn up with the aim to provide maximum flexibility to developers in respect of matters of this nature. In exceptional cases where such restrictions are contained in existing lease conditions, developers may apply to LD for lease modification to remove such restriction or the relaxation of any such requirements, subject to terms and conditions as may be approved.

3.15 A failure to provide for, or the closure or substantial change in private market facilities may affect the interests of residents in private housing estates. The Council has observed in recent years that there have been closures of wet market facilities in some private housing estates, e.g. Telford Gardens in Kowloon Bay, Laguna City in Lam Tin, Kornhill and Taikoo Shing near Quarry Bay. The guidelines drawn up by the Government for the approval of a Deed of Mutual Covenant (DMC) under land grant conditions for private developments³² (with particular reference to residential development³³) do not require the inclusion of provisions for these facilities. According to the Legal Advisory and Conveyancing Office (LACO), the main function of a DMC is to provide a system of property management that the owners and the manager covenant to comply with the terms of the land grant. DMC guidelines do not have the authority to bind the developer to use the land in a particular way. In other words, in the absence of such requirement in lease conditions, developers are not obliged to include the provision of market facilities when they draw up a DMC.³⁴

Planning of supermarkets

3.16 With regard to the demand assessment for retail floor space, guided by the expenditure-based models included in the HKPSG, PD informed the Council that the forecast is not intended to deal with the mix of trades. According to PD, under the current planning system and given that retail markets are highly dynamic in nature, the imposition of directions or conditions on trade mix would be difficult to defend unless the Government is to accept a significant departure from the current market-driven retail planning approach.

³² Legal Advisory and Conveyancing Office, Circular Memorandum No. 41: *Revised Guidelines for Deeds of Mutual Covenant ("DMCs")*, June 1999.

³³ For pure commercial or industrial development, the guidelines for DMC are drawn by the Law Society.

³⁴ Extracted from Lands Department's correspondence with the Council on 6 May 2003.

3.17 In February 1995 PD commissioned a "*Study on Shopping Habits and the Revision of Chapter 6 of the HKPSG*". The study was completed in October 1997. Although the study found that 97% of surveyed households reported supermarkets as their major or secondary outlet for grocery items, the Study concluded that it was accepted by the Government that it was not feasible to have a separate planning standard for supermarkets in remote areas, but chose to rely on market factors to determine the extent and mode of supply, because of the following reasons:³⁵

- (a) the recommended assessment methodologies could not be used to determine the mix of trades;
- (b) there was no reliable data base available on existing mix of trades so as to predict the future demand;
- (c) developments in remote areas were often subject to planning applications, the decisions on which were challengeable in the Town Planning Appeal Board and may be subject to judicial review; and
- (d) even if the planning system could determine a size and mix standard of trades in remote areas there is no justification imposing controls over the developer.

Supply of Retail Space by Housing Authority

3.18 According to the 2001 population census, over 3.2 million people, nearly half of Hong Kong's population, lived in public rental or subsidised government housing.³⁶ With a high population density, retail space in public housing estates would be highly sought after by foodstuffs and household necessities retailers. 11% of total retail space in Hong Kong is managed by the Housing Authority (HA) which therefore significantly dictates the development of Hong Kong retailing in foodstuffs and household necessities. Although HA is a government body, it adopts real estate management and retail market management in the same way as private sector business service providers.

HA policy on wet markets

3.19 At present there are 129 wet markets provided by HA. The allocation policy for HA's retail space to wet markets or hyper markets or other uses is based on the following principles:

- (a) Level playing field for fair competition;
- (b) Good shopping environment for public housing residents; and
- (c) Efficient use of government resources.

3.20 Wet markets are either managed by HD or operated under the Single Operator Market (SOM) system. The "single operator" concept was first introduced in 1988. It is a single tenancy, normally for six years, to an operator who is permitted to licence out parts of the leased area, thus taking over management of the premises. HA expected such lettings to achieve improvement in services by harnessing the specialist private sector expertise and increased flexibility with which private sector managers can respond to market trends, and releasing HD staff to meet other demands.

3.21 Early lettings were carefully monitored and the results, according to HA, were largely favourable. Surveys indicated that residents rated SOMs at least as high as HD

³⁵ Op Cit, Roger Tym and Partners, February 1998.

³⁶ Census and Statistics Department, 2001 Population Census.

managed facilities, for choice of goods and services, and management of operating conditions and pricing. With this success, the single operator concept was extended to new wet markets and shopping centres.³⁷ The continued success of SOMs encouraged expansion in the use of this form of operation and since 1997 it has been used for all new markets. As at June 2002, 26 HA markets (19%) are SOMs.

3.22 Nevertheless, according to HD there have been some problems with SOMs. For example, some retail tenants have complained of SOMs profiteering both by way of excessive rents and by collection of excessive charges for air-conditioning, management and promotion activity. Complaints have also been received of misleading representations on the business potential of stalls when SOMs offer tenancies, lack of professional management on control of obstruction and cleanliness or even as to the adequacy of the trade mix.

3.23 Despite these problems, HA considered that the operational and financial performance of SOMs is as good or better than direct HD management. HA has therefore adopted the following recommendations to improve the scheme:

- (a) Tightening up on SOM agreements to ensure premises are used as intended, the operator remains focused on intended trades, adequate protection for licensees (retail tenants), and management responsiveness;
- (b) Greater flexibility at early intake stage to allow partial opening of the market for a preliminary period on terms specified by HA;
- (c) Maintenance of competition to avoid dominance by any one operator and to facilitate new entrants;
- (d) Performance evaluation to be reflected in new lettings or letting renewal; and
- (e) A combined scoring system for new lettings.

3.24 The extent to which existing specialized small retailing outlets and wet market stalls can counter the market power of other market participants (for example large supermarket chains) depends on the attractiveness of their products and services as well as shopping environments. In this regard, HA also plays an important role in the maintenance of the competitiveness of small retail shops and wet markets in public housing estates.

3.25 Recent surveys by the Government and Consumer Council confirm that both hygiene and a friendly shopping environment are important factors in choosing retail outlets for fresh produce. Results obtained from the Government's survey³⁸ stated that of 236,900 households which seldom/never choose to purchase fresh food produce from wet markets, over half (52.4%) thought that the environment was poor; some 39.7% considered that the food was not clean; and 33.3% felt the location was inconvenient. More details of the surveys can be found in Chapter 5.

3.26 Since 1998, HA has maintained a "five-year rolling programme" for existing shopping centre improvements. This generally involves creation of additional retail space, improvements to accessibility, provision and up grading of air-conditioning, ventilation, etc, depending on different shopping centres.

3.27 In the course of this five-year rolling programme, a number of concerns

³⁷ Other concept like the Single Operator Shopping Centre (SOSC) arrangement was not very successful and currently there are only three in operation.

³⁸ Census and Statistics Department, Thematic Household Survey Report No. 5, *Pattern of purchasing fresh food produce*, August 2001, p.75.

regarding the wet market environment have arisen from stall retailers. In September 2001, HA agreed to carefully consider maintaining the commercial prospects for existing markets, and planned to practice various improvement measures covering about 70 of the HA's older estates. According to HA³⁹, those measures included retrofitting air-conditioning and upgrading facilities for markets that generate substantial business; downsizing, re-ordering and re-grouping of viable stalls, converting the space into other compatible purposes, and complete removal of markets with the highest vacancy rates.

Recent policy relating to supermarkets

3.28 In mid-2000, HA began to adopt a "widen trade policy", which enabled retailers of commercial premises to sell a wider range of goods and services under expanded trade descriptions. The policy also permitted supermarkets of not less than 800 square metres to operate service-style provision of fresh food (operating on a "superstore" basis) subject to the area being used not exceeding 20% of the leased area. In 2003, there are about 17 supermarkets converted to superstores.

3.29 This new policy was a welcome response to the changing needs of retail operators. However, the scope for expansion by small non-supermarket retailers is largely affected by consumer shopping behaviour and wet market design. The ability to take advantage of this new policy direction might therefore be diminished unless floor area design, which facilitates operators to achieve greater economies of scale, is also addressed.

3.30 As the operation of small market stalls is highly dependent on the facilities provided by the HA, a lack of desired standards in facilities, such as air conditioning and reconditioning of buildings, will affect the growth and expansion of small retailers.⁴⁰ In consideration of the effect on wet market stalls, HA has undertaken a policy that allows affected fresh food produce retailers to terminate their rental contracts without the required three months notice, within the first six months following a situation where supermarkets have been approved to sell fresh food.

3.31 With an increase in the number of public estates with superstores that sell fresh food in direct competition with wet markets, the share of supermarkets in the fresh food sector is expected to rise and the number of wet market stalls to fall. This will inevitably lead to a lessening of competitive choices for consumers. Therefore, while the HA's policy of softening the impact of supermarkets encroaching on wet market operators recognises the effect on their competitive position, there is no policy to address the long term consequences of less competitive choices for consumers. For example, the implementation of the "widen trade policy" in the recent economic downturn has led to an increasing vacancy rate amongst small retailers, which has led to supermarkets taking up the available space, further threatening the survival of remaining small retailers.

3.32 The role that small retailers can play in offering competition to supermarkets is important. Balancing the allocation of market facilities for different distribution channels is therefore crucial to the development of competition.

³⁹ Please refer to Housing Authority's website <http://www.houseingauthority.gov.hk>.

⁴⁰ As noted in Chapter 5, in the section examining consumer preferences between supermarkets and wet markets, the shopping environment was a major consideration when deciding between the two.

Role of the FEHD in Market Provision

3.33 As mentioned above, markets provided by the Government are built and managed by either the FEHD or HD. As in 2003, there were about 81 markets (excluding cooked food markets) provided by the FEHD.

3.34 The standards for provision of FEHD's markets are based on the previous Municipal Council's policy (i.e. the provisional Urban Council (UC) and the Provisional Regional Council (RC) respectively, to make provision for those living within the urban area or the New Territories).

3.35 The UC policy in general has been to re-site only wet goods hawkers, whereas dry goods hawkers would continue to trade on the streets, or where feasible within hawker bazaars. The Government is of the view that provision of markets should no longer be simply to meet a hawker re-siting commitment but has to be justified on a case-by-case basis with viability ensured. UC markets are normally built and managed by the then USD and now by FEHD; but private developers may be required through lease conditions to provide markets in large private residential developments. The RC policy is to focus on re-siting of hawkers. In areas without a re-siting commitment, market facilities may be provided by RC itself (to be managed by RC (now by FEHD) or contracted out to the private sector) or through requirements in the lease conditions imposed on private developers in respect of large private residential development accommodating 20,000 or more persons.

Problems encountered at management of public wet markets under FEHD

3.36 The two former Hong Kong Municipal Councils in the past built markets primarily to accommodate hawkers who would otherwise be trading on the street causing nuisance and congestion to pedestrian and vehicular traffic. Construction and location of markets has therefore been decided by availability of sites and re-siting commitments.

3.37 Due to the need to fully meet re-siting commitments, some markets have been over-provided with stalls. At the time of construction there was no critical assessment of how many wet markets were actually required. Little regard was paid to competition posed by nearby markets; either in private developments or by supermarkets in the vicinity. As a result, there is most likely an oversupply of markets across the territory and clustering of a number of markets in the same location. This has also affected the occupancy rates and in some cases led to sub-standard stall sizes in some markets.

3.38 Consequently there are some non-viable public wet markets which have the following common phenomena:

- (a) Outdated design;
- (b) Not strategically located;
- (c) Sub-standard stall size;
- (d) Sub-standard ancillary facilities;
- (e) Low occupancy / trading size; and
- (f) Keen external competition.

3.39 Due to historical reasons, hawkers who are re-sited into public markets pay rent at a concessionary level. The stalls they occupy are let out through restricted auctions. The upset auction price (reserve price) is usually set at 75% of the Open Market Rent, which is the upset auction price on remaining stalls not for re-siting purposes let out through open auction. The Open Market Rent is assessed by the

Rating and Valuation Department. At present, the ratio between market stalls let out through open auction and restricted auction is about 2:3.

3.40 Most of the tenants, being former hawkers resited into the public market, have not been able to adapt to the enclosed market environment. They find it difficult to compete with the new format and style of business practises, such as tidiness and clear price labelling. Since they and their offspring have the right to operate their business in the public market in perpetuity and as they are only paying below market rent, this gives little incentive to enhance their competitiveness.

3.41 Given that some market frontline supervisory staff and stall operators are not amenable to new ways of shopping mall management and requirements, FEHD has introduced many training courses for stall operators on ways to boost the viability and competitiveness of wet markets. The purpose of the training is to improve the customer service aspect of market stall lessees' interaction with their customers, and to sharpen their awareness as to the importance of food safety and environmental hygiene in a market setting.

3.42 Based on the findings of a survey carried out in 1987 on market facilities in the urban area, and the methodology for deriving planning standards as endorsed by UC, the standard for market provision in urban areas is one stall per 55 - 65 households or approximately 40 - 45 stalls per 10,000 population. As discussed above, in September 2001 FEHD commissioned a *"Consultancy Study on the Operation and Management of Markets"*. One of the objectives of the study was to review the existing planning standards and guidelines for market facilities, and to propose revision to the HKPSG if necessary. As the findings and recommendations of the study are not yet endorsed by the HWFB and FEHD, PD will continue to apply the current standards for market facilities flexibly, having regard to factors such as the size of the concerned development, availability of market and supermarket facilities in the vicinity, and planned provision of market in the area, etc.

Tendering Policy

3.43 Government tendering policies can affect the development of retailing through the control exercised over some types of wet markets, and supermarkets located in Government housing estates.

3.44 Wet markets under the control of FEHD are allocated to persons making the highest bid with some priority given to re-siting street hawkers. The HA also constructs an area within its estates that are designated for wet market stalls, and allocates them by open tender. The Government's response to the previous Consumer Council report into the supermarket sector in 1995 confirmed that the open tender arrangement for supermarket operational rights in new shopping malls under the HA would be continued. It was also noted that existing supermarket chains could retain outlets on renewal of tenancy through negotiation and by paying current market value.

Industrial Policy

3.45 The policy direction of the various Government departments such as the Planning Department, the Lands Department, the Food and Environmental Hygiene Department and the Housing Authority in relation to land allocation and management of wet markets in Hong Kong will have significant impact on the future development of these markets as a competitive choice for consumers.

3.46 Having consulted the various departments, it appears to the Council that both the two largest wet market operators in Hong Kong (i.e. the FEHD and HD) recognize the need for, and are planning to improve and upgrade facilities for their wet markets so as to maintain the commercial prospects for these developments.

3.47 However, the foodstuffs and household necessities retailing sector is moving towards large scale and more efficient operation, where supermarket chains with substantial financial resources will no doubt be in a position of competitive advantage. Under the current mode of wet market operation, and in the absence of determined policy or efforts to improve this form of retailing, a question arises as to whether wet market and small food traders will be able to continue to compete, merely by relying on the current preference of some consumers.

3.48 The Council held discussions with associations of small retailers and individual retailers who operate within Housing Authority premises, to discuss their concerns. The Council was informed that in their opinion their ability to quickly respond to changing market circumstances in operating their businesses was constrained by the rigid application of bureaucratic processes. For example, they claimed that while they are subject to stringent constraints on their available space, their flexibility in deciding what products to sell, and even restrictions in some cases on how to display goods, supermarkets are under a much freer operational environment that is determined by corporate commercially oriented policy.

Small and medium enterprises (SMEs)

3.49 As noted in Table 2.1 of Chapter 2, there were 15,427 market stalls and 8,367 licensed hawkers in Hong Kong in June 2003. The Council has no detailed information on these market stalls or traders. Nevertheless, in general, these market stalls or traders are small, with limited human and financial resources to expand their operations or upgrade their goods or services. Given the competitive choices for consumers, the cultural tradition, and the level of employment these traders bring to Hong Kong, the Council is of the view that some specific efforts or initiatives should be considered to assist the sector.

3.50 At present the Government provides a comprehensive range of services to meet the needs of small and medium enterprises (SMEs). For example, the Small and Medium Enterprise Office (SMEO) of the Trade and Industry Department has a number of creditable programmes and funding schemes that can be of assistance to wet market and small food traders.⁴¹ However, access to the programmes or schemes relies on SMEs taking the initiative to apply for assistance. Proactive measures could therefore be introduced by the Centre to encourage wet market stall holders and small food retailers in need of assistance to utilise the services; and to develop specific

⁴¹ The Small and Medium Enterprise Office (SMEO) of the Trade and Industry Department is responsible for developing policy initiatives and programmes of services to enhance the competitiveness of SMEs and their long term development. Non-government organisations, such as the Hong Kong Trade Development Council, the Hong Kong Productivity Council and the Vocational Training Council are also key SME service providers. The SMEO serves to co-ordinate the efforts of the public sector and industry support organizations in supporting the development of SMEs and meeting their needs. It runs various support measures including the operation of a Support and Consultation Centre for SMEs, which provides SMEs with free information and business advisory services under one roof and also regularly runs seminars on topics of interest to SMEs. The Office also administers four SME funding schemes. They are: SME Business Installations and Equipment Loan Guarantee Scheme; SME Export Marketing Fund, SME Training Fund and SME Development Fund, to help SMEs secure loans to acquire business installations and equipment, expand markets, provide training for employers and employees, and enhance competitiveness.

programmes aimed at these traders in the sector to utilise advanced business techniques.

Competition Policy

3.51 The Hong Kong Government's stance on competition policy, as per its *Statement on Competition Policy* notes (amongst other things) that:

- (a) there is no intention to apply a general competition law to the economy as a whole, but to apply administrative or legislative measures as it considers appropriate on a sector specific basis;
- (b) relevant government departments and bureaux would take responsibility for maintaining competition in their own sectors; and
- (c) it would work together with the Consumer Council to encourage the private sector to adopt pro-competition measures, such as self regulatory regimes that preserve and enhance free competition.⁴²

3.52 The Government has created the Competition Policy Advisory Group (COMPAG) to review policy issues related to competition. To facilitate implementation of the *Statement on Competition Policy*, COMPAG has in early 2003, developed guidelines to encourage business sectors to proactively implement Hong Kong's competition policy and provide objective pointers, benchmarks and principles for:

- (a) assessing Hong Kong's overall competitive environment;
- (b) defining and tackling anti-competitive practices; and
- (c) ensuring consistent application of competition policy across sectors.

3.53 The guidelines will be promoted in the private sector in the spirit of self-regulation and self-discipline. COMPAG aims to promulgate the guidelines before the end of 2003.

3.54 With regard to legislation, governments in comparable advanced economies have introduced general competition laws administered by competition authorities as a means of addressing anti-competitive conduct that can affect the competitive position of market participants; particularly SMEs. In Hong Kong, the Government has stressed a non interventionist policy in the market and a commitment to the concept of a free market. In this regard it would appear to share a view expressed by some critics that a general competition law equates to government intervention in the operation of markets.

3.55 However, the Council views general competition law simply as that which establishes boundaries between what constitutes acceptable and unacceptable market conduct, to preserve an environment conducive to allowing competition to take place. Subject to keeping within those boundaries, market participants are free to arrange their affairs as they see fit, in the same way as other public-interest law that protects private property, the enforcement of contracts, and suppression of crime etc.

3.56 Notwithstanding the government's reservations on the use of competition law, examples of such laws can be found in Hong Kong's telecommunications and broadcasting sectors where there are general prohibitions against dominant market

⁴² See Government's *Statement on Competition Policy*, May 1998, Clauses 10 (a) to (h), on the website for the Government's Competition Policy Advisory Group <http://www.compag.gov.hk>.

players abusing their position of market power to undermine competition, and the prohibition of anti-competitive agreements between competitors such as price fixing cartels and bid rigging arrangements.

3.57 Criticisms from the business sector have been raised on the rationale behind this form of sector specific regulation. For example, quoting from paragraphs 14 and 18 of the submission by Hutchison Telephone & Hutchison 3G on 27 February 2003 to the LegCo Bill Committee on the proposed Regulation of Mergers and Acquisitions:

"With the introduction of the proposed regime, Hong Kong would become the only jurisdiction in which competition laws and the review of mergers and acquisitions would apply only to one sector of the economy, the telecommunications sector. Hutchison fails to see the justification for singling out the telecommunications industry and contends that the telecommunications should be on a level playing field with other sectors of the Hong Kong economy in relation to the regulation of mergers and acquisitions."

"There is no compelling justification for an industry specific application of the mergers and acquisitions regulations to the telecommunications industry, and Hutchison requests that the Legislative Council consider rejecting sector specific mergers and acquisitions regulations in the telecommunications industry."

3.58 The Council considers that the sector specific approach is fraught with difficulties and inconsistencies, particularly in regard to the fact that it creates an un-level playing field in the economy, as noted above by Hutchison. Apart from the difficulties in actually clearly defining economic sectors to which competition rules should apply, the sector specific approach also raises concerns that the interests of market participants and consumers in one sector are not worthy of the level of protection afforded by competition laws to market participants and consumers in another sector.

3.59 As for the government's preference for self regulatory initiatives, there is currently no industry wide code of practice specifically for the retail distribution of foodstuffs and household necessities in Hong Kong. However, the Hong Kong General Chamber of Commerce has issued a *Chamber Statement on Competition*⁴³ that urges members to refrain from restrictive practices. The Statement also includes the following clauses:

- (a) encouraging specific industries to develop, through their respective associations, statements or codes of practice to promote competition within their own sectors;
- (b) that the codes should address common complaints and concerns about practices specific to the industries; and where possible
- (c) they should include a complaints handling procedure as well as provisions to deal with non compliance of their members.

3.60 The Chamber's statement and suggestions provide a basis for development of a self regulatory mechanism that could serve as a means of addressing anti-competitive conduct which can affect the competitive position of SMEs in the foodstuffs and household necessities retailing sector.

⁴³ Hong Kong General Chamber of Commerce, *Chamber Statement on Competition*, Clause 6. The statement can be downloaded from the Chamber's website <http://www.chamber.org.hk>.

3.61 However, the Council's first preference is that the Government should introduce a general competition law as a safeguard that has application to economy as a whole.⁴⁴

⁴⁴ In November 1996 the Council recommended the introduction of a general competition law in Hong Kong in its report *Competition Policy – The Key to Hong Kong's Future Economic Success*. The Government's response was to take a sector specific approach as noted above and to create the Competition Policy Advisory Group (COMPAG) to oversee application of the policy.

CHAPTER 4

COMPETITION STUDIES ON THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR IN OTHER COUNTRIES

4.1 The state of competition in the retailing of foodstuffs and household necessities has been a concern in other countries. This chapter briefly summarises recent studies into this area of retailing in the United Kingdom (UK), European Union (EU) and Australia.

United Kingdom

4.2 The UK Competition Commission (UKCC) prepared a report on the supply of groceries from multiple stores in the United Kingdom in October 2000.⁴⁵ The report arose due to a number of concerns:

- (a) that the price of groceries in the UK tended to be higher than in other European Commission (EC) countries and the US;
- (b) there was a substantial disparity between the price at the "farm-gate" and retail outlet;
- (c) that the existence of large "out-of-town supermarkets" were contributing to the decay of the "high street" in many towns;
- (d) the level of supermarket operators' profitability;
- (e) the intensity of price competition between the supermarket operators;
- (f) the existence of barriers to entry; and
- (g) the relationship between the supermarket operators and their suppliers.

Definition of the market

4.3 The UKCC noted that for the purpose of investigating the pricing practices, it identified the relevant economic market as:

*"the market for one stop grocery shopping carried out in stores of 1,400 square metres or more; and that one stop shopping patterns are primarily local, with consumers rarely travelling more than 10 minutes in urban areas, and rarely more than 15 minutes elsewhere to do their main shopping."*⁴⁶

Pricing practices

4.4 Regarding pricing practices, the UKCC made a number of conclusions.

4.5 First, most of the main supermarkets engaged in the practice of persistent below-cost selling with respect to some frequently purchased products, and that this led to the majority of their products not being fully exposed to competitive pressure leading to a distortion of competition in the supply of groceries. The UKCC noted that the practice damaged smaller supermarkets and non supermarket grocery outlets, and that adversely impacted consumers, especially the elderly and less mobile who tend to rely more on such stores, notwithstanding that the practice could be beneficial to some consumers.

⁴⁵ United Kingdom Competition Commission (UKCC) report, *Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*, October 2000.

⁴⁶ Ibid, Summary of report.

4.6 Second, the UKCC found that the main supermarkets charged flexible prices in different geographical locations, in accordance with local competitive conditions, and not in relation to costs. The UKCC considered that the practice (termed "price flexing") was against the public interest because customers tended to pay more to stores where there was an absence of competitors than where there were competitors.

4.7 The UKCC considered a number of possible remedies, such as the prohibition of persistent below-cost selling, the imposition of national pricing, a requirement that prices should be broadly related to costs and that parties should publish their prices on the Internet.

4.8 However, the UKCC concluded that from experience in other countries, all the remedies were either undesirable, disproportionate or presented practical difficulties. For instance, a report by the Irish Fair Trade Commission in 1991 noted persuasive evidence that a prohibition caused higher prices overall, a decrease in price competition and an increase in margins.

4.9 Notwithstanding the presence of undesirable pricing practices and undesirable effects, the UKCC stated that having regard to its overall finding that the market was generally competitive, it would choose not to make any recommendations for remedial action.

Relationship with suppliers

4.10 With regard to the concerns on practices relating to suppliers, the UKCC noted it had received many allegations from suppliers about the behaviour of the main parties (supermarkets chains) in the course of their trading relationships. It was said that most suppliers were unwilling to be named, or to name the main party that was the subject of the allegation. To quote the report:

"There appeared to us to be a climate of apprehension among many suppliers in their relationship with the main parties. We therefore put a list of 52 alleged practices to the main parties and asked them to tell us which of them they had engaged in during the last five years. We found that a majority of these practices were carried out by many of the main parties. They included requiring or requesting from some of their suppliers various non-cost-related payments or discounts, sometimes retrospectively; imposing charges and making changes to contractual arrangements without adequate notice; and unreasonably transferring risks from the main party to the supplier. We believed that, where the request came from a main party with buyer power, it amounted to the same thing as a requirement."⁴⁷

4.11 The UKCC concluded that five supermarket chains, each having at least an 8 per cent share of grocery purchases for resale from their stores, had sufficient buyer power that 30 of the practices identified, when carried out by any of them, adversely affected the competitiveness of some of their suppliers and distorted competition in the supplier market (and in some cases in the retail market) for the supply of groceries.

4.12 The UKCC concluded that these practices gave rise to a "second complex monopoly situation" and that when carried on by any of the major buyers, would:

- (a) adversely affect the competitiveness of some of their suppliers; with the result that

⁴⁷ Op Cit, UKCC report, Summary of report.

- (b) the suppliers are likely to invest less and spend less on new product development and innovation;
- (c) leading to lower quality and less consumer choice; with the likely result of
- (d) fewer new entrants to the supplier market than otherwise.

4.13 The UKCC noted that certain of the practices gave the major buyers substantial advantages over other smaller retailers, whose competitiveness would likely suffer as a result, leading to a reduction in consumer choice. While the UKCC took into account the advantages that could result from buyer power in relation to those suppliers with market power, and other offsetting benefits in relation to certain of the practices, it nonetheless concluded that the exercise of the practices operated against the public interest.

4.14 Insofar as resolving the problems of buyer / supplier relationships was concerned, the UKCC believed that the most effective way of addressing the adverse effects would be a Code of Practice; although it noted that a voluntary code would not be adequate. The UKCC considered that any supermarket chain meeting a specified market share should be required to give undertakings to comply with the Code of Practice, which should:

- (a) include provisions for independent dispute resolution;
- (b) be drawn up by retailers and representatives of suppliers;
- (c) be approved by the Director General of Fair Trading (DGFT) to meet the UKCC's concerns; and
- (d) involve the other main parties in the process to comply with the Code.

4.15 The Office of Fair Trading conducted a review of the *Supermarkets Code of Practice*, one year after the Code came into effect. The Code followed the UKCC report in October 2000, which recommended a code of practice to put relations between supermarkets and their suppliers on a clearer and more predictable basis. The Code covers stores with a market share above 8% but does not apply to:

- (a) supermarkets with a market share below 8%;
- (b) non-grocery items; and
- (c) issues not identified by the UKCC in their report as adverse effects on the public interest and intended to be addressed by the Code.

Market concentration

4.16 As a means of preventing any further local concentration that could weaken competition in some geographic areas, the UKCC recommended that a new system of supermarket approval should be designed. This would require that in certain clearly defined circumstances, the DGFT's approval should be sought by a major supermarket chains, should it wish to:

- (a) acquire an existing store, or build a new store having over 1000 square metres of grocery retail sales area within a 15 minute drive time of one of its existing stores; or
- (b) significantly to extend the grocery retailing area of an existing store.

4.17 The UKCC believed that the benefit of the system to consumers would outweigh the administrative costs of the implementation of the suggested system.

European Union

4.18 In October 1999, the European Union (EU) published a competition report⁴⁸ regarding the food retail distribution sector, studying the buying power of the supermarket companies in the Union. The study had found:

- (a) Aggregate EU retail food seller market concentration was high by comparison with manufacturing industry.
- (b) Buyer concentration was even higher except in the UK.
- (c) Cross-border expansion amongst member states operations grew rapidly.
- (d) Mergers between operators within food retailing in the Union were accelerating.

4.19 The report, drawing together a structural mapping of the market and detailed case studies, suggested the Commission should keep monitoring the following developments:

- (a) The effect of increasing buyer power in food retailing on the food producers' survival, and their capacity for independent decision-making with respect to product variety and innovation.
- (b) The positive short run impact for consumers through reduced intermediate prices leading to lower retail prices with the gain in buyer power.
- (c) Losses by non prime-brand producers to powerful retailers that extract considerable concessions given the availability of substitutes of the retailer's own brands.
- (d) Increasing barriers to entry into retail: such as incumbency advantages from experience, reputation and sunk investments in physical and human capital, together with efficient logistics and distribution networks.
- (e) Further consolidation and concentration in the food retailing.

Australia

4.20 In August 1999, the Australian grocery retailing industry was the subject of a Joint Select Committee on a Retailing Sector report that, amongst other matters, examined the degree of industry concentration within the retailing sector in Australia. Particular reference was made to the impact of that industry concentration on the ability of small independent retailers to compete fairly in the retail sector.⁴⁹

4.21 The Committee's report concluded that the market share of the three major supermarket chains amounted to around 80% of the dry/packaged goods market. The report noted that one supermarket chain argued that the share should be measured against the "stomach market", which includes food and groceries to take home, liquor to take home, and food catering (cafes and restaurants). The Committee expressed the view that this argument was irrelevant to the issue at hand. It concluded that:

- (a) the major chains enjoyed a substantial degree of market power;
- (b) the market power was enhanced by vertically integrated structures which enabled the major chains to gain commercial advantages over the independents;

⁴⁸ The report, namely *Buyer Power and Its Impact on the Competition in the Food Retail Distribution Sector of the European Union* was produced by Dobson Consulting for DG Competition.

⁴⁹ Parliament of Australia: Senate Joint Select Committee on the Retailing Sector, *Retailing Sector Report*, August 1999. The report can be downloaded from the following website http://www.aph.gov.au/senate/committee/retail_ctte/retail/exec.htm.

- (c) high levels efficiency, superior technology and buying power provided a strong attraction for consumers because of their price, range of products, extended trading hours, and convenience of one stop shopping.

4.22 The Committee noted there was evidence that prices for baskets of foods and individual foods at supermarkets had fallen on average since 1986. However, there were concerns on anti-competitive practices by the major supermarket chains with respect to small retailers, and the major chains had increased their market share at the expense of independents.

4.23 The Committee believed that some strengthening of Australian general competition law⁵⁰ was required. In addressing the issue of predatory pricing, it was recommended that the law be amended to give the competition authority, the Australian Competition and Consumer Commission (ACCC) the power to undertake representative actions and seek damages on behalf of third parties.

4.24 In addition, the establishment of a dispute resolution mechanism, funded by government was recommended. This was to take the form of an independent Ombudsman for the retail industry, which would have a role in, amongst other things attempting to resolve business complaints through mediation or referral to relevant bodies (including the competition authority in respect of competition and consumer protection issues).

⁵⁰ *Trade Practices Act 1974.*

CHAPTER 5

ANALYSIS OF THE FOODSTUFFS AND HOUSEHOLD NECESSITIES RETAILING SECTOR IN HONG KONG – MARKET DEFINITION

5.1 Competition is generally taken to mean the rivalry that exists within a market as to prices, product choices, and service levels for substitutable goods or services offered to consumers.

5.2 An assessment of competition requires as the starting point the identification of market boundaries that reflect the extent of substitution that takes place in supply and demand. This is commonly referred to as the relevant "economic market". This chapter examines information obtained through Council research in an effort to understand what range of retail outlets are sufficiently good substitutes for consumers and what factors may affect consumers in exercising choice.

One-stop Shopping

5.3 Having regard to the studies the Council has examined in other countries, in Chapter 4, and the growth of supermarkets in Hong Kong with their range of products that overlap with those offered in other retail outlets (Chapter 2), the Council has identified the concept of "one-stop shopping" as the essential starting point for its competition analysis. This is particularly important in terms of assessing the relevant economic market and whether any one or more market participants have market power.

5.4 It follows that for the purposes of assessing the relevant economic market, and market power, there is a need to examine consumer behaviour in deciding between shopping at a supermarket (which by definition serves a one-stop shopping function) and deciding when to use other different retail outlets for products that can be found in supermarkets. This requires an examination of:

- (a) geographic convenience;
- (b) price differences between types of outlets;
- (c) time of purchase; and
- (d) other general consumer preferences.

5.5 As noted in Chapter 2, foodstuffs and household necessities currently available in supermarkets can also be purchased from a range of different retail outlets, such as:

- (a) convenience stores;
- (b) discount stores;
- (c) grocery stores;
- (d) product speciality stores; and
- (e) wet market stalls.

5.6 The following sections examine data obtained from Council research, and other sources, that provide some indication of the extent to which consumers might switch between supermarkets and other retail outlets. Given the distinct difference between retailing fresh produce on the one hand (particularly given the historical role that wet markets have played) and packaged foodstuffs and household necessities on the other, these two are examined separately.

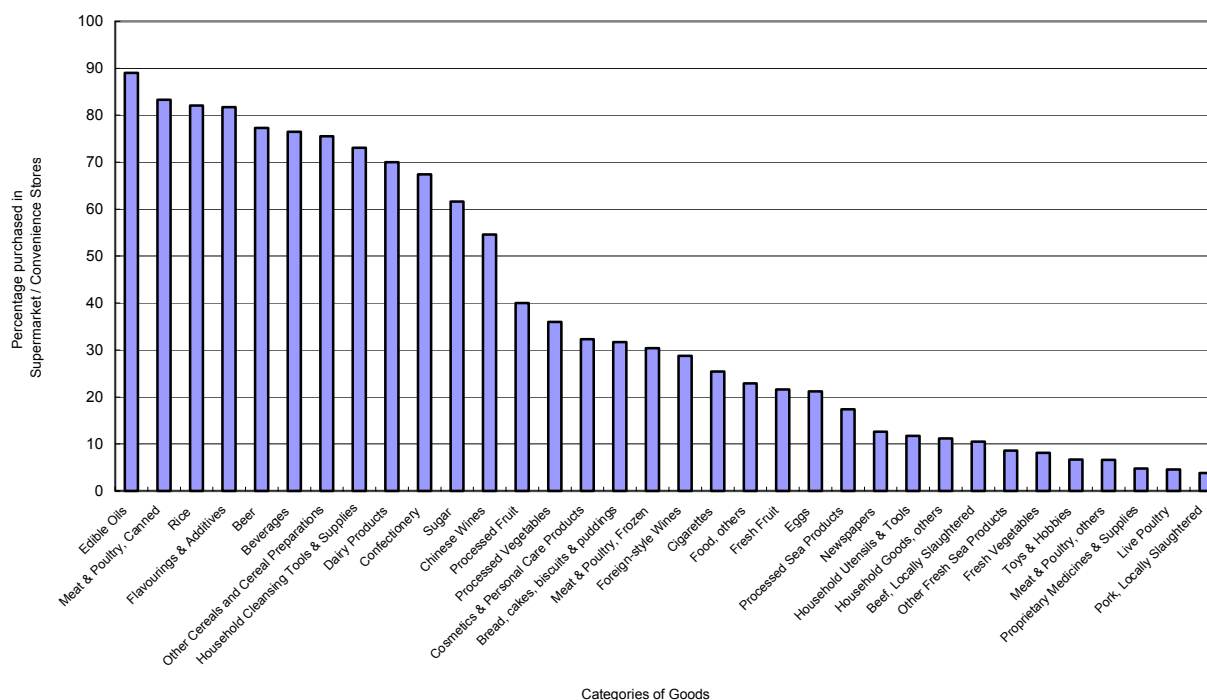
Packaged Foodstuffs and Household Necessities

5.7 The Census and Statistics Department has produced some information regarding consumers' purchasing behaviour in regard to packaged foodstuffs and household necessities. These products are generally available either in one-stop shopping from supermarkets, or separately from convenience stores, discount stores, grocery stores, or speciality stores (as described in Chapter 2)

5.8 The information provided by the Census and Statistics Department indicates that the majority of households (over 65%) purchase their edible oils, canned meat products, rice, sauce & flavourings, canned beer, non-alcoholic drinks, dairy products, snack and household supplies (cleaning) from supermarkets and / or convenience stores (see Figure 5.1).

5.9 Based on this information, there is a strong consumer preference for supermarkets and convenience stores over other forms of retailing for packaged foodstuffs and household necessities. Given that supermarkets have a wider product range than that found in convenience stores, it can be assumed that in terms of satisfying consumer preferences for "one-stop shopping", supermarkets would have an advantage over convenience stores.

Figure 5.1: Percentage of Categories of Goods Purchase in Supermarket / Convenience Stores



Source: Census and Statistics Department, 1999 – 2000 Household Expenditure Survey

Wet Markets

5.10 As noted in Chapter 2, Hong Kong consumers have historically purchased the majority of their fresh produce needs (e.g. seafood, meat and vegetables) from traditional wet markets. However, the trend towards superstores (with wet market type

facilities) indicates that supermarket chains are now aggressively pursuing market share in this sector.

5.11 According to the information provided in the 2001 Annual Report of the *Grocery Trade Magazine*, the growth rate of total market value of fresh food in Hong Kong for the year exceeded 5%. The growth rate of supermarkets on the other hand was up to 15% and accounted for 30% of market share for fresh food.⁵¹

5.12 The substantial price reductions in supermarkets for fresh pork during 2002 which led to allegations that supermarkets were unfairly undercutting wet market retailers⁵² is an example of the keen expansion of supermarkets into the wet market sector (fresh pork accounts for about 51% of total pork available in the market). A recent quarterly study by Taylor Nelson Sofres⁵³ found that meat purchases at wet markets dropped 8.6% between the first and third quarter of 2002 while other purchases, for example, seafood, fruit and vegetables on wet markets fell only slightly.

5.13 In these circumstances any perceived differences between supermarkets, especially superstores with "wet market" type characteristics, and wet markets, as far as fresh produce is concerned, are clearly breaking down. The extent to which the traditional preference for wet markets is challenged by supermarkets can be ascertained by examining what factors directly affect consumer choice, particularly the effect played by geographic location.

Consumer Preferences – Supermarkets versus Wet Markets

5.14 A number of studies have been conducted in recent years by different parties that give an indication of consumer preferences in relation to supermarkets and wet markets.

Study by the Planning Department

5.15 In 1995 the Planning Department commissioned a study on household shopping habits. The study was completed in 1997 and found that more households used supermarkets (58%) as their major shopping outlet for grocery items than wet markets (see Figure 5.2).⁵⁴

Study by the Census and Statistics Department

5.16 A survey by the Census and Statistics Department on consumption patterns for purchasing fresh produce indicated that among those who usually chose to purchase fresh food produce from wet markets, their major reason for doing so was "the food was fresher". Among those who usually chose to purchase fresh food produce from supermarkets, the major reasons were "the food was cleaner", and "the location was more convenient".⁵⁵

⁵¹ *Grocery Trade*, 2001 Annual Report, p. 87.

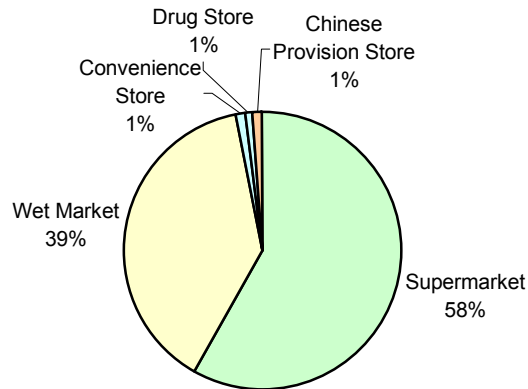
⁵² In May 2002 Park n Shop, followed by Wellcome, announced to reduce substantially their retail prices in fresh pork. There were then allegations of "below cost" retailing by supermarkets, and that this might have a detrimental effect on competition for the product and wet market retailers.

⁵³ Hong Kong Standard, 22 October 2002, p.9.

⁵⁴ Op Cit, Roger Tym and Partners, February 1998, Figure 3.4.

⁵⁵ Census and Statistics Department, Thematic Household Survey Report No. 5, *Pattern of purchasing fresh food produce*, August 2001.

Figure 5.2: Major Shopping Outlet for Grocery Items



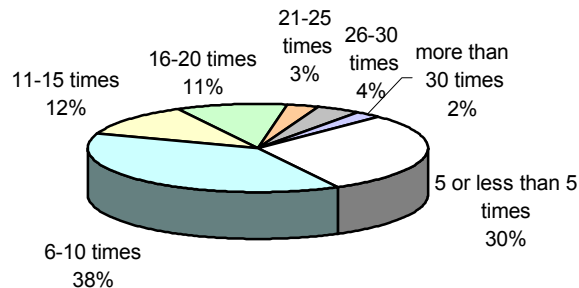
Source: Study on Shopping Habits and Revision of HKPSG, Figure 3.4

Study by Consumer Council

5.17 The Council conducted a survey in 2001 on the consumption pattern of consumers when choosing between supermarkets and wet markets. Questionnaires were sent by mail to 20,132 households. Altogether, 2,727 responses were received; being a response rate of around 14%. The result of the survey indicated that 69% of respondents usually chose to purchase fresh produce from wet markets, while 31% usually chose to purchase fresh produce from supermarkets. By comparing this result to a survey reported in *Asian Advertising and Marketing* in 1993, which estimated that supermarkets had less than 10% share in the retailing of fresh produce and wet markets 90%, it can be assumed that there has been an increase in the share of the fresh produce sector by supermarkets of 20%.

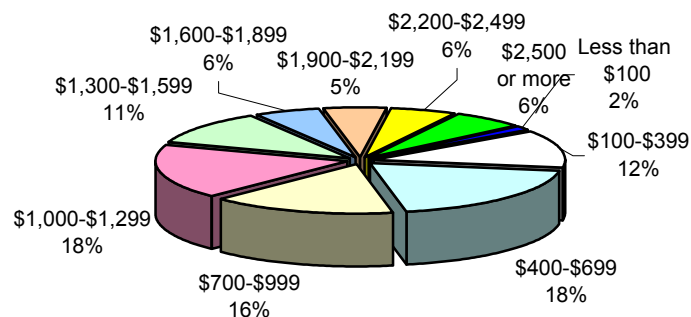
5.18 The Council's survey also studied the number of monthly visits to supermarkets (Figure 5.3) and consumer expenditure of purchasing goods, including groceries and fresh food in supermarkets (Figure 5.4).

Figure 5.3: The Number of Monthly Visits to Supermarkets



Source: Consumer Council Survey, 2001

Figure 5.4: Consumer Expenditure of Purchasing Goods Including Grocery Goods and Fresh Food in Supermarkets



Source: Consumer Council Survey, 2001

5.19 It was noted that 32% of surveyed households have more than 10 trips per month to supermarkets for shopping. The majority of respondents, 38%, had 6 to 10 trips to supermarkets in a month. Concerning their monthly expenditure in supermarkets, more than half, 52% of the respondents, spent \$400 to \$1,299 in a supermarket a month.

Secondary school survey

5.20 Of interest to this topic has also been a survey by a group of secondary school students who collected and analysed information from consumers on their preferences between supermarkets and wet markets.⁵⁶

5.21 The results of this survey were quite similar to the results obtained in the Census and Statistics Department study and the Consumer Council study as described above, in that freshness of food was of high concern, as was the cleanliness of the environment.

5.22 Details of the three surveys are shown below (Table 5.1, 5.2 and 5.3).

Table 5.1: Reason for Choosing Supermarket or Wet Market (Census and Statistics Department)

Choosing to Purchase fresh food produce from	Reasons	Percentage of Households
Supermarket	Food was cleaner	53.6%
	Location was more convenient	45.5%
	Environment was better	45.1%
Wet market	Food was fresher	69.9%
	Price was lower	46.1%
	More choices	41.2%

⁵⁶ Consumer Council, Consumer Culture Study Award Competition, 2000 – 2001, Senior Secondary School Session, 2nd Runner-up, "Where to buy wet products? Market or Supermarket?" by Diocesan Boys' School.

Not choosing to purchase fresh food produce from	Reasons	Percentage of Households
Supermarket	Food was not fresh	53.1%
	Price was higher	43.2%
	Not many choices	39.9%
Wet Market	Environment was poor	52.4%
	Food was not clean	39.7%
	Location was inconvenient	33.3%

Source: Census and Statistics Department, Thematic Household Survey Report No. 5, "Pattern of purchasing fresh food produce", August 2001

Table 5.2: Reason for Choosing Supermarket or Wet Market (Consumer Council)

Choosing to Purchase fresh produce from	Reasons	Percentage of surveyed interviewees
Supermarket	Environment was cleaner	26%
	Operation time was longer	22%
	Could purchase other products at the same time	21%
Wet Market	The food was fresher	46%
	Could compare the price and food with other stalls	38%
	Overall price was lower	36%

Source: Consumer Council Study, 2001

Table 5.3: Reason for Choosing Supermarket or Wet Market (Secondary School Survey)

Choosing to Purchase fresh food from	Reasons	Percentage of Interviewees
Supermarket	Dry product & non-food product also available	46.5%
	Good hygienic environment	45.5%
	Near home	34.6%
Wet Market	Food is fresh	59.6%
	Near home	43.5%
	Many food choices	37.0%

Source: "Where to buy wet products? Market or Supermarket?" by Diocesan Boys' School, 2000 - 2001

Geographic Locations of Supermarkets and Wet Markets

5.23 In addition to concerns on freshness of food and cleanliness of environment, the above consumer surveys also indicated a concern for geographic convenience. In a 1999 working paper by the Hong Kong University of Science and Technology it was noted that "*The total number of weekly visits to all types of food outlets was almost 16 - very high by Western standards - and included 5.8 trips to a wet market, 3.8 trips to a supermarket, 2.5 trips to a bakery, 1.2 trips to a fruit store and 1.0 trip to a Chinese grocery store. Travel time to the closest supermarket averaged 5.9 minutes, and to the closest wet market, 7.4 minutes.*"⁵⁷

5.24 This confirms that retail shopping frequency is very high in Hong Kong and that geographic location is an important factor in choosing retail outlets.

5.25 As can be seen from the following table (Table 5.4), the number of traditional public wet markets is currently fewer than that of supermarkets.⁵⁸

⁵⁷ Arieh Goldman, Seshan Ramaswami and Robert Krider, *Supermarket Shopping Adoption and the Modernization of Food Retailing: Theory, Method and Application*, working paper of the HKUST, 1999.

⁵⁸ The Council has no statistics about public wet markets provided by the Hong Kong Housing Society and the private wet market.

Table 5.4: Public Wet Markets Provided by HA and FEHD vs Supermarket Chain Stores

	Public Wet Market		The 3 Largest Supermarket Chains in Hong Kong		
	Provided by HA	Provided by FEHD	Wellcome	Park n Shop	CRC
Number	129	81	242	211	79
Total	210		532		

Source: HA, FEHD, Supermarkets' websites in August 2003

5.26 Wet markets are provided either by the Government or the private sector. As discussed in Chapter 2 and 3, recent years have seen the closure of some public and private wet markets. In most cases, the wet market facility within a housing estate has been transformed into a supermarket.

5.27 The two largest supermarket chains in Hong Kong have about 250 (Wellcome) and 210 (Park n Shop) stores respectively in January 2002. Using the store address list provided in company websites⁵⁹, Table 5.5 was constructed indicating the percentage of stores located in either private housing estates, public housing estates, or commercial areas.

Table 5.5: Distribution of the Two Largest Supermarket Chain Stores

Location	Stores Distribution for The Two Largest Supermarket Chains in HK	
	Park n Shop	Wellcome
Private housing estate	49%	53%
Public housing estate	30%	30%
Commercial Area	21%	17%
Total	100%	100%

Source: Company websites, January 2002

5.28 In the course of developing their presence in Hong Kong, it is apparent that the two largest supermarket chains have not only been increasing their focus on the size of stores, but also their location in strategic positions, such as shopping malls. The Council estimates that based on information of supermarket address lists, over 90% of Park n Shop and Wellcome superstores are located in shopping malls.

Table 5.6: Distribution of the Superstores in Hong Kong

Supermarket Chain	Total Number of Superstores	Number of Superstores Located in Shopping Malls
Park n Shop	50 (+11%)	47 (+7%)
Wellcome	16* (+45%)	14 (+40%)

Source: Company websites, August 2003

Note:

1. Wellcome informed the Council that it had 17 superstores at a meeting in August 2003.
2. () Growth from 2001.

5.29 In an effort to obtain further information on whether wet markets are sufficiently good substitutes for superstores in a geographic sense, the Council examined the geographic location of all Park n Shop and Wellcome superstores on a map of Hong Kong. Assuming that consumers would not be willing to spend more than 15 minutes

⁵⁹ Website of Wellcome, <http://www.wellcomehk.com>, website of Park n Shop, http://www.Park_n_Shop.com. The analysis was done according to the two companies' website information in January 2002. As in August 2003, there are 242 Wellcome stores and 211 Park n Shop stores as indicated from their websites.

(a very conservative estimate) walking distance⁶⁰ to locate substitute outlets for fresh produce, the Council attempted to ascertain whether or not wet markets would provide a ready substitute for the superstore in its geographic area; and vice versa⁶¹.

5.30 Of the total 56 superstores examined in 2001, the Council's conclusion was as follows:

- (a) Ten superstores faced no direct competition from wet markets because the walking distance between them was estimated to be far more than 15 minutes. For example, the superstore at Laguna City in Lam Tin.
- (b) Seven superstores were identified as facing a low degree of competition from wet markets, where the walking distance was estimated from around 15 to 25 minutes.
- (c) Thirty-four superstores were found to be within the 15-minute walking distance standard, and thereby facing geographic competition from wet markets. For example, the large wet market closest to the superstore in Hollywood Plaza at Diamond Hill is located in Fung Tak Estate, with an estimated walking distance of about 10 minutes.
- (d) Five superstores were rated as being inconclusive as to whether they were within the walking distance standard.

Conclusion

5.31 Based on available survey information it appears that as far as "one-stop shopping" is concerned and the identification of the relevant economic market, a distinction can be made between, on the one hand, shopping for fresh produce in supermarkets and wet markets; and on the other hand, shopping for packaged food and household products in supermarkets, and other retail outlets.

5.32 As regards packaged foodstuffs and household necessities, consumers appear to exercise a strong preference for supermarkets and convenience stores. Due to the greater product range enjoyed by supermarkets, it can be assumed that supermarkets would have an advantage over convenience stores.

5.33 In relation to fresh produce, the results of consumer surveys conducted by the Council, and others, indicate there is a strong consumer preference for purchasing fresh produce from wet markets rather than supermarkets. Nevertheless, while there are a number of factors affecting consumer purchasing decisions, the survey results reflect a common concern with traditional wet markets in respect to hygiene, purchasing environment, and geographic location. Having regard to the growth in

⁶⁰ Assumption based from the op cit UKCC report, October 2000, "*..... consumers rarely travelling more than 10 minutes in urban areas, and rarely more than 15 minutes elsewhere to do their main shopping*". The HKUST working paper (see paragraph 5.22) noted that the travel time to the closest supermarket averaged 5.9 minutes, and to the closest wet market, 7.4 minutes.

⁶¹ S. Baker, A. Coscelli, and T. Van Dijk, *Unilateral effects in retail Chain Mergers: An Application to Supermarkets*, European Competition Law Review, Issue 4, 2002. The authors note that "*.....differentiation by location is one of the most important forms of differentiation in retail markets. Customers will view a store in location X as very different to an otherwise identical store in location Y and would normally see it as in direct competition with other stores in X. This need not mean that markets are always local but it does mean that in assessing competition on the demand side it is important to take store location into account*". The authors note the existence of 'unilateral effects' that in some circumstances could lead to an assumption of national, rather than local markets. However, given the consumer views as indicated in the surveys on wet markets, and that it is reasonable to assume that consumers would want to transport fresh food produce home as soon as possible to maintain its freshness, the fifteen minute travelling time standard is considered reasonable.

superstores, the adoption of aggressive price discounting strategies by supermarkets⁶² and the subsequent absorption of wet market share, an improvement in these issues would seem to be required to halt any further losses. Due to the role of government in the location and construction of the facilities, the extent to which this loss can be addressed is highly dependent on Government policy.

5.34 The extent to which consumers can exercise choice between supermarkets and wet markets, and therefore place pressure on supermarkets to maintain lower prices and more choices, is limited by geographic considerations; due to the absence of wet markets in some areas. Given the role that government plays in residential and commercial planning, and access to retail sites in public housing estates, it has an opportunity to exercise some control over the extent to which either form of retailing is made available to consumers, and thereby the extent of competition in the retailing of foodstuffs and household products.

⁶² Apart from the substantial reduction in retail prices of fresh pork in May 2002, the supermarket chains also introduced a price discount program to all senior citizens and other promotion programmes.

CHAPTER 6

MARKET POWER

6.1 A market is taken to be fully competitive where no firm is able to act independently of any other firms competing in that market, or where a firm's behaviour is effectively constrained by the threat of entry from firms outside the market. In this situation no firm should be able to raise and sustain its prices above the competitive level, or act in such a way that affects competition by foreclosing market entry or foreclosing competition.

6.2 This chapter examines whether any one or more market participants have market power, and second, whether there are any strong indications that market power has been, or is being misused.

Market Concentration Ratios

6.3 It should be noted that while market shares are an important issue when examining the question of market power, the fact that one market participant holds more share than another is not by itself indicative of market power. It is the extent of market share fluctuation that provides a better measure of competitive rivalry.⁶³

6.4 Nevertheless, a high concentration of suppliers in a market will raise a *prima facie* competition concern. In jurisdictions with laws that prohibit anti-competitive mergers or acquisitions, a benchmark test based on market concentration ratios is applied to determine whether an acquisition or merger might be at risk of substantially lessening competition; indicating a potential breach of the law. If a proposed acquisition or merger satisfies the test, i.e. that it would result in a concentration level at or above the arbitrary level, the merger or acquisition would therefore be scrutinised to see whether the concern is well founded.

6.5 The test used by one competition law jurisdiction that has a relatively conservative approach to determining an appropriate ratio (as compared to other competition law jurisdictions) can be used as an example.⁶⁴ This particular test states that if a proposed merger will result in a post-merger combined market share of 70% or more, for the three (or fewer) largest firms, and the merged firm will supply at least 20% of the relevant market, the competition authority will want to give further consideration to the proposal before being satisfied that it will not result in a substantial lessening of competition. In any event, it is considered that if the merged firm will supply 40% or more of the market, the competition authority will want to give the merger further consideration.

6.6 The twofold thresholds in the competition authority's benchmark test reflect concerns with not only the potential to exercise unilateral market power, but also with what is termed "co-ordinated market power" or "collective dominant position". Co-ordinated or collective conduct does not necessarily involve explicit collusion but may simply involve signalling or conscious parallelism, both of which are

⁶³ See for example, M. Sakakibara and M. E. Porter, *Competing at Home to Win Abroad: Evidence From Japanese Industry*, in which the authors explore the influence of domestic competition on international trade performance and find that market share instability rather than structural variables such as seller concentration are a better measure of domestic competition; and therefore trade performance.

⁶⁴ New Zealand Commerce Commission, Practice Note 4: *The Commission's Approach to Adjudicating on Business Acquisitions Under the Changed Threshold in Section 47 – A Test of Substantially Lessening Competition*, May 2001.

characteristics of an oligopoly market. An example of a recent successful decision by a competition authority prohibiting an acquisition based on the theory of collective dominant position, is that of the European Commission, whose declaration that the takeover of a firm in the UK market for short-haul foreign package holidays would have created a collective dominant position in the market, as compared to unilateral market power, was subsequently upheld by the European Court of First Instance.⁶⁵

Oligopoly

6.7 An oligopoly is constituted by a small number of firms in a market, with substantial barriers to new participants entering the market. The theory of oligopoly is a complex and contentious subject that postulates between two points of reference.

- (a) A "co-operative oligopoly" in which a small number of firms co-ordinate their actions to maximise joint profits. This could be through an explicit agreement (essentially a cartel) or even without an explicit agreement, because each firm finds acting as though it were a member of a cartel to be in its self interest. In other words there is a tacit agreement.
- (b) A "non-co-operative oligopoly" where firms act independently (and consider themselves as rivals) but are aware of each other's existence and have a good assessment of each other's costs.⁶⁶

6.8 The distinction between these forms of oligopoly is not always a clear one. This is because an absence of competition can arise because of either an explicit or tacit agreement, or simply because competitors are aware of each other and are able to accurately predict the behaviour of one another. In the latter case, there may be little opportunity for strategic behaviour that would give one firm a significant long term advantage in the market, and a pattern of marketplace conduct evolves that serves the same mutual self interest as an explicit agreement.

6.9 This leads to a perception of co-operative behaviour. Where competition authorities have challenged such behaviour, the courts have had to determine whether it could infer that a cartel has come about, drawing from the course of conduct of the alleged conspirators. Notwithstanding prevailing theories of oligopoly, the question of whether oligopolistic markets tend to behave more like monopolistic markets, than like markets with genuine contest or effective competition, albeit among a few firms, is a matter that can only be ascertained from the facts.

Oligopolistic Price Leader

6.10 Another theoretical proposition that has been advanced to explain seemingly co-operative behaviour is that of the oligopolistic price leader, or dominant firm price leader. Prices in this scenario are similar due to the fact that competitive fringe firms follow the price leadership of the dominant firm in the market, due to the unilateral market power the dominant firm can exert and the discipline this has on unilateral pricing action. Whether a dominant firm can exercise unilateral market power in the long run depends on a number of factors:⁶⁷

- (a) the number of firms that can enter the industry;

⁶⁵ European Court of First Instance, decision handed down 22 September 2002, Case T-342/99 *Airtours v. European Commission*.

⁶⁶ Carlton and Perloff, *Modern Industrial Organization*, Second Edition, HarperCollins College Publishers, 1994, p. 175 and 229.

⁶⁷ *Ibid*, p. 158 – 159.

- (b) how their costs compare to those of the dominant firm; and
- (c) how quickly new entry can take place.

6.11 Price leadership of the sort envisaged above has been proposed as a likely basis on which to explain the existence of co-operative behaviour, where similar modes of pricing and other market behaviour have been observed. For example:

*"The weight of the evidence from industry case studies and statistical analyses, both cross section and time series, suggests that oligopolistic firms do not react to each other's moves in stable, mechanistic, easily modelled ways. Rather, there appears to be much emphasis on establishing clearly understood signals and patterns of leadership exercised by one of a very few of the market's largest firms."*⁶⁸

The Relevant Market

6.12 As indicated in Chapter 5, there appears strong evidence from consumer consumption patterns that there are two separate retail markets. These are:

- (a) a market for *fresh produce*, with supermarkets and wet markets closely competing with each other; and
- (b) a market for *packaged foodstuffs and household necessities*, where supermarkets compete with other retail outlets, such as convenience stores, grocery stores, and speciality stores.

6.13 A crucial question is the respective market shares of the market participants.

Fresh Produce Market Shares

6.14 As noted in Chapter 5, consumer surveys conducted by the Council and others, indicate a strong consumer preference for purchasing fresh produce from wet markets rather than supermarkets.

6.15 Information obtained from a report by the United States Department of Agriculture on the retailing of food in Hong Kong, based on an ACNielsen study conducted in 1999, has been used to construct the following table on the percentage of fresh food purchases made at wet markets and supermarkets according to household income.⁶⁹

Table 6.1: Percentage of Fresh Food Purchases Made at Wet Markets and Supermarkets According to Household Income

Distributive Trade	Monthly household income below HK\$12,000	Monthly household income between HK\$12,000-29,999	Monthly household income above HK\$30,000	Average
Wet Market	82%	79%	64%	76%
Wellcome	3%	4%	6%	4%
Park n Shop	8%	7%	19%	11%

Source: ACNielsen, 1999

6.16 Based simply on market share, it can be assumed that as far as fresh produce is concerned, wet markets currently compete strongly with supermarkets, especially those within the superstore category that have attempted to mimic the traditional wet

⁶⁸ Frederic.M. Scherer, "Market structure" in Eatwell, Milgate and Newman (eds), The New Palgrave (Macmillan, London. 1987), p. 344.

⁶⁹ United States Department of Agriculture, Foreign Agricultural Service, *GAIN Report # HK0059*, p. 5.

market concept. Using the merger concentration ratio applied by at least one competition authority, as described above, there would not at first glance seem to be a concern based simply on overall market shares.

6.17 However, given the importance of geographic location of wet markets to supermarkets for competition to exist, pointing to the existence of geographic markets, there would still be a concern in some areas. As noted in Chapter 5, based on an examination of locations of wet markets to supermarkets by different geographic areas around Hong Kong, the Council estimated that ten out of the total 56 superstores faced no direct competition from wet markets because the walking distance between each was estimated to be far more than 15 minutes.

6.18 Moreover, it would seem that the increasing numbers of superstores that offer large and varied quantities of fresh produce will invariably continue to diminish wet markets' share. As noted in another United States Department of Agriculture report:

"There are about 15,756 wet market stalls and 'mom and pop' shop operators. According to Hong Kong government statistics, traditional markets occupied consistently around 54 percent of total retail food sales several years ago. Yet the market share decreased to 46% in 1998, 1999, and 2000. The traditional market is facing ever increasing competition from the big supermarket chains which offer fresh meat, seafood and groceries".⁷⁰

6.19 While the above industry report points to a continuing loss of market share by the traditional wet market, the two major supermarket chains disputed this trend. One of these supermarket chains provided information to the Council claiming that new wet markets were being developed. The Council was provided with a list of what were claimed to be new wet markets, immediately prior to publication of this report. The Council was unable to assess the information due to the timing of its receipt and the publication of this report.⁷¹

Packaged Foodstuffs and Household Necessities Market Shares

6.20 As noted in Chapter 5, information obtained by the Census and Statistics Department indicates that there is a strong consumer preference for supermarkets and convenience stores over other forms of retailing for packaged foodstuffs and household necessities. The following information has been obtained from a number of sources in an endeavour to ascertain market share for each sector, under a number of variables, which would be instructive in understanding whether any one or more entities might have market power.

Number of operators and retail outlets

6.21 As noted in the November 2001 United States Department of Agriculture report, whilst the supermarket category constitutes a very small number of Hong Kong's total

⁷⁰ United States Department of Agriculture, Foreign Agriculture Service, *GAIN Report # HK1068*, 16 November 2001, p. 11.

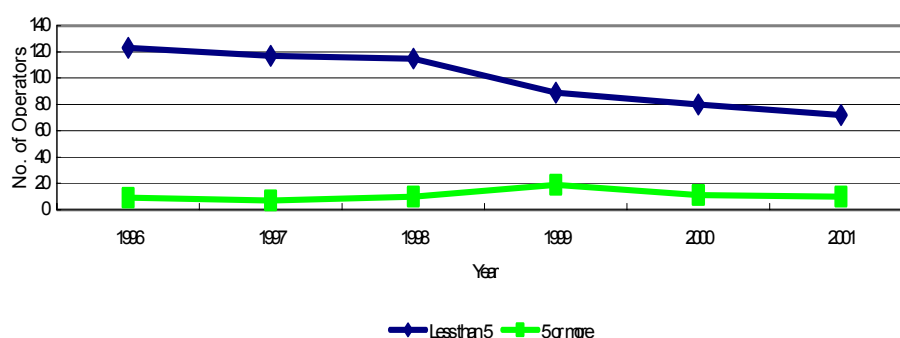
⁷¹ The new wet markets were said to be in Aberdeen Tin Wan Estate, Ap Lei Chau Market, Chai Wan Hing Wah Estate, Chai Wan Market, Fanling Luen Wo Market, Fu Hong Estate, Hong Kong Stanley Market, Kowloon City Mei Tung Estate, Kwai Chung Shek Lei Estate, Kwai Shing Estate, Nam Tin Kai Tin Estate, Sai Wan Ho, Hing Tung Estate, Sau Mou Ping Estate, Sau Mou Ping Po Tat Estate, Sha Tin Yu Tsui Court Market, Sho Ki Wan Oi Dip Wan Market, Tai Kok Tsui Fu Wing Market, Tin Shui Wai Chung Fu Estate, Tin Shui Wai Tin Chak Estate, Tseung Kwan O Choi Ming Estate, Tseung Kwan O Metro City, Tseung Kwan O Ming Tak Estate, Tseung Kwan O Sheung Tak Estate, Tuen Mun Fu Tai, Tuen Mun Lung Mun Market, Tung Chun Yat Tung Estate, Tung Chun Yu Tung Estate, Yau Tong Estate.

retail outlets, its share in terms of retail sales is significant: 44% of total sales in 1995, 45% in 1996, 44% in 1997 and 54% in 1998, 1999 and 2000.

6.22 An examination of the number of operators and the number of retail outlets each operator has can add to the picture of market presence, leading to a clearer understanding of market power.

6.23 According to the Census and Statistics Department, the number of supermarket operators, including both conventional supermarkets and convenience stores in 1996 was about 132, with 9 operators, each of which had five or more outlets and 123 operators, each of which had less than five outlets. In comparison, the statistics in 2001 revealed a figure of 82 supermarket operators, with 10 operators each of which had five or more outlets and 72 operators each of which had less than five outlets, showed a substantial decline of small operators by approximately 41% within 6 years (see Figure 6.1).

Figure 6.1: Number of Supermarket Operators from 1996 to 2001, (with Outlets Less than 5, or 5 or More)



Source: Census and Statistics Department, Report on Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels, 1996 – 2001

Notes: Supermarket operators include both conventional supermarkets and convenience stores.

6.24 Moreover, as statistics in 2001 indicated (Table 6.2), supermarket operators that have either one or less than five outlets contribute very little floor space to the total sector compared to larger operators.⁷² In addition, supermarket operators with five or more than five outlets have a significantly higher percentage of employees, compared with operators that have one or less than five outlets.

Table 6.2: Statistics for All Supermarkets in 2001

Total Number of outlets	Number of supermarket operators*	Floor area (sq.m.)	Number of Employees
1	66 (-4%)	8,032 (-17%)	215 (-18%)
2 – 4	6 (-45%)	1,221 (-43%)	89 (-7%)
5 or more	10 (-9%)	684,328 (+16%)	19,015 (+13%)
Total	82 (-10%)	693,571 (+15%)	19,313 (+13%)

Source: Census and Statistics Department, Report on Annual Survey of Wholesale, Retail and Import and Export Trades, Restaurants and Hotels, 2000 and 2001

Notes:

* Figures include both conventional supermarkets and convenience stores.

() Year ago percentage change.

⁷² For example, the largest superstore of Park n Shop in Hong Kong has a floor area of 75,000 square feet and sells over 20,000 product categories. The largest Wellcome superstore has a floor area of 54,000 square feet in 2001.

6.25 Accordingly, an examination of the number of outlets held by those operators that have five or more outlets can provide a more relevant picture of the market power that either of those operators possesses.

6.26 Table 6.3 shows the number of retail outlets per chain store, of which the Council is aware, that have more than five outlets. The figures are based on information obtained in 2000 and 2003 from different sources: 7-Eleven, China Resources Supermarket (HK) Co. Ltd., Circle-K, Dah Chong Hong, Ltd., Dairy Farm Group, Sai Cheong, Yu-Kee, South China Morning Post Group; the websites of Wellcome⁷³ and Park n Shop⁷⁴ as of August 2003; Hong Kong Economic Times report of 19 August 2000; as well as Grocery trade magazine Annual Reports in 2000 and 2001.

Table 6.3: Number of Chain Retail Outlets

Distributive Trade	Retail Chain	No. of Outlets in 2000	No. of Outlets in 2001	No. of Outlets in 2002	No. of Outlets in 2003
Supermarket	Wellcome*	235	250	247	242
	Park n Shop	189	210	207	211
	CRC	66	70	78	79
	KK	39	-	-	-
Hypermarket	Carrefour	4	-	-	-
Chain Store	Dah Chong Hong	41	41	43	43
	Yu-Kee	32	~ 56	52	52
Convenience store	7-Eleven*	414	444	477	485
	Circle-K	123	146	166	176
	Daily Stop**	62	72	80	83
	Sai Cheong	~ 15	21	26	26

Notes:

* Owned by Dairy Farm Group.

** Owned by South China Morning Post Group.

Turnover shares

6.27 Another important way of approaching market share as a means to determine market power is to examine turnover shares. The following two tables indicate the turnover shares of key supermarket chains (Table 6.4) and convenience stores (Table 6.5) in Hong Kong for the period from 1994 to 1997. The information is from the Asia Market Intelligence Ltd (AMI) Report *Multiple Retailing Market Profile - Hong Kong*, produced in 1998; reference to "brand" shares.

⁷³ Website <http://www.wellcomehk.com>.

⁷⁴ Website <http://www.ParknShop.com>.

Table 6.4: Turnover Shares for Supermarket Chain Stores, 1994 – 1997

Brand Share	1994	1995	1996	1997
Wellcome	38.0	39.9	41.0	41.8
Park n Shop	39.3	38.4	38.2	38.2
Yaohan	6.1	6.2	6.0	4.1
CRC Shop	3.4	3.5	3.6	4.0
Jusco	2.3	2.1	2.3	3.1
DCH Food Marts	1.5	2.0	2.0	2.0
KK	1.0	1.2	1.4	2.0
Sogo	0.8	0.8	0.8	0.8
Seiyu	0.5	0.5	0.5	0.5
HK Daimaru	0.4	0.3	0.3	0.3
Carrefour Asia	-	-	-	0.3
HK Seibu	0.4	0.3	0.3	0.3
CRC Dept Store	0.3	0.2	0.2	0.2
UNY	0.2	0.2	0.2	0.2
Yue Hwa	0.2	0.2	0.2	0.2
Wing On	0.2	0.2	0.2	0.2
HK Tokyu	0.2	0.2	0.1	0.1
HYFCO	0.4	0.4	0.6	-
Others	5.0	3.4	2.1	1.8
TOTAL:	100	100	100	100

Source: Asia Market Intelligence Ltd (AMI), Multiple Retailing Market Profile - Hong Kong, 1998

Table 6.5: Turnover Shares for Convenience Stores, 1994 – 1997

Brand Share	1994	1995	1996	1997
7-Eleven	73.5	67.7	66	67.6
Circle-K	18.8	20.9	20.4	19.9
Daily Stop	4.7	7.9	9.3	7.7
Magic House	3.1	3.5	4.3	4.9
TOTAL:	100	100	100	100

Source: Asia Market Intelligence Ltd (AMI), Multiple Retailing Market Profile - Hong Kong, 1998

6.28 As stated in the 1998 AMI Report, while the leading chains developed rapidly, small supermarkets floundered. It also reported that the total market turnover of small supermarket operators of low-end segment dropped from 43% in 1994 to 18% in 1997.⁷⁵

Convenience stores

6.29 There are more than 700 convenience stores in Hong Kong. The two largest being 7-Eleven (which, along with Wellcome, is owned by Dairy Farm, part of the Jardine Matheson Group) with 485 outlets, and Circle K with 176 outlets. Other branded stores have less than 10% of market share.⁷⁶ Convenience stores are characterised by their around the clock operation, and are seen to be generally less competitive on prices and product choices as compared to supermarkets, relying on their convenience attributes where goods are normally bought for immediate, or near immediate consumption. Whether convenience stores and supermarkets compete directly with each other is debatable.

6.30 In the Council's 1994 report on the supermarket industry it was opined that convenience stores and supermarkets only competed with each other in limited product categories such as drinks, confectionery and snacks. The report also noted that while senior management of convenience stores were of the view that

⁷⁵ Asia Market Intelligence Ltd (AMI), *Multiple Retailing Market Profile - Hong Kong*, 1998, p.35.

⁷⁶ Op Cit, *USDA Gain Report # HK0059*, p. 6.

convenience store retailing is different from supermarket retailing, and were run on very different philosophies, senior management of the supermarket chains considered convenience stores as their competitors because of the overlapping items and the extensive network of convenience stores outlets.⁷⁷ As reported in Chapter 2, both Wellcome and Park n Shop have (since the 1994 Report) begun operating convenience store type operations within supermarket premises.

Summary on Market Concentration

6.31 Having regard to:

- (a) the number of outlets held by the two largest supermarket chains;
- (b) the turnover shares; and
- (c) vertical integration into the convenience store sector,

the two largest supermarkets, Park n Shop and Wellcome can be seen to be at the threshold level of the above merger guideline market concentration standard.

6.32 Acquisitions of additional supermarket retailing space, or acquisitions of competitors or their retailing space at the expense of new entrants, would therefore raise a *prima facie* concern with unilateral market power or conditions conducive to co-ordinated conduct.

Entry Barriers

6.33 Market incumbents have less ability to exercise market power against consumer interest if there is a constant threat of new entry. It is the threat of new entry that places competitive pressure on incumbents to maintain low prices and constantly search for innovations in product choice and quality of service. Barriers to entry can fall into two broad categories.

- (a) Structural barriers to entry arise from basic industry characteristics such as:
 - i. access to physical infrastructure;
 - ii. technology; and
 - iii. building demand through advertising and pricing strategies.
- (b) Strategic barriers to entry refer to the behaviour of incumbents. For example:
 - i. incumbents may threaten to retaliate against entrants that sell products below the price set by incumbents through
 - ii. predatory behaviour such as below cost pricing;
 - iii. pressuring suppliers not to supply new entrants; or
 - iv. pressuring suppliers to only supply new entrants on terms less advantageous than those offered to incumbents.

Availability of retail space

6.34 A successful distribution network relies on the number and geographic location of stores. Unless there is opportunity for new entrants to satisfy this structural barrier,

⁷⁷ Op Cit, Consumer Council report, 1994, paragraphs 7.2 - 7.7.

they will face disadvantages compared to incumbents.

6.35 As far as the public housing sector is concerned, supermarket operational rights in new shopping malls constructed by the Housing Authority are initially through an open tender arrangement. However, the Government's response to the 1994 Consumer Council report noted that existing supermarket chains could retain their retail outlets on renewal of tenancy through negotiation and by paying current market value, rather than the sites being released for new tender. This has the effect of perpetuating the incumbency of existing retail outlet by the same supermarket chain.

6.36 As far as private sector residential areas are concerned, it is expected that the close relationship between some property developers and existing major supermarket chains will mean that the opportunity for non aligned operators to obtain retail space in new private sector residential property developments is limited.

6.37 Moreover, a recent research paper produced by the Hong Kong University of Science and Technology noted that there is a nearly completed spatial diffusion of large supermarket chains throughout residential areas of Hong Kong.⁷⁸ Combined the above factors can be considered as major impediments to the threat of new entry posing a substantial competitive threat to incumbents.

Bargaining power

6.38 The ability to negotiate advantageous supply contracts plays a crucial role in whether new entrants can sustain market presence. On the other hand, the existence of substantial bargaining power by incumbent firms can allow them to negotiate lower costs than those of their competitors.

6.39 Given the high market shares noted above for Park n Shop and Wellcome, their position as major distribution channels suggests there is little likelihood that suppliers will be able to exercise substantial countervailing market power during the course of negotiation with those two supermarket chains. An example of the market power that can be exerted by these two chains in the negotiation process is illustrated in comments made in a recent United States Department of Agriculture report:

"Almost all Hong Kong supermarkets require listing fees, that is, a fee charged to allow a new product to be put on their shelves. This is a one off fee for a trial period. The listing fees are extremely negotiable and vary greatly among different supermarket chains. For example, Wellcome and Park n Shop, which have many branch stores, have expensive listing fees. A product with five product ranges is expected to pay US\$16,000 to \$39,000. On the other hand, Jusco, a supermarket in a Japanese department store, charges \$150 for each product."⁷⁹

6.40 It follows that when new entrants attempt to negotiate supply contracts they would not enjoy the competitive advantage in the negotiation process enjoyed by incumbents, particularly the two largest supermarket chains. Moreover, it can be expected that the costs of listing fees would be passed on by way of higher wholesale prices to either new entrants, or existing players with less bargaining power.

6.41 Apart from the issue of supply contract negotiations, there have been

⁷⁸ Arie Goldman, Seshan Ramaswami and Robert Krider, *Supermarket Shopping Adoption and the Modernization of Food Retailing: Theory, Method and Application*, working paper of the HKUST, 1999.

⁷⁹ United States Department of Agriculture, Foreign Agricultural Service, *GAIN Report #HK1068*, 16 November 2001, p. 8.

allegations that incumbent supermarket chains have exerted restrictive pressure on suppliers to withhold supply to new entrants, or otherwise control supply to anyone posing a competitive threat. The allegations are discussed in more detail in Chapter 8 of this report.

Market Conduct

6.42 As discussed above, a market is taken to be fully competitive where no firm is able to act independently of any other firms competing in that market, or where a firm's behaviour is effectively constrained by the threat of entry from firms outside the market. In this situation no firm should be able to raise and sustain its prices above the competitive level, or act in such a way that affects competition by foreclosing market entry or foreclosing competition.

6.43 In an attempt to evaluate whether these market conditions exist, the Council undertook research in a number of areas in relation to packaged foodstuffs and household necessities. Those areas were:

- (a) Effect of brand name on consumer purchasing decisions;
- (b) The relative price change of products purchased in supermarkets and convenience stores;
- (c) Price differentials between supermarket chains;
- (d) Advertising price comparisons;
- (e) Price comparison of low demand substitutable products; and
- (f) Effect on pricing of market exits.

Effect of brand name on consumer purchasing decisions

6.44 The Council conducted a survey in 2001 on the shopping behaviour of households, which examined, as part of the study, the brand name effect of products sold in supermarkets. The exercise was aimed at estimating the effect on demand, if any, of brand names for individual products, in order to scope the extent to which market power may be derived from brand names rather than from a distribution channel.

6.45 Households were asked to name their preferred brand names of fast moving consumer goods (FMCG) by using a 5 point scale, with "5" & "4" points being accorded to "very important" and "important" of the brand name in their purchasing decisions. In addition, the questionnaire included a control question asking if the purchasing decision would be changed when the price of the reported brand increased by 5%. The survey received a total of 2,727 responses.

6.46 Results of the survey indicate that the importance of brand name in household purchase varied widely among different categories (see Table 6.6). In general:

- (a) 40% or less of households will not change the brand in their purchases if the price changes by 5%;
- (b) 60% or more of households will change the brand in their purchases if the price changes by 5%.

Table 6.6: Effect of Brand Name on Consumer Choice

Product Category	Total Response Received	Select "4 & No"	Select "5 & No"	Total Select "4 or 5 & No"	Percentage of Total Select "4,5 & No" to Total Response
Diaper	248	36	56	92	37.10%
Rice	1570	142	228	370	23.57%
Soy Sauce	1523	179	159	338	22.19%
Can Drink	1497	186	141	327	21.84%
Tetra Pack	1479	180	125	305	20.62%
Instant Drink	797	90	57	147	18.44%
Oyster Sauce	1292	126	92	218	16.87%
Lotion	541	56	35	91	16.82%
Detergent	1255	107	81	188	14.98%
Oil	1465	108	103	211	14.40%
Bakery	1077	94	59	153	14.21%
Milk	1277	91	87	178	13.94%
Ice-cream	1108	87	41	128	11.55%
Canned Beer	800	52	37	89	11.13%
Facial Tissue	867	57	37	94	10.84%

Source: Consumer Council Survey, 2001

6.47 As indicated above, more than 60% of consumers are willing to change brands in their purchases in supermarkets if the price of the FMCG changes by 5%. The results of the survey indicate therefore, that brand name on FMCG products does not play a substantial, or critical role in a majority of consumers' purchasing decisions. This high consumer price sensitivity was consistent with the Council's observation that supermarket chains generally adopt a price promotional strategy for different products every week.

6.48 The sensitivity to price also indicated that there would be pressure from the presence of competing outlets in the general vicinity of supermarkets providing consumers with alternative products.

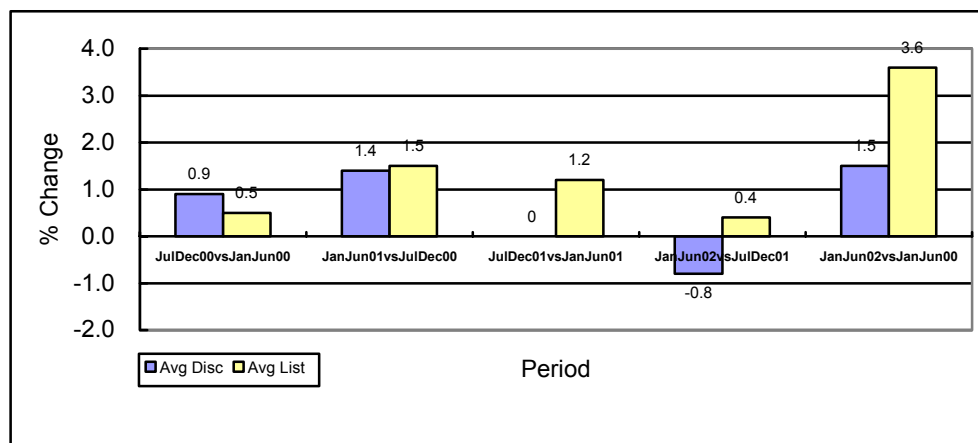
Relative price changes of products

6.49 The Council also compared the price change over time of products that are mainly purchased in supermarkets and convenience stores. As noted in Chapter 2, the Council regularly performs pricing surveys of a basket of goods in supermarkets, and these have indicated that supermarket retail prices increased at certain time periods despite the general downturn in the economy.⁸⁰ Analysis of the Council's price survey in 2002, covering five half-yearly periods from January 2000 to June 2002 indicated that there was an upward price trend at the supermarket chains. The Council's analysis showed that over these periods, there had been an increase of 3.6% in average list prices of a selected basket of goods, and a relatively smaller 1.5% increase in prices for the same goods when the discount price was taken into account (see Figure 6.2). In terms of the Council's price survey in 2003, the average list prices of a selected basket of goods went up by 1.5% during the first half of 2003 compared

⁸⁰ Consumer Council *Choice* magazine, 310, 15 August 2002, p. 38 – 41. 2003 details are in the 15 August 2003 edition of *Choice* magazine. It is to be noted that the basket of products used in the price surveys is not determined arbitrarily by the Council but has been agreed upon between the Council and the three supermarkets, Park n Shop, Wellcome and CRC, as noted in paragraph 2.34 of Chapter 2. In response to the Council's pricing surveys, and findings, recent suggestions from industry are that consumers might have also benefited from the effect of coupons on prices and multi-pack discounts.

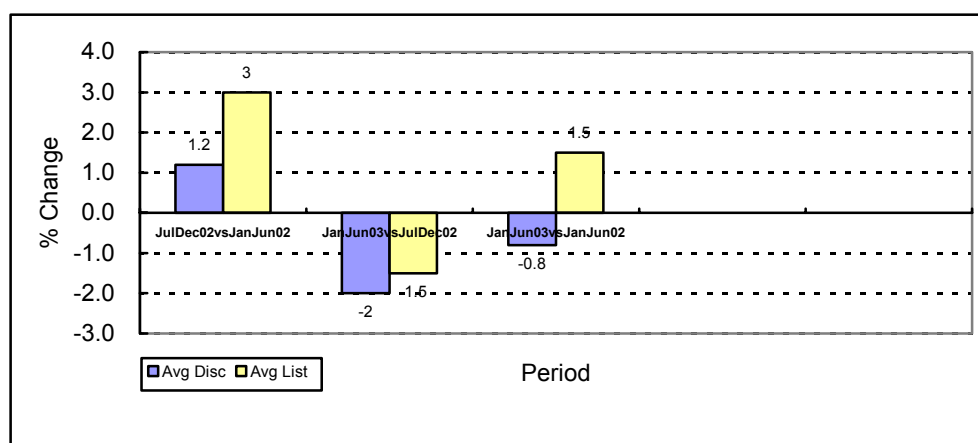
with the same first half of 2002. Taking into account the discount prices that the supermarket chains offered, a slight decrease of 0.8% was recorded (see Figure 6.3). One supermarket chain suggested that consumers might have benefited from the use of coupons and from multi-pack discounts.

Figure 6.2: Change in Average List and Discounted Prices of a Selected Basket of Goods, 2002



Source: Consumer Council Choice Magazine, 310, 15 August 2002, p. 38 – 41

Figure 6.3: Change in Average List and Discounted Prices of a Selected Basket of Goods, 2003



Source: Consumer Council Choice Magazine, 322, 15 August 2003

6.50 In a separate exercise, the Council selected those categories of goods that 65%⁸¹ of households purchase from supermarkets and convenience stores to construct a price index of products reflecting the cost of shopping for those goods in supermarkets and convenience stores. Price information was extracted from the monthly report of the Consumer Price Index. The exercise compared the price change of products that are mainly purchased in supermarkets against the general inflation / deflation rate.

6.51 As shown in Table 6.7 below, there was a relative increase in prices of products mainly purchased from supermarkets and convenience stores over the years.

⁸¹ Information on percentage of categories of goods purchase in supermarket / convenience stores is provided by the Census and Statistics Department. Details can be found in Chapter 5.

Table 6.7: Relative Price Change of Products Mainly Purchased in Supermarkets and Convenience Stores

	Jan/2000	Jul/2000	Jan/2001	Jul/2001	Jan/2002	Jul/2002	Jan/2003
Price Changes of products mainly bought in supermarkets and convenience stores shops	-9.52%	-7.09%	-0.33%	1.39%	0.87%	0.82%	0.20%
Inflation / Deflation (Composite CPI)	-5.30%	-3.20%	-1.20%	-0.90%	-3.50%	-3.40%	-1.60%

Source: Census and Statistics Department, Monthly Report on the Consumer Price Index.

Price differentials between supermarket chains

6.52 It can be assumed that if one supermarket can set prices persistently higher than its competitors, in the light of little brand name effect of FMCG on consumer purchasing decisions (i.e. consumers are sensitive to price changes) this can be an indication of market power. However, the means by which this can be tested is difficult to gauge. First, the Council does not have any sales volume information on products sold in supermarkets. Second, it is difficult to form a clear view that one supermarket chain can persistently set prices higher than that of another chain, because the different supermarket chains will have different product discounts at different times.

6.53 The UK Competition Commission, in its competition study on the supermarket industry, having regard to the "one-stop shopping" concept, noted that supermarkets usually compete in terms of the price of a consumption basket rather than on individual products.⁸² Given that supermarkets in Hong Kong operate on the same one-stop shopping basis, the Council considered that in order for it to compare the price differences between different chains, it was necessary to construct a consumption basket for average household shopping at a supermarket based on a selected category of goods that 65% of households would purchase from supermarkets.

6.54 As shown in Figure 6.4, there was a significant price increase in list prices of Park n Shop and Wellcome over KK and CRC from the first quarter 2000 to first quarter 2001. In addition, it was found that Park n Shop increased its selling price faster over the past two years as shown in Figure 6.5. This could be seen as an indication of a rebalancing of its aggressive discounting pricing strategy in year 1999 when faced with the entry of adMart and then the exit of Carrefour and adMart in year 2000.

⁸² United Kingdom Competition Commission (UKCC) report, *Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*, October 2000.

Figure 6.4: List Price Comparison across Different Supermarkets

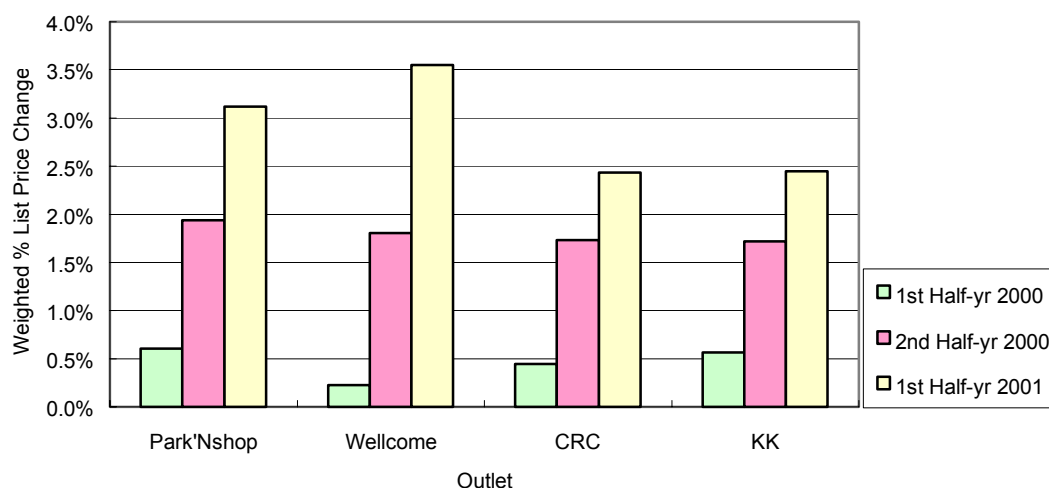
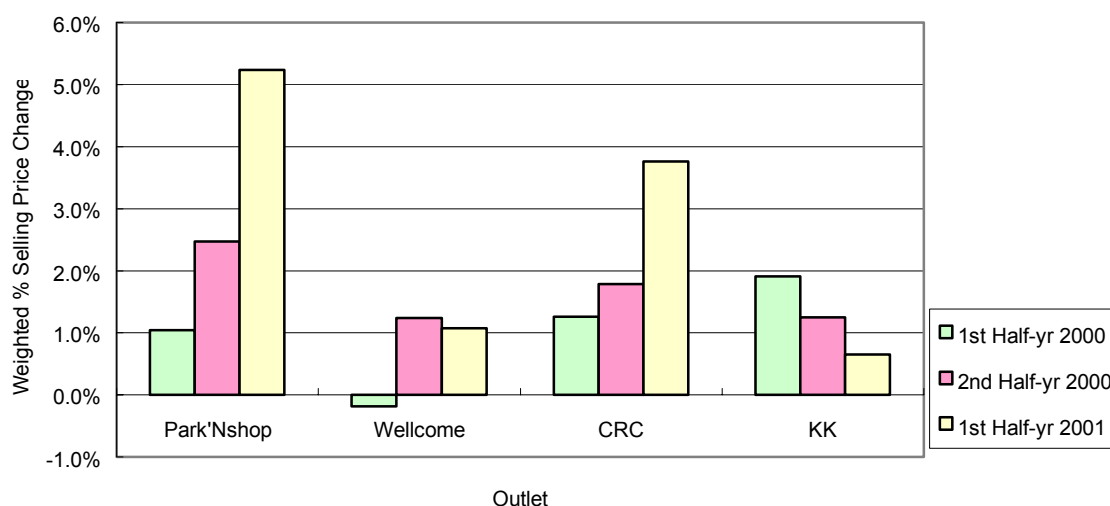


Figure 6.5: Selling Price Comparison across Different Supermarkets



Co-ordination of pricing behaviour

6.55 As noted above, when discussing market concentration ratios, a high ratio will raise concerns with co-ordinated market power. Using a number of different variables to measure market concentration, there is a *prima facie* concern with the market share held by the two largest supermarket chains (i.e. Park n Shop and Wellcome) raising questions as to whether co-ordinated market power might be exercised. The Council conducted the following comparisons of the advertising price of FMCG; and the selling price of low demand substitutability products in physical stores, with a view to assessing whether there might be any price co-ordination between the two. It should be noted that the results were limited by availability of information.

- **Comparison of advertising price of FMCG**

6.56 The two largest supermarket chains place their advertisements in popular local

newspapers every Friday. With regard to the 207 FMCG of the Council's database, Park n Shop advertised those products 707 times and Wellcome 846 times. Some products were advertised a number of times, over the period from August 2000 to the end of July 2001 (i.e. 52 weeks). Among these advertisements:

- (a) There were 118 times that both chains advertised the same product on the same date (53 of the 207 FMCG items in the Council's database).⁸³
- (b) In 95 out of these 118 times (80% of the 53 FMCG items), the products were also advertised at the same price.

● *Comparison of selling price of low demand substitutability products*

6.57 There were a total of 251 brand names collected in the Council's 2001 survey (see paragraphs 6.44 – 6.47). From the brand names recalled by households, only five brand names had a relatively high proportion of responses for which purchasing decisions would not be changed even when their prices were increased by 5%. Since these brand products are seen to be less sensitive to price change due to their brand name effect, a presumption could be drawn that there is little reason for Park n Shop and Wellcome to compete strongly with each other on the products. An exercise was therefore conducted to ascertain the extent of price competition on the products (Table 6.8).

Table 6.8: Selling Price of Popular Brands

Year	Coca-Cola		Pamper's		Golden Elephant Rice		Lee Kum Kee Oyster Sauce		Vitasoy Milk (250ml x 6)	
	Park n Shop	Wellcome	Park n Shop	Wellcome	Park n Shop	Wellcome	Park n Shop	Wellcome	Park n Shop	Wellcome
2 nd Half 1999	\$2.93	\$3.16	\$125.67	\$120.88	\$42.99	\$46.10	\$24.58	\$34.31		
1 st Half 2000	\$3.64	\$3.99	\$124.73	\$125.75	\$41.01	\$43.51	\$25.29	\$30.05	\$13.32	\$13.50
2 nd Half 2000	\$4.17	\$4.20	\$117.41	\$115.28	\$41.22	\$43.13	\$25.65	\$30.98	\$12.82	\$13.00
1 st Half 2001	\$4.38	\$4.20	\$125.81	\$127.81	\$40.87	\$42.33	\$28.70	\$30.60	\$13.00	\$12.76

Average Price - counted in half year

6.58 The results of the two comparison exercises indicated while there was some uniformity in advertised prices for some products, there was no average uniform selling prices for the products. Average selling price differences ranged from \$9.73 for Lee Kum Kee Oyster Sauce in the second half of 1999, to \$0.03 for Coca Cola in second half of 2000.

6.59 Average selling prices for Coca Cola, Pamper's and Vitasoy indicated that the lowest selling price alternated between the two chains, and for two of those products, Coca Cola and Vitasoy, the average difference was insignificant, at \$0.20. Using this limited pricing information, no definitive conclusion could be reached that the two

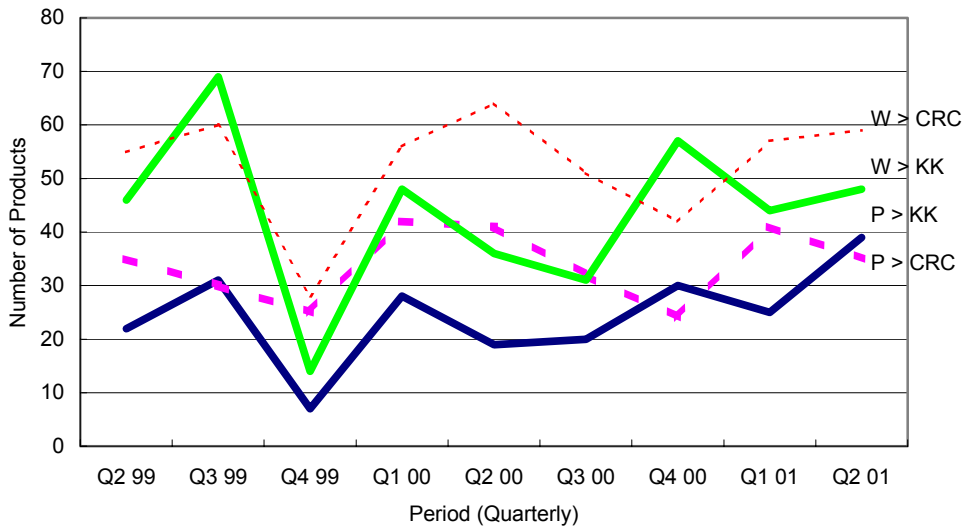
⁸³ The same products could be repeatedly advertised in different weeks and therefore recounted a number of times.

supermarket chains were coordinating prices between each other.

Effect of market exits

6.60 In order to assess market competition, it is also useful to examine the effect on pricing of the two large supermarket chains before and after the exit of rivals, e.g. adMart and Carrefour. Average quarter selling prices of 127 different products were compared across supermarkets over the period of 3rd quarter of 1999 to 2nd quarter of 2001. The number of products where the selling price of Park n Shop and Wellcome was higher than that of KK and CRC was plotted in Figure 6.6.

Figure 6.6: Comparison of Selling Price across Supermarkets of 127 FMCG



6.61 In Figure 6.6, from the 3rd quarter of 1999 to the 4th quarter of 1999 the price of products in Park n Shop and Wellcome dropped, compared with those of KK and CRC. This coincides with adMart entering the retailing market by way of direct sales in June of 1999. After that sudden peak of competitive activity, the selling price of Park n Shop and Wellcome steadily rose from the 4th quarter of year 1999 to 2nd quarter of 2000.

6.62 Beginning from the 1st quarter of year 2001, the number of products where selling prices of Park n Shop and Wellcome were higher than KK and CRC started to pick up. Carrefour, the hypermarket chain store that had an entry strategy of heavy discounting, closed in the 4th quarter of 2000. It is reasonable to assume that one of the reasons why Park n Shop and Wellcome prices rose after that period was due to that exit and the subsequent absence of a keen price competitor.

Pricing during the SARS crisis

6.63 During the Severe Acute Respiratory Syndrome (SARS) epidemic in the community, some traders exploited the early scarcity of protective masks by charging exorbitant prices at a time when as a result of the uncertainty of the disease and the extreme concern, consumers were at their most vulnerable. In March and April 2003 the Council received 361 complaints against exorbitant pricing of masks sold by small retailers. For example, the price of N95 masks was \$88 against the recommended

price by the supplier of \$15. The asking price for surgical masks which were on average sold at \$1.2 to \$1.5 were pitched by one retailer at \$15 by one outlet. Insofar as the pricing of surgical masks was concerned, the Council noted that the major supermarket chains and other well established retailers soon acted as a stabilizing force in the market for the public good. They achieved this by quickly meeting demand for the masks and offering them at prices substantially lower than the exploiting traders. There were only fifteen complaints made to the Council regarding products sold by supermarkets during the crisis and these largely related to disputes over the quality of surgical masks or the quality of bleach.⁸⁴

Non-price Competition

6.64 Both Park n Shop and Wellcome have an Internet store in addition to their physical stores. From a Council survey carried out in 2001, 11% of respondents (total responses received: 2,727) indicated they had experience in purchasing products in the Internet stores of Park n Shop and Wellcome. Of these respondents, 37% indicated that they favoured purchasing products through the Internet.

6.65 An exercise was then conducted to ascertain the extent to which there was any price differential for products sold in both forms of retailing. The assumption being that any significant price variation between the two types of outlets for the same products would be indicative of separate markets. Given resource constraints, the Council was only able to compare the price of its FMCG product sample with related goods in the Internet outlet.

6.66 As a trial, one day was randomly selected for the study. It was found that 12 out of 57 matched products in the Park n Shop sample and 9 out of 36 matched products in the Wellcome sample were priced differently from their physical stores. Based on this limited survey of FMCG, which indicated a substantial majority that were available over the Internet were priced the same in physical stores, both stores could be assumed to be using their Internet sites to extend their competitive position over other chains through non price competition.

6.67 Apart from the Internet service, there has also been an increase in value added services by supermarkets, such as home delivery services. Subsequent to adMart entering the retail market with its free delivery service under a minimum purchase condition, the two large supermarket chains followed suit by offering a free delivery service on the condition of the total purchase cost exceeding \$150.⁸⁵ Subsequent to the departure of adMart, Park n Shop announced that its minimum purchasing condition for a free delivery service changed from \$150 to \$400 on 15 February 2001.⁸⁶ Wellcome followed suit by changing its minimum purchasing condition one-week after Park n Shop amended its condition. Of note, was the fact that CRC maintained its free delivery services on a minimum condition purchasing at \$150.

Conclusion

6.68 Having regard to the different variables in measuring market concentration, and the threshold levels developed by overseas competition authorities that administer general competition laws, there is a prima facie concern that the two largest supermarket chains (i.e. Park n Shop and Wellcome) are at the level where the risk of

⁸⁴ In relation to bleach concentration, in May 2003, the Council released results of a test of household bleaches which revealed significant variations in the active ingredient sodium hypochlorite.

⁸⁵ Hong Kong Economic Times, 29 June 1999, p. A2.

⁸⁶ Hong Kong Economic Times, 7 February 2001, p. A23.

co-ordinated conduct arises. Although, as indicated in small scale Council price surveys, whilst there were similarities for product prices, the information obtained was not *prima facie* indicative of price co-ordination.

6.69 Any concern however, would be lessened if there was a constant threat of new entry. While there are no legal barriers, as noted in Chapter 3, new entrants are hampered in entering the market due to the existence of significant non-legal entry barriers, that are both structural and strategic. Insofar as structural barriers are concerned, these barriers primarily appear to lie in the difficulties of accessing prime sites due to the incumbency of existing supermarket chains in prime locations.

6.70 As far as strategic barriers are concerned, the pricing behaviour of incumbents does not provide any conclusive indication. The Council's examination of the pricing behaviour of the two major supermarket chains shows that there has been an upward pricing trend in list prices of the two despite the general downturn in the economy and the retail sector. The increase in their selling prices appeared to be an indication of a rebalancing of an aggressive discount pricing strategy when faced with competitive new entrants, and then the exit of the new entrants.

CHAPTER 7

MISLEADING AND DECEPTIVE CONDUCT

7.1 Information is the cornerstone upon which competition is built. The veracity of product labels, descriptions, advertisements and promotions is therefore important, because the way in which they are presented affects consumer choice and therefore competition. If the marketing environment is characterised by rivals engaging in misleading and deceptive conduct, this will raise doubts as to the degree of competition in the market, because the ability for consumers to make competitive choices would be distorted through misinformation.

7.2 Among the distributive trades that supply foodstuffs and household necessities in Hong Kong, the two key supermarket chains have spent a huge amount on advertising. According to the ACNielsen Media International, Park n Shop and Wellcome were the top 3 and 6 products in advertising expenditure in Hong Kong, spent \$68 millions and \$38 millions, respectively, as in Quarter 1, 2002.⁸⁷ The Council has noticed that the marketing strategy of both Park n Shop and Wellcome insofar as general advertising claims are concerned is that they both claim to offer the lowest prices on certain promotional items. In order to gauge the veracity of their claims, prices quoted from the two stores of the same product were compared in this chapter.

7.3 From recent concerns raised in the marketplace, there are problems with misleading practices as to the nature of meat products. This chapter also provides a summary of a complaint received by the Council on misleading conduct in product sale and a court case of conspiring to defraud customers over the place of origin of product being sold at a supermarket. In order for consumers to be properly informed, and for the marketplace to operate efficiently, the Council proposed several options as to how marketplace can be better informed.

Advertising Claims by Supermarkets

Lowest price claims

7.4 As shown in the study on brand name effect in Chapter 6, the focal point of competition is price. In order to gauge the veracity of their claims, the Council compared prices quoted from the two stores of the same product. The material used for comparisons was advertisements on the same date and for the same basket of goods.

7.5 As noted in the section "Co-ordination of Pricing Behaviour" in Chapter 6, there were 118 times that both stores advertised the same product on the same date, which covered 53 out of 207 items, over the period from August 2000 to May 2001. It was observed that out of the 53 items, both Wellcome and Park n Shop had some promotional items, which were claimed to have the lowest price in Hong Kong, with prices higher than one another (Wellcome had 6 promotional items with prices higher than that of Park n Shop, and Park n Shop had 7 promotional items with prices higher than that of Wellcome).

⁸⁷ ACNielsen news, *Hong Kong advertising expenditure records 8% growth in Q1*, 26 April 2002. The news report can be downloaded from ACNielsen's website <http://www.acnielsen.com.hk>.

7.6 Accordingly, while there was some truth in the claims from these two supermarkets that at the time of advertising they offered the lowest price of certain promotional items, some items (which were claimed to have the lowest price in Hong Kong) were actually more expensive than the same items selling in other supermarkets.

7.7 The extent to which claims such as those made by the above supermarkets actually affect consumers' choices in the marketplace, and lead to unfair advantage, is not easy to gauge. In some circumstances advertising claims may amount to nothing more than mere puffery and will not be taken seriously by consumers. Puffery is a concept in common law that can be distinguished from representation, by assessing the extent to which any statement can actually be verified and would be relied upon by a reasonable person when deciding whether or not to accept an offer.⁸⁸

7.8 A general statement to be "the cheapest" by a particular retail chain while seeming to be a clear representation could be viewed as mere puffery due to the inexactness of the claim, because what is exactly the cheapest, i.e. a basket of goods, all goods, or some goods, is not made clear in the statement. Faced with a barrage of such statements from all or most retailers, Hong Kong consumers might justifiably be highly cynical of such statements, and treat them with indifference. On the other hand, where consumers are aware of the falsity of such claims due to the ease of making comparisons with products of other retailers, they may even consider the claims with derision.

7.9 Nevertheless, the extent to which dubious or ambiguous statements are made in the marketplace should be a matter of concern. As long as the retailers say this is so, there will be consumers who believe in it. Therefore, advertising standards should not be allowed to fall to a level where consumers lose trust in the information that is being thrust upon them, due to the importance that an informed market plays in economic efficiency.

Advertised price and store price comparisons

7.10 Another issue of relevance in determining the veracity of advertising claims is whether newspaper-advertised prices match the shop-selling price. In order to verify these advertising claims, the Council conducted on-site visits in two different weeks (the last week of July and the second week of August 2001). Each on-site visit covered four outlets of Park n Shop and four outlets of Wellcome across wide geographical distances, including remote and isolated areas such as the Peak and Sai Kung.

7.11 A total of 130 items were checked for both Park n Shop and Wellcome. It was found that there were 32 and 21 discrepancies between the shop-listed price and newspaper-advertising price on the first visit and the second visit respectively. For some items, the shop listed price was higher than the advertised price and for some other items, the shop listed price was lower than the advertised price. The results for these two on-site visits are summarised in Table 7.1 as follows.

⁸⁸ For example, in May 2000, the Telecommunications Authority received a complaint (Case Reference T55/00(a)) against CTI alleging that an advertisement for its IDD 1666 Ultimate Price Guarantee, in which the phrase "the lowest IDD monthly charges" was used, was in breach of the *Advertising Code of Practice*. The TA expressed the view that the methodology used by CTI in determining its prices was not consistent with a layman's understanding of the meaning of the phrases "the lowest IDD monthly charges" and "Ultimate Price Guarantee".

Table 7.1: Number of Discrepancies between Listed Prices and Advertised Prices

	Supermarket	LP>AP	LP<AP
First Visit	Park n Shop	8	4
	Wellcome	18	2
<i>Total: 32</i>		26	6
Second Visit	Park n Shop	8	0
	Wellcome	9	4
<i>Total: 21</i>		17	4

Notes:

LP>AP = number where listed price was higher than advertised price; and

LP<AP = number where listed price was lower than advertised price.

7.12 The Council also compared price information from its regular *Choice* magazine supermarket price survey with that of newspaper advertising prices collected over the period from August 2000 to June 2001. Survey sampled products advertising in our survey date were selected for comparison.

7.13 There were 19 out of 129 times in the selected samples from Park n Shop with discrepancies between the newspaper-advertised price and the shop-selling price, where the advertised price was lower than the shop-selling price in 11 times. 34 inconsistencies out of 160 times from Wellcome was found, where the advertised price was lower than the shop-selling price in 26 times.⁸⁹

7.14 The situation where the advertised price was lower than the original price or label price in the shop occurred in small branches of the supermarket stores. This could possibly be due to insufficient manpower allocated to change the price label on time or to channel the new price information through the information system to the retail outlet. The inaccurate price labelling that was found, if it lasted for some time, could result in an inconvenience or confusion for consumers. The veracity of advertising claims by the supermarkets would also be doubted by consumers, affecting the ability of consumers in making competitive choices.

Defrauding Consumers and Harming Reputations

7.15 Some cases of deception are actionable as fraud under the section 16A of the *Theft Ordinance* which prohibits the use of deceit to induce another person to do something in substantial prejudice to that other person. One such case arose from a complaint to ICAC alleging that staff of a supermarket had bribed colleagues to connive at falsely representing the place of origin and false sales turnover of chicken meat. Subsequent investigations by ICAC revealed a case of fraud, while the original corruption allegation was found to be unsubstantiated.

7.16 The details of the case were that in December 2000, one supermarket manager had instructed his assistants to remove the wrapping and price labels of individual packs of refrigerated chicken fillets prepared by a distribution centre. The price labels of these packs showed that the place of origin of the meat was China and the retail price was \$13.9 per pack. The manager then instructed his assistants to re-pack the meat with a new price label, falsely representing that the place of origin of the meat was Brazil, at an inflated retail price ranging from \$21.2 to \$30.2 per pack. The re-packed meat was put on sale to customers. Another person, who took over management of the branch in April 2001, instructed the supermarket manager to continue the practice. The two managers were not authorised by the company to change the trade description or to inflate the retail price.

⁸⁹ The same products could be repeatedly advertised in different weeks and therefore recounted a number of times.

7.17 In September 2002 the two managers, charged by the ICAC, were given jail sentences for conspiring to defraud customers over the place of origin of meat products being sold at the supermarket. This case is instructive in showing that not only can consumers' interests be prejudiced by such behaviour, but that corporate goodwill can suffer. Senior management therefore needs to be vigilant in taking necessary measures to prevent their customers from being misled or deceived by unscrupulous staff.

Misleading Conduct in the Sale of "Chilled" and "Fresh" Meat

7.18 In 2002, the Council received a complaint by the meat and livestock importer Ng Fong Hong (NFH) alleging misleading sales practices in relation to wet market traders and supermarket operators selling chilled pork as fresh pork. According to NFH, "chilled" pork from Thailand had been mixed together with fresh pork and sold to consumers as fresh pork. NFH stated that this had occurred in many wet market stalls, as well as in other retail outlets.

7.19 According to information provided by the Government, there were three types of pork available in the market (with market share in parenthesis):

- (a) Pork from freshly slaughtered pigs (51%);
- (b) Chilled pork – the pork is chilled immediately after the slaughtering process and is required to be stored and displayed in chillers between 0°C-4°C (3%); and
- (c) Frozen pork – the pork is frozen immediately after the slaughtering process and is required to be stored and displayed in freezers at or below -18°C (46%).

7.20 There is no restriction on the place of origin of live pigs or pork supplied to Hong Kong as long as the importers or local farmers meet Hong Kong sanitary requirements.

7.21 All live pigs and imported chilled/frozen pork, regardless of the place of origin, have to be inspected by Food, Environment and Hygiene Department (FEHD) at food control checkpoints. Live pigs, including those from local supply, are transported to slaughterhouses where they are sold through auctions. Agriculture, Fisheries and Conservation Department (AFCD) conducts a screening test before livestock are slaughtered.

7.22 FEHD works with the related authority in the exporting country on sanitary requirements and inspects slaughterhouses and processing plants that produce chilled pork for export to Hong Kong where necessary. This gives FEHD a better understanding of the hygiene standard of an exporting country before approving imports.

7.23 FEHD requires that any business selling fresh or frozen beef, mutton, pork, snake, fish and poultry must obtain a Fresh Provision Shop licence issued by FEHD, under the *Public Health & Municipal Services Ordinance* Cap. 132 and its relevant regulations. A licence will be granted with specific licensing requirements and conditions so as to ensure the maintenance of a good standard of hygiene and safety on the licensed premises and the wholesomeness of the food supplied from the outlet. The word "fresh" is defined under the Food Business Regulation as food that has not been subjected to a process of preservation. The act of chilling meat could therefore be seen as a process of preservation.

Allegations of deceptive practices

7.24 Traders are aware of consumers' preference for fresh meat, as distinct from meat that has been subject to preservation, e.g. frozen or chilled, and can obtain a premium price for meat that is presented as fresh.

7.25 NFH stated that the mixing of fresh with chilled meat had occurred in many wet market stalls, as well as in at least one supermarket. A list of stalls that were suspected by NFH to have sold chilled meat as fresh meat was given to the Council, and Council staff subsequently accompanied NFH representatives on a tour of wet markets in which the practice was observed.

7.26 During the tour of wet markets by staff, it was noted that chilled meat could be identified by its colour and temperature. However, traders who intend to mislead consumers hang the chilled meat behind the fresh pork along the stall front, preventing consumers from identifying the chilled meat. It was also alleged by NFH that some retailers might even use preservatives (which is prohibited) to make the meat look like fresh.

7.27 In addition, NFH alleged that one of the major supermarket chains falsely used the description "fresh pork" (新鮮豬肉) on their labels and receipts. No origin was given for the meat, and it was suspected by NFH that the supermarket in question was passing off chilled pork as locally slaughtered fresh pork. The basis for this belief was that from what NFH could ascertain, the amount of fresh pork the supermarket sold was much larger than it had ordered from local farms and NFH during the period when NFH monitored the supply and sale of product.

Remedies for Deceptive Marketing Conduct

Trade Descriptions Ordinance

7.28 Section 7 of the *Trade Descriptions Ordinance* makes it an offence for a person who in the course of trade or business applies a false trade description to any goods. A false trade description is defined as (amongst other things):

- (a) a trade description that is false to a material degree; or
- (b) though not false, is misleading, that is to say, likely to be taken for such an indication of any of the matters specified in the definition of trade description as would be false to a material degree.

7.29 Having regard to the alleged deception in regard to chilled and fresh meat, applying a label describing meat as "fresh", when it falls within a definition of "chilled" could be considered misleading under the above terms. The Ordinance is administered by the Commissioner of Customs and Excise, which is primarily aimed at misleading trade marks, rather than false or misleading descriptions of meat. Whether a prosecution would be successful depends on the ability to collect clear evidence of deception on the part of traders using the term 'fresh' to describe meat.

Food regulations

7.30 In discussions with FEHD, the department stated that while regulations are directed at ensuring food is presented in a safe manner, rather than ensuring that consumers are not misled into purchasing food they did not intend to purchase, or to pay a premium price for product they consider inferior, falsely representing meat as

fresh when it was in fact chilled would be a breach of the relevant fresh meat selling licence. If evidence of found of this form of deception it could result in loss of licence.⁹⁰

7.31 Obtaining evidence to prove a beach of regulations could be achieved by for example, witnessing a trader removing chilled meat from a chilling cabinet and then selling the meat in an un-chilled state, i.e. as "fresh".

Trading on corporate goodwill

7.32 Notwithstanding the legislative remedies that may be available to counter deception, the Council considers that a commercial response could also provide consumers with a level of protection. For example, in order to protect a wholesaler's position in the market, a system of accreditation could be employed whereby the wholesaler could enforce its own standards of trader behaviour, by providing on an exclusive supply basis, promotional support and assistance in operating a fresh food shop, on the condition that the trader observes high standards of marketplace behaviour that protects the corporate goodwill of the wholesaler. In these circumstances, the wholesaler, the trader, and the consumer would benefit.

7.33 However, for this to be fully effective, there would need to be a number of wholesalers operating on a similar basis, to ensure that competition plays its part in maintaining high standards. In addition, this form of "branding" traders would not provide a basic safety net of ensuring high standards of marketing behaviour for all traders, which consumers would expect.

Labelling

7.34 Clearly differentiating between frozen, thawed, chilled and freshly slaughtered meat is problematic, and in some circumstances, labelling can be used to assist consumers.

7.35 The Council considers that for both pre-packaged and non-pre-packaged meat products, clear information should be given to consumers on whether they are freshly slaughtered, chilled or frozen, by way of labelling of the product and proper display of information on the shelves.

7.36 In addition to problems with pork, the Council also became aware of similar misrepresentations of chicken. In this regard some suggestions were made that in order to help consumers differentiate between fresh and chilled product, the heads, feet or chin of chilled chickens should be removed before they are imported. However, this form of differentiation could act against the interests of those who purchase chicken for religious purposes and cannot afford to buy fresh chicken. Traditionally, consumers pay tribute to the deity and ancestors with a whole chicken (head, feet or chin all intact).

7.37 In September 2002, FEHD publicly announced its intention to introduce appropriate licensing/tenancy conditions in the licenses for sale of chilled poultry at retail outlets requiring legible notices rectangular in shape with sides of at least 30

⁹⁰ In this regard it is noted that licence conditions prohibiting misleading and deceptive conduct can co exist with legislation primarily achieving objectives not related to commercial activities. For example, Section 86B of the *Education Ordinance* states that "No owner or manager of a school that is registered or provisionally registered shall publish or cause to be published (including issue, circulate, display, distribute or broadcast) any advertisement that contains any other information otherwise concerning the school which to his knowledge is false or misleading in a material particular."

centimetres in length and at least 20 centimetres in width printed with legible English and Chinese labelling, at the premises and at the refrigerators used display informing consumers that the premises sells chilled chicken.

7.38 A label with a security hologram printed with the letters "CIQ" would also be stuck onto the plastic packaging of each chilled chicken imported from the Mainland to show that the imported chilled chicken had been approved for export to Hong Kong by Mainland's inspection and quarantine authority. A specially allocated number would be printed on the packaging to identify in which processing plant and when the chilled chicken was processed. Also, there will be a red chop underneath the chicken wing to assist in identification.

Conclusion

7.39 There are a number of regulations that can be used to combat misleading and deceptive conduct in trade or commerce. The extent to which the regulations can prove effective in maintaining consumer confidence is a matter that should be kept under surveillance and any deficiencies should be addressed.⁹¹ The Council welcomes the assurance from FEHD that it will enhance inspection of meat stalls/shops and enhance collection of intelligence to combat against any breaches of the licensing requirements/tenancy conditions regarding storage and display of meat.

7.40 The Council also trusts that the *Trade Descriptions Ordinance* will also be applied in relevant circumstances, to ensure that consumers are protected from the unscrupulous marketing practices of some traders.

7.41 Supplier initiatives in forcing their retailers to comply with high standards of trading in order to protect the supplier's product reputation, through measures such as franchising, will also assist in raising standards.

⁹¹ In this regard, the Council issued a study in May 2001 entitled *Regulating Deceptive, Misleading & Unfair Practices in Consumer Transactions* in which it indicated areas of improvement that should be addressed in Hong Kong consumer protection laws.

CHAPTER 8

ALLEGATIONS OF ANTI-COMPETITIVE CONDUCT

8.1 Over the past years, the Council noted several press reports, and has had representations made to it from businesses alleging anti-competitive conduct in the foodstuffs and household necessities retailing sector. The allegations have concerned refusals to supply due to the inducement of resale price maintenance, and also raised issues of excessive pricing and subsequent restriction of output. There have also been indications of attempted anti-competitive collusive pricing, and misleading and deceptive conduct to obtain unfair competitive advantage.

8.2 In some circumstances, such conduct if proven would be indicative that a firm or firms possess market power, i.e. being able to persistently behave in a manner different from the behaviour that a competitive market would enforce on a firm facing otherwise similar cost and demand conditions.⁹²

8.3 This chapter relates allegations made to the Council of conduct raising competition concerns in the foodstuffs and household necessities retailing sector, and outlines information that has been obtained by the Council from its inquiries in the industry.

Refusal to Supply

Allegation by adMart

8.4 On 26 June 1999, adMart began retailing food products and household goods by way of direct sales. The attraction of its innovative strategy lay in aggressive pricing and offering delivery services. Its emergence triggered price competition by the two major supermarket chains in Hong Kong. In August 1999, there were allegations publicized in the mass media that supermarket chains had exerted restrictive pressure on suppliers to withhold supply from adMart. It should be noted that the allegations were originally made by the Apple Daily newspaper, which was related to adMart.

8.5 In light of the allegations, the Council wrote to the supermarket chains seeking their comments. In response, both companies claimed that they had no restrictive contracts with their suppliers and their suppliers were free to supply any of the other companies who competed with them.

8.6 At the same time they emphasized that the specific details of their discussion with suppliers were a matter of commercial confidentiality, indicating that any detailed information about their agreements with suppliers would not be made available to the Council. In response, the Council forwarded to the supermarket chains a copy of its *Benchmark Corporate Performance Pledge* which had been developed as part of the Council's statutory function of encouraging self regulatory measures by business to protect and promote the interests of consumers.⁹³ A copy of the *Benchmark Corporate Performance Pledge* is attached at Annex 2.

8.7 Not long after venturing into the internet-based grocery and household goods home-delivery service, adMart experienced operational problems. Allegations against

⁹² Quoted in part from Dawson J in *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 177 at 200, who in turn quoted Kaysen and Turner, *Antitrust Policy* (1959).

⁹³ *Consumer Council Ordinance* (Cap. 216), Section 4.

adMart revealed that it had imported parallel goods and counterfeit products.⁹⁴

8.8 During this time, Council staff were unable to obtain information from the company on the allegations that were being made in its related company newspaper Apple Daily. adMart eventually ceased operations on 11 December 2000.

Allegation by chain store

8.9 In October 1999, a chain store lodged a complaint with the Council that its trade orders for mooncakes were withheld by a moon cake supplier, under pressure from some supermarkets during the peak-selling weeks leading up to the Mid-Autumn Festival. The refusal to supply resulted from the chain store declining a request from the supplier to increase its selling price in line with the supermarket chains.

8.10 The Council wrote to the moon cake supplier seeking comments on the chain store's allegation of the supplier's retail price maintenance. The supplier subsequently held a meeting with the Council to explain its version of events.

8.11 At the meeting, the supplier acknowledged that it had withheld supply to the chain store in view of its low pricing levels. It also admitted to being approached by some supermarket chains, which expressed grievances at the chain store's low prices. The supplier further acknowledged that the supermarket chains mentioned the possibility of returning their purchases to the supplier if the chain store continued to undercut their prices. The supplier declined to put in writing its verbal acknowledgement of resale price maintenance, and the inducement by the supermarkets to engage in resale price maintenance.

8.12 The Council subsequently approached the supermarkets named by the supplier (referred to here as Supermarket A and Supermarket B) and sought their reaction to the allegation that they had attempted to block the chain store's discounting. The supermarkets denied the allegation and provided their account of what had happened. A chronological sequence of events concerning the allegations and the refutations, as related by all parties to the Council, is as follows:

8.13 On 4 August 1999, the chain store met with the moon cake supplier regarding its proposed moon cake promotion for the forthcoming Mid-Autumn Festival. The supplier, which has its own retail outlets, suggested the chain store sell at the recommended price of \$166 per box (which is 20% off the original pre festival price \$208 per box).

8.14 On 26 August 1999, the chain store's outlets started to sell the moon cakes at a promotional retail price of \$145 per box. The chain store decided to sell the product at this price so as to be competitive with the pricing of other major brands of moon cakes.

8.15 The chain store placed moon cake orders to the supplier for 576 and 486 boxes on 7 and 8 September 1999 respectively for delivery on 10 September 1999. The supplier rejected the delivery. The reason was, according to the supplier, that it had received complaints from Supermarket A and Supermarket B on the low selling price at the chain store. Both of them placed pressure on the supplier (by threatening to return all their purchases) not to supply goods to the chain store. The supplier requested the chain store to adjust the selling price in order to release the pressure from Supermarket A and Supermarket B. Otherwise, they could not supply the goods. The supplier's refusal to supply was transmitted over the phone to the chain store's

⁹⁴ South China Morning Post, 13 October 1999.

Category Manager and Division Manager, without written evidence of the threat from supermarkets.

8.16 In its reply to subsequent queries from the Council, Supermarket A claimed to have full knowledge of the sale of the supplier's moon cakes by the chain store at the promotional retail price of \$145 per box. Nevertheless, it still placed an order on 28 August 1999 for its stock of moon cakes; to be sold at the recommended retail price of \$166. The implication from this sequence of events is that if Supermarket A had a concern with the chain store's pricing it would not have placed the order with the supplier.

8.17 The chain store informed the Council that it had no knowledge of any trading terms, such as returns policy, between the supplier and the two supermarkets. Information furnished by the supplier to the Council indicated that Supermarket A and Supermarket B ordered 10,332 and 4,122 boxes of moon cakes respectively. The chain store refused to increase the selling price and the supplier did not supply the orders.

8.18 In its response Supermarket B denied having told the supplier on 7 September 1999 that it would return all of its purchases to the supplier or suggest to the supplier that it should control the retail prices of the chain store. Supermarket B returned unsold stock to the supplier according to its contractual right (on a sale or return basis) when the festival was over. From the information provided by the supplier, there was no indication that Supermarket A and Supermarket B altered their purchases during the period. However, in reply to the Council the supplier denied that it had contracted with Supermarket B on a return policy of leftover stock, and it was clear that the moon cake supply to the chain store by the supplier was refused.

8.19 In a subsequent survey of the retail sector during the festival in Year 2000, staff inquiries revealed that there was no supply of the supplier's mooncakes through the chain store, and that the product was being sold at \$145 in Supermarket A and Supermarket B stores.

Allegation by supermarket

8.20 In mid-March 2000, a sign was put up on empty shelves of a supermarket's stores alleging that supplies of a popular brand of drink were being withheld by the supplier as a consequence of the supermarket's low retail price. The case caught media attention, and news articles appeared in late March 2000, followed by commentaries over radio.

8.21 Council staff met the drink supplier to discuss the case. The supplier's senior management stated that the suspension of supply was not only due to the supermarket's low retail price, but was also caused by the supermarket's repeated failure to abide by suppliers' promotional schemes. The supplier stated that other supermarket chains had market power and were able to exert a high degree of influence on the suppliers in regard to supply terms.

8.22 Staff also met the supermarket's senior management, who explained that it is their pricing strategy, during periodic promotional sales, to sell products at a very low margin and even below the wholesale price. While the resale price was below their actual wholesale cost, they took the view that it was not strictly below cost, because the actual cost, as far as they were concerned was the wholesale price of their major competitors. Because these competitors could obtain better wholesale prices than the complainant, they always sold the popular brand of drink at discounted price below that

recommended by the supplier.

8.23 The complainant further submitted that the drink problem was not just an isolated incident. It alleged difficulties with other suppliers unhappy with its low price strategy. Its understanding was that suppliers were under pressure, implicit or explicit, from other supermarket chains to control supply to anyone posing a competitive threat. The complainant's management informed Council staff that facts on the refusal to supply were often difficult to ascertain because orders were more often than not made over the phone and without documentary evidence of conversations. In delaying or withholding supply, suppliers very often put forward the excuse that stock was temporarily unavailable.

Price Fixing Agreement between Competitors

8.24 Of special interest regarding the allegations of refusal to supply moon cakes, is that on 24 August 2000, a leading moon cake supplier was quoted in a newspaper article⁹⁵ suggesting suppliers should form an association to control the price and quality of moon cakes.

8.25 The Council decided to monitor prices in the lead up to the subsequent festival in the next year to see whether there was any uniformity in price between resellers. The Council also sent a letter to the supplier that had called for the price fixing agreement in August 2001, prior to the festival period. The letter expressed the Council's concern with the previous attempt at fixing the price for moon cakes and made reference to the Government's competition policy, by providing a copy of the official *Statement on Competition Policy*, for the supplier's reference. There was no response from the supplier, and a subsequent a price survey of moon cake prices was conducted in September 2001. The survey showed that there was no price uniformity in the sale of moon cakes for that year.

Abuse of Market Power

8.26 On 17 May 2001, a group of 20 suppliers complained to the Council that two supermarket chains had jointly increased prices of their goods, without negotiating the situation with suppliers. The suppliers considered this was consistent with an abuse of market power, because of the increase in consumer prices and ultimate reduction in sales.⁹⁶ Their allegations are summarised as follows:

- (a) They claimed that the supermarkets increased prices from between 3% - 16% on over 500 fast moving consumer goods (FMCG) without notifying the suppliers, from April 2001. Sometimes, they both increased the price on the same day or within one or two weeks, and continued their price strategies until sales dropped. If suppliers voiced any dissent, they were asked for a cut in wholesale prices.

[As noted in Chapter 2 of this report, regular price surveys conducted by the Council indicated that supermarket retail prices of a basket of goods increased at certain time periods, despite the general downturn in the economy and retail sector. While the items and categories used in the Council's surveys might vary with those provided by the suppliers, the

⁹⁵ Hong Kong Daily News Newspaper, 24 Aug 2000, p. A6.

⁹⁶ While the suppliers did not raise the point themselves, a query arises as to whether the tactic being employed by the supermarkets is to raise the profile of their own house, or generic brands at the expense of the suppliers' brands.

results of the price surveys, to a certain extent, support the suppliers' allegation that there were increases in supermarket retail prices at certain time periods.]

- (b) The supermarkets increased their prices gradually after the Lunar New Year in 2001. However, they kept advertising in newspapers that they offered the lowest prices in the market; which the suppliers considered was misleading consumers.

[The Council's price survey as reported in Chapter 7 also supports the suppliers' allegation that supermarkets' lowest price claim advertisements might not be correct. In one of the pricing analyses, the Council found that some of the promotional items (which were claimed to have the lowest price in Hong Kong) were actually more expensive than items selling in other supermarkets. In another analysis, it was found that there were discrepancies between advertised price and shop-listed price where in some cases the shop-listed price was higher than the advertised price. Although to be fair, in some cases the shop-listed prices were lower.]

- (c) If the supermarkets found there was competition from a discount program introduced by other stores (other supermarkets, pharmaceutical stores and grocery stores) the suppliers would be asked to increase the wholesale price to those rivals. If this was not done, the supplier would be threatened by the supermarkets that they would stop ordering their goods, or they would demand the supplier pay the discount differential so as to maintain the profit margin of the two supermarkets.

[These allegations are similar to the allegation noted in this chapter regarding the supply of moon cakes.]

8.27 Substantial pricing information indicating the products involved, the recommended retail price, the promotional price, and the subsequent price charged by the supermarkets, was provided to the Council. The letter accompanying the information also indicated the material had been passed to a Legislative Council Member.

8.28 The Council informed the suppliers that the information would be used in the Council's ongoing research into the foodstuffs and household necessities retailing sector, for inclusion in a subsequent report on the sector.

Conclusion

8.29 The allegations regarding refusal to supply, and inducement of resale price maintenance outlined in this chapter are similar to those that were made prior to the Council's 1994 *Report on the Supermarket Industry in Hong Kong*. During the subsequent years, similar allegations have arisen, however, there is no neutral body tasked with examining and resolving the complaints. In the absence of an authority with relevant investigative and enforcement powers similar to that usually found in competition authorities in other advanced economies and a body of laws which prohibits anti-competitive conduct, Hong Kong consumers will never know the extent that they have "suffered", if any, and it will be difficult to ascertain the veracity of the complaints and the refutations.

8.30 The complaints by suppliers on the supermarkets' excessive pricing conduct suggests that supermarkets are charging prices that are not set with reference to

strong competitive pressure. Recent overseas experience of investigations into the supermarket sector in those countries reveals that competition authorities have found that an indication of a highly competitive sector is when supermarkets sell FMCG below their wholesales prices, in order to attract customers. This pricing practice is generally referred to as "negative gross margins".⁹⁷

8.31 The above allegations made by Hong Kong suppliers suggest that negative gross margins are not a major characteristic of supermarkets' pricing strategy in Hong Kong (apart from that of at least one recent entrant that has subsequently exited, as noted above). On the contrary, based on the suppliers' information, the average price set by some supermarkets seems well above the standard retail price or recommended promotional price of suppliers.

8.32 At the heart of the various allegations that have been made is the question of whether any one or more of the supermarket chains in Hong Kong have market power, and whether that power has been abused to the detriment of consumer welfare. The detriment has two aspects.

8.33 In the short term, there is the immediate effect on competition across the range of price, product range, and service performance. In the long term, there is a question as what effect the use of that market power will have in sending signals to:

- (a) existing competitors to deter them from engaging in vigorous price competition; and
- (b) potential competitors as to the probable success of new entry in the Hong Kong supermarket sector.

8.34 As noted at the beginning of Chapter 6, which examined the notion of market power, a market is taken to be fully competitive where no firm is able to act independently of any other firms competing in that market, or where a firm's behaviour is effectively constrained by the threat of entry from firms outside the market. Based on the information received by the Council there are indications of minimal market constraint on the pricing behaviour of one or more supermarket chains and that some supermarkets may even set average price above the standard retail price or recommended promotional price of suppliers.

8.35 Nevertheless, the Council is not an investigative body and hence has no formal investigative powers. It is therefore unable to establish beyond doubt the veracity of the allegations.

8.36 As noted in Chapter Three, the Government's *Statement on Competition Policy* states that government entities have a responsibility for maintaining competition in their specific sectors. There may also be a role for industry self regulation in this regard, pursuant to the Government's belief that such measures are appropriate for examining allegations of anti-competitive conduct.

⁹⁷ Op Cit, UKCC report, October 2000, Chapter 4.

Summary of Previous Council Study and Government Response

Background

1. In the process of assisting to develop a comprehensive competition policy for Hong Kong, the Consumer Council conducted a series of sector specific competition studies on various industries beginning in 1993. On 16 November 1994, the Council published its first *Report on the Supermarket Industry in Hong Kong*. In May 1995, the Government published its detailed response to the Council supermarket competition study report.

Summary of Council's Study

2. Examining the competitive environment of the supermarket industry was the first objective of the 1994 report. According to the report, growth rates in the number of retail outlets between 1985 and 1993 indicated an expansion of the two largest supermarket chains (Park n Shop and Wellcome). Moreover, the study noted significant non-legal entry barriers existed in the industry, such as difficulties in accessing prime sites and suppliers and the economies of scale of the larger operators.

3. The previous report also evaluated the impact of the market structure of the industry on suppliers and consumers. In the study, it reported some evidence of the imbalance of market power between suppliers and the large supermarket chains. Because of their market share, the two large supermarket chains had strong bargaining power over suppliers and were able to impose more favourable trading terms when compared with other smaller supermarkets. The trading terms included high listing fees, promotional discounts, contributions to promotion funds, and product recalls.

4. In addition, the report recorded complaints from suppliers on alleged restrictive practices used by the large supermarket chains resulting in a drop in the number of overlapping brands between competing supermarkets, resulting in detriments to both consumers and the whole industry.

5. In examining the impact on consumers, the report focused on three areas of market behaviour - product variety and differentiation, prices, and services.

6. In comparing product variety among four supermarket chains (Park n Shop, Wellcome, CRC and KK), the study found that Park n Shop and Wellcome did not necessarily provide wider product choice than CRC and KK. The possible reasons behind this were the hard bargaining terms of big supermarkets, higher listing fee, and the availability of supermarket own-label products. Moreover, the big chains tended to follow each other's products' categories/types resulting in the limitation of new and innovative products.

7. The report stated a difficulty in examining in-depth whether price collusion existed amongst major supermarket chains, and also expressed difficulty in determining whether restrictive supply practices and product market allocation were deliberately used to avoid price competition between supermarkets.

8. Survey findings showed that the marginal price difference among the four major supermarket chains was slight. The report suggested that this might be because of resale price maintenance and low sales margins. In addition, the report recommended that consumers shop around and compare prices because not all products sold in the large supermarket chains necessarily had lower prices. Within the survey basket of products, there were some with increases higher than the rate of inflation rate, even though the rates of the total price increases of the surveyed products for all four supermarket chains were lower than the inflation rate of CPI(A) for food (excluding meals away from home) in the period 1991-1993.

9. The result also showed that all supermarket chains adopted a policy of single pricing across all outlets on the regular prices of products, but allowed fluctuations in discounts offered in different districts.

10. The Council's report proposed six recommendations, in the following areas, to enhance consumer interests:

- (a) Monitoring of the supermarket industry;
- (b) Establishment of a complaint avenue against restrictive trade practices;
- (c) Special conditions for the operation of supermarkets in remote districts;
- (d) Information disclosure;
- (e) Improvement of customer services; and
- (f) Prohibition of the sale of "out-dated" products.

Government Response

11. In response to the Council's study, the Government published its response⁹⁸ in 1995, in which it made a number of specific comments on the Council's recommendations. The responses directly related to competition and consumer issues are as follows.

Monitoring of competition

12. In response to the recommendation that a body should be designated to monitor the supermarket industry in order to keep track of any growth in market power that might be harmful to competition and consumer interests, the Government believed that there was no need for special monitoring. In expressing its doubts on the function of such a body, it believed that arbitrary decisions from such a body might have the effect of:

- (a) tampering with the freedom of contract and weakening commercial certainty;
- (b) reducing the ability of the suppliers and retailers to monitor or provide good quality or services; and
- (c) hindering competition among suppliers and restricting discount practices.

13. However, it did suggest that the Trade Practices Division of the Consumer Council might continually study the subject of supermarkets and their substitutes.⁹⁹

⁹⁸ Government report, *A Government Response to the Consumer Council Study on the Supermarket Industry*, May 1995, by the then Trade and Industry Branch, Hong Kong Government.

⁹⁹ *Ibid*, p. 9, paragraph 2.13.

Mergers and acquisitions

14. In response to the Council's concern about the possibility of a merger between the two largest supermarket chains in Hong Kong, the Government believed that control of mergers or acquisitions, if any, should apply to all business sectors and not only to supermarkets. The Government noted it would make reference to other competition studies conducted by the Council at the time and take consideration of:

- (a) whether "any general measures should be taken to monitor the market as a whole";
- (b) whether "any additional functions should be conferred on the Consumer Council in examining trade practices in the interest of the consuming public."¹⁰⁰

Government planning

15. In response to the Council's recommendation that the Government should generate a planning standard for the establishment of supermarkets in remote districts, the then Director of Planning commissioned a study on the possibility of a planning standard for the provision of supermarkets. The Planning Department's conclusion was that it was impractical to generate such a planning standard because of the difficulty in defining and testing "remoteness".¹⁰¹

Access to supermarket sites

16. The Council's report also recommended that the Government should implement an open tender policy for granting operational rights for supermarkets in remote areas. It was suggested that an operator should only be allowed to bid for the operating right of one or a limited number of supermarkets in the same development. The Council's report had two suggestions on the implementation of that policy:

- (a) "dividing the site into two lots and administering two separate tenders, one for residential development and the other for commercial facilities; or
- (b) prescribing a requirement in the agreements and conditions of land sales that developers should grant the rights of supermarket establishments through open tenders."¹⁰²

17. In relation to these two suggestions, the then Secretary for Planning, Environment and Lands was of the view that they were impracticable and unreasonable.¹⁰³ The reasons being that there was little retail space provided in separate and free-standing buildings in most multi-purpose development projects. Moreover, it was noted that there was no reason to restrict ownership that might affect the site value. The Government also noted that in any event, a bidder could overcome any restriction on granting supermarket rights in the same development by using associated companies.

¹⁰⁰ Op Cit, Government report, p.9, paragraph 2.15.

¹⁰¹ Roger Tym and Partners, *Study on Shopping Habits and Revision of HKPSG*, Chapter 6, Final Report, February 1998, p. 135.

¹⁰² Op Cit, Government report, p.12, paragraph 2.26.

¹⁰³ Op Cit, Government report, p.12, paragraph 2.28, "The Secretary for Planning, Environment and Lands is also of the view that it is unreasonable and impractical to include a lease condition requirement that supermarket operation rights should be let by the owner through open tenders."

Information collection

18. The Council's report also recommended that the Census and Statistics Department (CSD) should review its method of information collection in order to effectively monitor supermarkets. Subsequent to this advice, the Government responded that the CSD had made an improvement in the accessibility and availability of information on supermarkets to the public. In addition, because CSD was constrained due to confidentiality obligations, the CSD suggested the Council collect information directly from supermarket operators for its further monitoring of the sector.

19. Having regard to the difficulties of seeking information from private companies while assessing the competition issues by the Council, the Government would consider the need for the empowerment of the Consumer Council in the collection of business information, especially of such commercially sensitive information, subject to adequate checks and balances.¹⁰⁴

Customer services

20. The Council's report recommended that supermarkets should improve their customer services in areas of price marking and labeling. The Government stated that the response from the four major supermarket operators was positive towards the improvement of their customer services.

21. The Council's report also proposed that supermarkets should display the Code of practice of the Hong Kong Article Numbering Association (the ANA Code). The Government was informed by the major supermarket operators that they would comply with the Code and charge the lower price if there was any discrepancy between shelf price and that of the scanner.

¹⁰⁴ Op Cit, Government report, p.18, paragraph 2.53.

**Consumer Council
Benchmark Corporate Performance Pledge**

1. Most established and successful business in Hong Kong subscribe to high standards of operation. The following principles have been identified by the Consumer Council with a view to providing businesses with additional guidance in developing their consumer liaison activities and improving corporate goodwill. Moreover, the Council believes that formal recognition by a business of the principles (or similar principles) in a publicly displayed corporate performance pledge would clarify its commitment to the principles and enhance its reputation as a quality trader.

2. The principles that would be adhered to by a quality trader, as identified by the Council, are as follows:

- (a) Provide information to consumers about products and services and after-sales service in a way that will not mislead them.
- (b) Have mechanisms in place whereby safety considerations become part of the daily process of product procurement, storage and delivery.
- (c) Maintain mechanisms to ensure the security of consumer transactions and privacy of consumer information.
- (d) Have a policy which guarantees at the very least that refunds will be provided where goods are not of merchantable quality or fit for purpose, and that services will be provided with due care and skill.
- (e) Maintain appropriate internal compliance measures with regard to industry regulations.
- (f) Refrain from engaging in restrictive practices that impair economic efficiency or free trade.
- (g) Establish an open dialogue with user/consumer/community groups.
- (h) Ensure that customers have easy access to information on the business and that complaints are dealt with effectively.

Consumer Council
December 1999