



Submission to Commerce Commission on Collaboration and Sustainability Guidelines

Federated Farmers of New Zealand

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SUBMISSION TO COMMERCE COMMISSION ON COLLABORATION AND SUSTAINABILITY GUIDELINES

TO: Commerce Commission

DATE: 23 August 2023

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ABOUT FEDERATED FARMERS

Federated Farmers of New Zealand is a membership organisation, which is mandated by its members to advocate on their behalf and ensure representation of their views. Federated Farmers does not collect a compulsory levy under the Commodity Levies Act and is funded from voluntary membership.

We have a long and proud history of representing the needs and interests of New Zealand's farmers and rural communities, helping them to thrive.

Federated Farmers empowers farmers to excel in farming. Our key strategic outcomes include provision for an economic and social environment within which:

- Our members may operate their business in a fair and flexible commercial environment for the long haul;
- Our members' families and their staff have access to advocacy, advice, insights, and services such as essential to the needs of a vibrant rural community; and
- Our members adopt responsible farm management and sustainable food production practices.

SUBMISSION TO COMMERCE COMMISSION ON COLLABORATION AND SUSTAINABILITY GUIDELINES

1. INTRODUCTION

- 1.1 Federated Farmers of New Zealand welcomes the opportunity to submit feedback on the Commerce Commission's draft Collaboration and Sustainability Guidelines (the **Guidelines**).
- 1.2 Federated Farmers is a voluntary, member-based industry organisation. As such, we acknowledge our role in providing opportunity for industry-level collaboration between farming businesses that may otherwise be in competition with each other.
- 1.3 Federated Farmers acknowledges the role of the Commerce Act 1986 (the **Act**) and is broadly supportive of the principles underpinning this legislation; namely, those articulated in paragraph 10 of the Guidelines.
- 1.4 While Federated Farmers considers our membership activities to present a low risk of breaching the Act, we consider it our role to ensure that issues around competition are considered by our members during their activities with each other, both under and outside of the Federated Farmers' umbrella.

2. GENERAL COMMENTS

- 2.1 We applaud the Commerce Commission for taking this proactive step and providing accessible guidance to industry.

3. THEORETICAL EXAMPLES

- 3.1 We note the inclusion of illustrative examples throughout the Guidance and that these are largely based on instances where anti-competitive conduct has resulted in prosecution or litigation.
- 3.2 Federated Farmers considers that it would be helpful to include further examples of behaviours that would breach the Act. We consider that hypothetical examples would be sufficient, as the intention of examples is to provide illustrative examples so that users of the Guidance can reason by analogy in considering their conduct and decision-making.
- 3.3 With this in mind, we have provided some examples from 3.6, below, and where they might sit in relation to the Guidance. We have also included a current example of conduct which we consider worthy of the Commerce Commission's attention, from 3.8.
- 3.4 We would also add that the Commerce Commission should consider providing examples that are relevant to the business make-up in New Zealand. While the examples listed in the Guidelines are relevant to an extent, because many of these pertain to large and multi-national business, they do not necessarily reflect the nature of business in New Zealand. Our concern is that smaller businesses reading the Guidance may therefore consider their actions beneath notice, when the legal test is not on business size, per se.
- 3.5 Federated Farmers suggest that the Commerce Commission include examples in Guidance that relate to small-medium enterprises, along with those operating in a rural

setting. These business types are prominent in New Zealand and users of the Guidance may find these more relevant, which would enhance engagement with the content of the Guidance as a whole.

- 3.6 For paragraph 26 discussion “Collaborative sustainability initiatives that may impact competition” a hypothetical example relating to 26.1 (industry commitment to sustainability related standards) could be:

To create a marketable sustainability brand for their industry, industry members agree to a standard which means members are prohibited from using certain products in their production. The standard is nearly compulsory, as members cannot export their products unless they adhere to the standard; the industry is largely export focused.

- 3.7 For paragraph 26 discussion “Collaborative sustainability initiatives that may impact competition” a hypothetical example relating to 26.2 (supply chain restriction) could be:

To encourage their members to use products with a certain supply chain accreditation which would lift the industry’s environmental reputation, an industry body provides credit terms so its members can purchase this type of product with greater ease, leading to preferential acquisition over other products on offer.

- 3.8 A further example relating to paragraphs 28 and 29 could be reflective of the scenario highlighted by Gareth Vaughn’s article¹ for www.interest.co.nz. As a result of their commitment to the Net-Zero Banking Alliance (NZBA), BNZ have set a target for the dairy farming sector to reduce their financed biological emissions by 11% before 2030, using 2022 as a baseline.

- 3.9 As the www.interest.co.nz article notes, NZBA members are required to set sector level targets, and all major New Zealand rural lenders’ parent banks are signatories to the NZBA. To our knowledge, no further New Zealand banks have set specific sector targets, but as the article suggests they are under consideration.

- 3.10 We believe the Commerce Commission needs to consider how this arrangement could affect competition for rural lending and for banking services more generally. It should also consider including an example in the Guidelines to reflect the hypothetical scenario where further New Zealand banks implement agreed targets to reduce agricultural emissions, considering NZBA provisions.

- 3.11 If further rural lenders restricted their services in a bid to meet their obligations under the NZBA, including contractual and lending arrangements between them and agricultural customers, we submit that, in absence of any Commerce Commission clearance, this could have the potential or effect of restricting output in the agricultural sector and could be considered anti-competitive.

ENDS

¹ For further information <https://www.interest.co.nz/rural-news/123574/bnz-having-target-reduce-its-financed-dairy-farming-emissions-through-membership#:~:text=One%20of%20BNZ's%20initial%20targets,2030%20against%20a%202022%20baseline>