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Draft Report
Market Study Into the Retail Grocery Sector

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Introduction

1. Vegetables New Zealand and Horticulture New Zealand welcomes the opportunity to make a further submission on the Commerce Commission's Market Study into the Retail Grocery Sector. This submission adds to the verbal submissions made during the Commission's recent consultation conference and our previous written submissions.

Transparency for Margin and Costs of Production

2. The Commission's study is focused on the price that consumers end up paying to the supermarket duopoly. A key ingredient of that price is the margin that the supermarkets and each of the supply chain participants charge, along with the costs of production and distribution. Publication of these costs and the margins charged would in our submission place through public opinion downward pressure on prices that consumers are charged. Alternatively wholesale pricing linked to volumes could be published. Ways in which to publish this information include the retail ombudsman or adjudicator reporting it on a regular basis. Another publication option is to have available on a website real time costs of production, wholesale pricing, volumes and margins for anyone to access. The result of such transparency would, in our view, encourage the supply chain participants to focus on costs, but particularly focus on the margins they are charging. This would in turn result in more competitive pricing for consumers. If you would like to explore this concept further, we are available to discuss it in more detail.

Code of Conduct

3. All the participants attending the conference agreed that there should be a mandatory supplier code of conduct, but there was not general agreement as to what it should cover and how it should operate. Turning to the questions asked by the Commission at the consultation conference.
4. *Who should be subject to a grocery code*? We submit that only large retailers and their distributors by use of a threshold should be subject to the code so as not to stifle start-ups, fetter innovation and create unnecessary bureaucracy. The threshold could be set based on market share on the basis of say a retail market share of 20% or more. We note that the competition issues and concerns highlight by the Commission's Study are not related to all the participants in the grocery market, just on the large retailers.
5. *To what extent might concepts from the Australian Food and Grocery Code of Conduct be relevant?* We submit that UK model is more suited to New Zealand's grocery sector as it permits more flexibility and better outcomes for fresh produce. We do, however,

submit that a bespoke code should be created for New Zealand and we are able to contribute to the development of that code..

6. *Should there be different requirements for fresh produce?* We submit that the requirements placed on dry goods cannot be the same as for fresh produce due to freshs' limited shelf life. This does not however mean that there needs to be a separate code, but as required separate provisions when appropriate for dry goods and fresh produce. We are also able to assist with the development of this.
7. *To what extent should the code limit use of best price guarantees and exclusive supply arrangements?* We submit the Code's focus would be best placed on fair dealings and transparency as discussed above. We also recommend that the code be principled based to allow innovation and a dynamic competitive approach.
8. *What should the oversight, code compliance, monitoring and dispute resolution process be.?* We submit that it is important to have enforcement as the last resort, but taking the example of the UK code and its adjudicator role, achieving fair dealings in real time a better outcome than lengthy enforcement action. This could include direct interaction by the adjudicator with the parties affected by the dispute or a more formal but timely dispute resolution process.

Suppliers Collectively Bargaining

9. We support having authorised suppliers collective bargaining as an option, but believe that for fresh produce, it is a system, due to the dynamic nature of fresh produce, that will not offer much assistance. This is especially so with the Commission's proposed $10 million annual limitation on the suppliers in the collective bargaining group. In the fresh produce sector this will cut out all but niche suppliers.
10. There may however be some competitive utility in providing for Community Supported Agriculture https://www.nal.usda.gov/afsic/community-supported-agriculture under the Commerce Act as a collective bargaining exemption.

Conclusion

11. Thank you for the opportunity to make this and our other submissions.
12. We believe the greatest improvement that the Commission could recommend, which would result in better pricing for consumers or, alternatively an understanding of the costs of the produce they are purchasing: is transparency of the costs of the production, wholesale pricing linked to volumes and / or the margins charged by the supply chain participants. Public scrutiny and an understanding of the financial aspects of producing the product they are buying; we believe will be a real and enduring force for competitive pricing.
13. Similarly we fully support, as did all the submitters at the Consultation Conference, the development of a mandatory supplier Code of Conduct with a setting for fresh produce. In our submission we support the greater flexibility offered by the UK model. In any event the New Zealand model, in our view, needs to be developed in consultation with all the participants of the supply chain having input.
14. We are available for further comment and input should that be required.