

## Privacy of natural persons

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Competition Policy

Building, Resources and Markets

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**Re: Submission Regarding the Grocery Code of Conduct Consultation 2022**

The section of the consultation paper that we really want to see change in, is about fair-trade regarding grocery supply agreements and the negotiating power that retailers have over suppliers/growers.

Before we get into that I have attached two recent grower payments for lemons (note: I'm just using lemons as a comparison at present seen as these are in supply, but we faced the same issues this year with our Valencia's and persimmons (which also dropped in price locally) and I know mandarin growers have been complaining too. So, it is across the board. As you can see, we are only averaging 35c per kg for our lemons and that is not even covering our production and labour costs. It is so disheartening as these prices are even lower than previous years (see 2019 average payment of 50c per kg). So with a drop in prices to growers and production costs up you don't need to be a business analyst to see there is no money being made. Everything is going up, so why are the growers getting paid less? Because retailers are beating down the prices and playing the marketers/suppliers off against each other, so they feel they have no alternative but to drop their prices but at a loss to the growers.

Growers production costs are up at least 30% (labour, fuel, power, fertilisers, cartage have all had big increases just to name a few).

Our marketing company (who deals with the retailers on our behalf) give us a take or leave price which we are not able to negotiate as the big supply chains will go wherever than can get the cheapest price and other marketing companies are dropping their prices so low just to move stock, therefore the growers are not making anything on the local market (the marketing companies don't take a loss though). We understand during peak season there is a lot of supply out there, but marketing companies should not be allowed to keep dropping prices to such low levels like this and be beaten down by the retailers to do so. The marketers/suppliers need to be able to communicate so there is a price balance reached which is fair to the growers.

There should be a threshold that they can't sell below (say for example with lemons not below 95c per kg). We also grow other citrus and persimmons and it's the same story for them. Hardly worth growing them at a local level and so much is thrown away because they are marked, yet there is

nothing wrong with the fruit itself. So we're also paying to grow food to be dumped too! We're not asking for a lot just 60c per kg more (which would help ease pressure, not necessarily answer all our prayers or not by any means make us rich), so if something is \$3.39 per kg it would be \$3.99 per kg so it wouldn't be a huge jump to the consumer, but it really should come off the supermarkets excessively high profit margin. Whilst they are making up to \$1m a day in profit they are happy to buy produce from a grower at a loss ... but as long as they're making money right? It's not surprising to hear of so many in the agriculture and horticulture industry committing suicide and these numbers are increasing.

We have not had a price increase for 10 years, not even an inflation increase or anything to help towards our increasing production costs (note: this may not be the case for kiwifruit and apples). This is distressing and disheartening given the increased costs of production we are experiencing. To add salt to the wound, we currently have approx. 42,000 kgs of lemons on the trees that we won't be able to pick as with these prices and the cost of picking them it is not worth the extra loss and they will have to rot. No one can afford to live off the land to grow fruit to rot or to sell at a loss.

We are also concerned that the supermarkets/marketers will just beat the prices down more and blame the new regulations as an excuse rather than pay us decent value for our crops.

### **What Could Be Done?**

From what we can see from some sections in the Grocery Code of Conduct consultation paper that we find would help the growers/suppliers current situation **are below in bold:**

#### [Including a Purpose Statement within the Code and Overarching Obligations](#)

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#### 4.2 Purpose of the Code

57. The purpose statement could set some boundaries around what the Code will or will not do. For example, allowing the Code to:
- d. support (or at the least not hinder) supplier participation in any wholesale supply arrangements by the designated retailer.

**Allow communication between marketers to avoid prices going below a level where growers are facing losses (or minimal profit), therefore retailers aren't playing each of them off for the cheapest price (price war) resulting in devastating returns for the growers.**

#### 4.3 Overarching Obligations

Good faith and/or fair dealing obligation

65. An overarching principle of either good faith or fair dealing has the potential to improve the conduct in the grocery acquisition market and improve adherence to the purpose of the Code.
67. Good faith is best known in relation to employment matters where it has and has four elements:

d. most broadly, must treat others fairly using common sense.<sup>1</sup>

**Fair-trade that ensure retailers can't buy produce undervalue for them to then profit off a grower's loss because they aren't being fair on what they are paying the grower/supplier. So, there should be communication between marketers/suppliers/growers to ensure prices are not being sold undervalue.**

74. We have developed three options for good faith or fair dealing obligations. All three options manage the risk (outlined in paragraphs 8-10) that the Code may result in an excessive shift of negotiating power to suppliers which could put upward pressure on prices for consumers, and generally focus on procedural matters rather than substantive matters.

**We support Option 2 (Prescriptive Code):**

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A **good faith** obligation

Designated retailers must:

- a) not put the supplier under duress
- b) not retaliate against the supplier
- c) be responsive and communicative
- d) provide information in time for suppliers to respond
- e) generally engage in the trading relationship in good faith.
- f) avoid discrimination or distinction between suppliers,
- g) recognise the supplier's need for certainty around the risks and costs of trading.

**We favour option 2 as there is strong focus on a good faith obligation that has the potential to drive an overall improvement in a retailers conduct with the supplier.**

- i) **This could reduce the likelihood of costs or risks being passed onto suppliers and improve the certainty and transparency of the terms of the trading relationship.**

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- ii) **When a grower is facing no or small profits the retailer can't put the supplier under duress pushing for lower prices when the grower is already suffering.**
- iii) **Retailers should not retaliate against the marketers/suppliers by pressing someone else to lower prices forcing the next to follow suit (as this is what is currently happening).**
- iv) **The retailers should engage in good faith and be fair for what they are paying for fruit/produce. They must recognise the suppliers need, risks and costs of trading and pay fair prices. They are fleecing the growers at present.**

## 5. Requirements for Supply Agreements

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### 5.1 Approach to this Issue

85. Grocery supply agreements set out the terms and conditions of the trading relationships between retailers and their suppliers. The negotiating power that the designated retailers have over suppliers may influence the terms and conditions in supply agreements. In relation to supply agreements, the Code should:

- a. provide certainty and transparency in relation to the terms and conditions of supply by establishing a range of minimum expectations on designated retailers

**Set a minimum threshold where fruit cannot be sold below an undervalued price. Given how each variety of fruit is different, a meeting between marketing companies, suppliers, growers, and retailers at the beginning of each season can set these.**

- b. reduce the likelihood that suppliers will face unexpected costs or risks, including by prohibiting or limiting some conduct by designated retailer

**Allow communication between marketers/suppliers to avoid prices going below a level where growers are facing losses (or minimal profit), therefore retailers aren't playing each of them off for the cheapest price (price war) resulting in devastating returns for the growers. A fair-trade that ensures retailers can't buy produce undervalue for them just to then profit off a grower's loss because they aren't being fair on what they are paying the grower/supplier.**

In summary, growers need to make money too. Retailers can't take all the profits and be unfair to those who grow the food. Growing is hard work and high risk with the bad weather elements added to the mix, it makes growing a challenge and is stressful.

Yours faithfully,

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