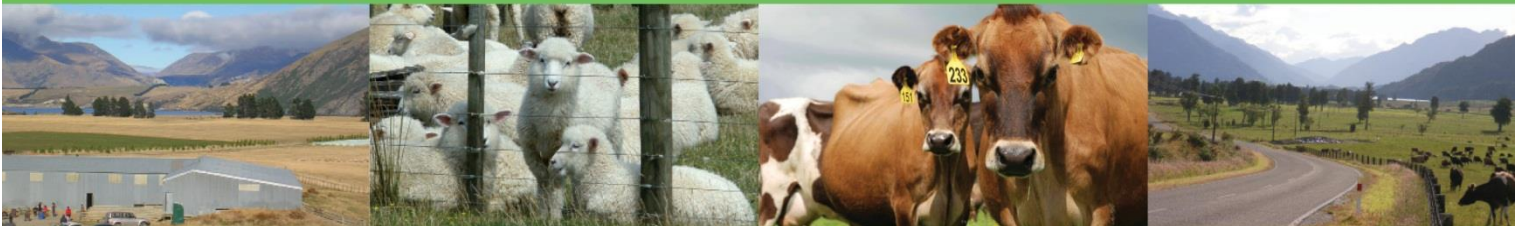


# Promoting Competition in New Zealand—A Targeted Review of the Commerce Act 1986

Federated Farmers of New Zealand

February 2025



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# SUBMISSION ON THE TARGETED REVIEW OF THE COMMERCE ACT

**TO: Ministry of Business, Innovation, and Employment**

**DATE:** February 2025

## ADDRESS FOR SERVICE

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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.

Federated Farmers represents rural and farming businesses throughout New Zealand. We have a long and proud history of representing the needs and interests of New Zealand's farmers.

Federated Farmers aims to empower 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;
- Our members' families and their staff have access to services essential to the needs of a vibrant rural community; and
- Our members adopt responsible management and sustainable food production practices.

## **SUBMISSION ON PROMOTING COMPETITION IN NEW ZEALAND**

- 1.1 Federated Farmers of New Zealand welcomes the opportunity to submit to Ministry of Business, Innovation & Employment (MBIE) on promoting competition in New Zealand.
- 1.2 We are committed to addressing market imbalances and promoting a fair and competitive environment for farmers, ensuring sustainable operations and equitable treatment across all agricultural sectors.
- 1.3 We would welcome the opportunity to meet with MBIE to discuss this submission further.

## **2. SUMMARY OF RECOMMENDATIONS**

- 2.1 Federated Farmers recommends that:
  - (a) MBIE prioritise the development of an industry code for the arable and wool sectors to address these challenges and establish a framework that supports equitable outcomes for all parties.
  - (b) The Commerce Commission should establish dispute resolution mechanisms as part of any new industry code.
  - (c) MBIE work collaboratively with Federated Farmers and stakeholders to develop these industry codes, ensuring they reflect practical needs and realities.
  - (d) MBIE and the Government amend the Commerce Act 1986 to introduce Right to Repair provisions, ensuring agricultural machinery manufacturers provide farmers and independent mechanics with access to necessary repair tools and software.
  - (e) MBIE explore legislative options to enable supervised collective bargaining for farmers, ensuring they can negotiate fair prices without breaching competition laws.

## **3. GENERAL COMMENTS**

- 3.1 The Dairy Industry Restructuring Act (DIRA) already provides a framework for addressing competition concerns in the dairy industry, demonstrating the value of sector-specific regulatory tools. There is an inefficiency in addressing market imbalances through primary regulation, when industry codes provide a more flexible and responsive mechanism for doing so.
- 3.2 Industry codes must be enforceable to provide certainty and fairness for all parties. Reliance on informal or voluntary arrangements often leaves smaller stakeholders, such as farmers, vulnerable to unequal power dynamics. A framework that includes a third-party enforcement mechanism and dispute resolution scheme ensures transparency, accountability, and fair outcomes.
- 3.3 The wool industry operates under significant structural and operational challenges. While the lack of competition in wool scouring is a well-documented issue, there is an equally concerning lack of transparency in the wool auction system. Currently, a small

number of large players dominate the strong wool market, and anecdotal evidence suggests informal cooperation between buyers, including instances of wool being purchased at auction and resold at subsequent sales. This practice undermines the integrity of the auction system, reduces competition, and limits opportunities for farmers to secure fair prices.

- 3.4 In the arable sector, there is growing interest in formalising an industry code of conduct to address issues such as contract compliance, fair terms, conditions and pricing. While some initiatives are underway, there is a need for a comprehensive, enforceable framework to provide certainty and fairness.

#### **4. PRIORITISING INDUSTRY CODES FOR WOOL AND ARABLE SECTORS**

- 4.1 The wool sector's reliance on a single provider for scouring services highlights the risks of monopolistic control within the sector. While wool scouring is a specialised service unique to this industry, the absence of competition within the wool sector limits farmers' ability to negotiate fair terms and ensures pricing inefficiencies. The lack of transparency in the wool auction system further compounds these issues, creating an uneven playing field that favours larger players over smaller stakeholders.
- 4.2 The arable sector faces challenges around contract compliance, and fair pricing. Relationships between growers, merchants, and processors often lack the transparency and consistency needed to ensure fairness. Companies involved in arable processing and marketing—key stakeholders in the sector—would benefit from an enforceable industry code that provides clarity and strengthens trust.
- 4.3 Federated Farmers recommends that MBIE prioritise the development of an industry code for the arable and wool sectors to address these challenges and establish a framework that supports equitable outcomes for all parties.

#### **5. ESTABLISHING COMPLIANCE AND DISPUTE RESOLUTION MECHANISMS**

- 5.1 Effective industry codes must include accessible and efficient dispute resolution mechanisms to ensure confidence in raising and resolving disputes. An impartial third party to oversee and adjudicate disputes as they arise is essential. This approach reduces costs and complexity for farmers, providing a timely and fair alternative to costly legal proceedings.
- 5.2 The Commerce Commission's role in overseeing compliance should be extended to include education and awareness initiatives. By promoting good practices and encouraging better behaviour from all parties, the Commission can proactively address potential disputes and support the development of fairer industry standards.
- 5.3 Federated Farmers recommends The Commerce Commission should establish dispute resolution mechanisms as part of any new industry code.

#### **6. ENGAGING FARMERS AND STAKEHOLDERS IN CODE DEVELOPMENT**

- 6.1 Farmers and other stakeholders bring invaluable insights into the practical challenges and opportunities within their sectors. Their engagement is essential to developing industry codes that are both effective and enforceable.

- 6.2 A collaborative approach would ensure that industry codes reflect real-world needs and encourage widespread buy-in from all parties.
- 6.3 Federated Farmers recommends MBIE work collaboratively with Federated Farmers and relevant stakeholders to develop these industry codes, ensuring they reflect practical needs and realities.

## **7. ENSURING COMPETITION THROUGH RIGHT TO REPAIR**

- 7.1 Restrictive repair practices in the agricultural machinery sector are limiting competition and increasing costs for farmers. Manufacturers are locking essential maintenance and repairs behind proprietary software, preventing farmers and independent mechanics from servicing their own equipment. This forces farmers to rely on manufacturer-approved servicing, driving up costs and reducing choice.
- 7.2 Other countries, such as Australia, have begun addressing similar issues by requiring manufacturers to share repair and diagnostic information. New Zealand must ensure that farmers are not left at the mercy of monopolistic servicing arrangements that undermine competition and increase financial pressure on rural businesses.
- 7.3 Federated Farmers recommends that MBIE and the Government amend the Commerce Act 1986 to introduce Right to Repair provisions, ensuring agricultural machinery manufacturers provide farmers and independent mechanics with access to necessary repair tools and software.

## **8. ENSURING FAIR PRICING THROUGH COLLECTIVE BARGAINING**

- 8.1 Farmers often face significant imbalances in price negotiations, particularly in sectors where a few dominant buyers control market pricing. In Oregon, the introduction of state-supervised collective bargaining allowed seed growers to negotiate fairer prices without breaching antitrust laws. This model ensures that farmers have a stronger voice while maintaining market integrity.
- 8.2 A similar framework in New Zealand could help address pricing disparities in key agricultural sectors, particularly where producers have little negotiating power. By enabling structured, government-supervised collective bargaining, farmers could secure fairer pricing while ensuring compliance with competition law.
- 8.3 Federated Farmers recommends that MBIE explore legislative options to enable supervised collective bargaining for farmers, ensuring they can negotiate fair prices without breaching competition laws.