

SUBMISSION ON

Targeted Review of the Commerce Act 1986

14 February 2025

To: Ministry of Business Employment and Innovation

Name of Submitter: Horticulture New Zealand

Contact for Service:

Sarah Cameron
Senior Policy Advisor
Horticulture New Zealand
PO Box 10-232 WELLINGTON

Privacy of natural persons

OVERVIEW

Submission structure

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Our submission

Horticulture New Zealand (HortNZ) thanks MBIE for the opportunity to submit on the Targeted Review of the Commerce Act 1986 and welcomes any opportunity to continue to work with MBIE to discuss our submission.

HortNZ could not gain an advantage in trade competition through this submission.

HortNZ's Role

Background to HortNZ

HortNZ represents the interests of approximately 4,500 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain, and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



Submission

It is noted in the consultation document that market studies provide the best indicators of competition. While Market-based studies often provide valuable indicators of competition, whether they are the "best" depends on the terms of reference.

The terms of reference¹ of the 2020-2022 market study into the grocery sector concentrated on:

1. The structure of the grocery industry at the wholesale and retail levels
2. The nature of competition at the wholesale and retail levels of the grocery industry
3. The pricing practices of the major grocery retailers
4. The grocery procurement practices of the major grocery retailers; and
5. The price, quality, product range and service offerings for retail customers.

The study found there needed to be more competition for New Zealanders to benefit from better prices, more choice, and more convenient shopping. The [Grocery Industry Competition Act](#) was developed in response and a Grocery Supply Code² implemented.

In this instance, the study and corresponding regulatory measures is a good example of when a market study provides the best information.

1.1. Code or rule-making powers and other matters

The Grocery Supply Code sets out rules for the conduct of regulated grocery retailers (RGRs) Foodstuffs North Island, Foodstuffs South Island and Woolworths New Zealand when dealing with grocery suppliers.

The Grocery Supply Code was developed to address the imbalance in bargaining power between RGRs and their suppliers. Its purpose is to promote competition and efficiency in the grocery industry by:

- Promoting fair conduct, and prohibiting unfair conduct
- Promoting transparency and certainty about the terms of agreements
- Contributing to a trading environment that supports competition, confident participants and a diverse range of suppliers in the grocery industry.

Initially the Supply Code was called the Grocery Code of Conduct and came into effect in 2023 with a requirement for it to be reviewed by September 2025. This consultation took place in 2024 which HortNZ submitted on.

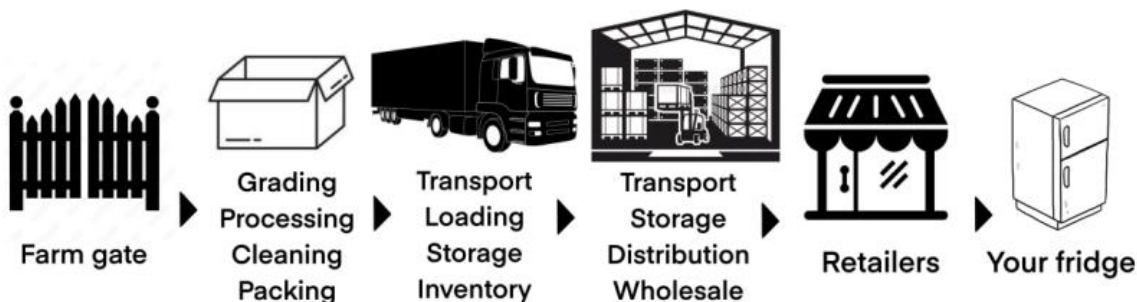
¹ <https://gazette.govt.nz/notice/id/2020-go5278>

² https://comcom.govt.nz/__data/assets/pdf_file/0022/329710/Commerce-Commission-Grocery-supply-code-factsheet-28-September-2023.pdf

Among other recommendations, HortNZ sought an expansion of the Grocery Supply Code or introduction of a new Horticultural Code (similar to Australia) to address the same dynamic that exists within the horticultural supply chain. For context, growers interactions with the fresh produce supply chain are at the first point of sale which can be through an aggregated wholesale market, grocery retailer or other direct arrangement.

The Horticulture Supply Chain

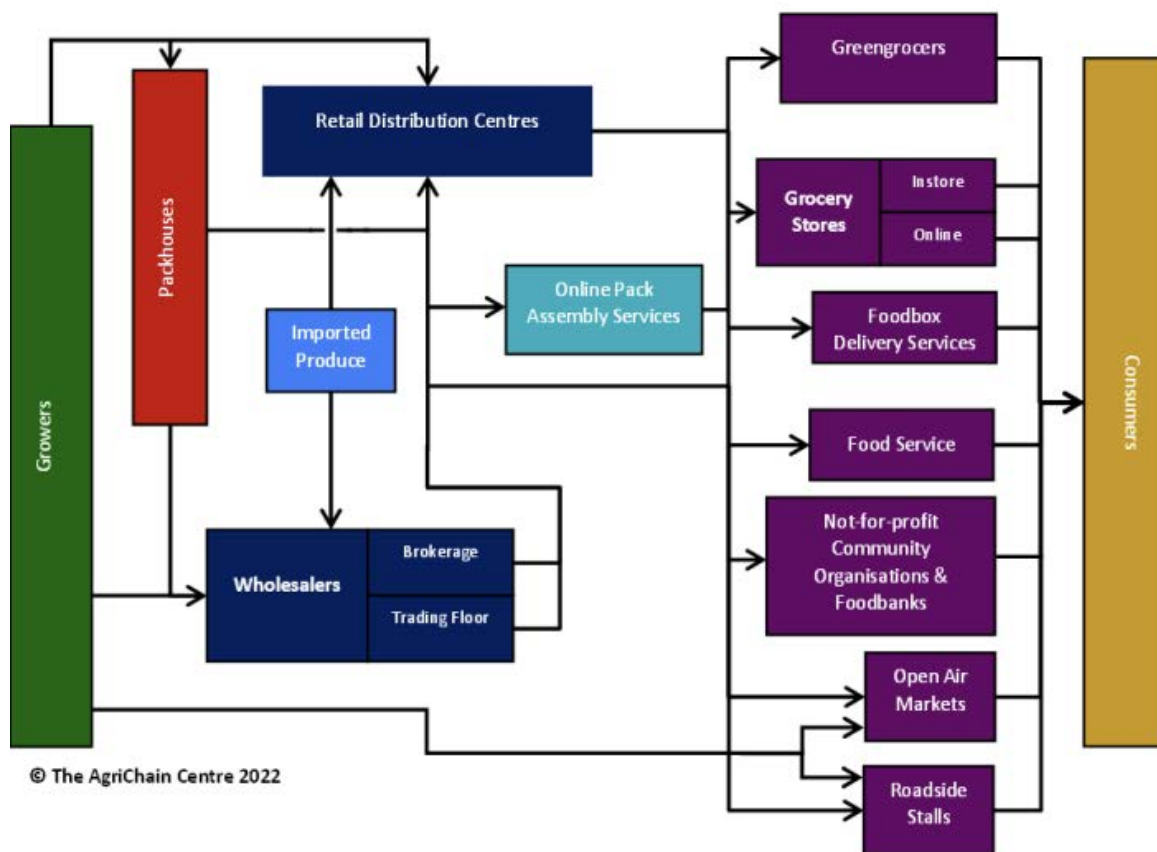
The horticulture supply chain has multiple steps, from farm gate, to processing to transport, to storage and distribution, to retail before reaching the consumer. Different growers sell their product at different stages along this supply chain.



Flows of Fresh Produce in NZ

The graph illustrates the flows of produce. The proposal is focused on the retailer, but there is a significant flow of produce from growers via the wholesale market. There are also direct relations between growers and small retailers and food service markets.

New Zealand Fresh Produce Supply Chain



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HortNZ has responded to the below questions with a view specific to horticulture.

- Q. 1.1** Do you consider that industry codes or rules could either:
- Fill a gap in the competition regulation regime or
 - Provide a more efficient and appropriate response to addressing sector-specific competition issues rather than developing primary legislation?

Codes of conduct provide a set of rules or minimum standards for an industry. They cover the relationship between industry participants and their customers.

HortNZ supports an industry code as they provide consistency and an additional layer of transparency however we do not support a regulated approach. Codes can be recognised in the Act as a mechanism but not prescribed - eg - standards and rules for each code set out. An example of an industry code within horticulture would be to manage the conduct between aggregated wholesalers and suppliers.

- Q. 1.2** If you think that industry codes or rules could fill a gap, what class of matters or rules could be included in an industry code or rules?

HortNZ favours using the Australian approach. The [Food and Grocery Code of Conduct](#) is a voluntary code. It is prescribed under the *Competition and Consumer Act 2010*. The code was introduced to improve standards of business behaviour in the food and grocery sector - this includes the conduct of retailers and wholesalers towards suppliers.

1.2 Conclusion

Due to the specific nature of industries, a regulated approach may be best for some while others seek to mirror the non-regulated Australian approach. There needs to be flexibility to allow the introduction of codes (whether regulated or not) and not have one rule for all.