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Turners and Growers Fresh Limited (T&G Fresh)

Submission on the New Zealand Grocery Code of Conduct

Introduction

T&G Fresh appreciates the opportunity to respond to the Ministry of Business, Innovation and Employment (MBIE) on the design of a New Zealand Grocery Code of Conduct.

This submission is divided into two parts:

- a) Part 1: Provides background on T&G Fresh and its role as both a grower, marketer and supplier of fresh fruit and vegetables in New Zealand.
- b) Part 2: Sets out T&G Fresh's response to relevant questions for which we have feedback on the design of the Grocery Code of Conduct.

T&G Fresh is happy to provide more detail to MBIE on any of the points raised.

Part 1: Overview of the T&G Fresh business

T&G Fresh is the domestic New Zealand business of T&G Global Limited, which is listed on the New Zealand Stock Exchange.

The business spans the fruit and vegetable supply chain, from partnering with retailers, in-home meal kit partners, foodservice providers and quick service restaurants to provide them with the brands and quality they need, right through to growing its own produce, working with independent growers throughout the country, exporting produce, as well as importing produce which isn't readily grown in New Zealand. The business operates both as a grower, grower aggregator and supplier of fresh fruit and vegetables.

T&G Global, through its subsidiaries, grows, markets and sells its own apples, tomatoes, blueberries and citrus crops.

Alongside its own grown produce, T&G Fresh competes with other fresh produce wholesalers to sell fruit and vegetables on behalf of independent New Zealand growers through its 12 market floors located in Whangarei, Auckland, Hamilton, Tauranga, Gisborne, Hastings, New Plymouth, Palmerston North, Wellington, Nelson, Christchurch and Dunedin. These markets are trading floors (both physical and digital), where growers' produce is sold to the major supermarkets, independent retailers and foodservice customers.

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Part 2: Response to questions

2. The approach to developing a Code of Conduct	
Q1	<p>Do you have any comments in relation to Chapter 1, in particular any comments on:</p> <ul style="list-style-type: none"> - the objectives (section 2.2)? - evaluation criteria for the Code (section 2.3)?
	<p>We agree and are aligned with the stated objectives to improve dealings between grocery retailers and suppliers and in respect of competition in the market for the acquisition of groceries, and that the Code should address any imbalance of negotiating power between grocery retailers and their suppliers.</p>

3. Which retailers should be bound by the Code?	
Q2	<p>In relation to section 3.3, which of the three Designation Options do you think is best, and why?</p> <p>Option A. We believe that this will provide the most protection for suppliers.</p>
Q3	<p>In relation to section 3.4, which of the three Options do you think is best, and why?</p> <p>Option A. This will ensure that all buying functions, held at head office level or store level, are provided for. It will reinforce that all owner operators under a co-op are included.</p>
Q4	<p>Do you have any comments on the preliminary assessment of the options against the criteria in Chapter 3?</p> <p>We believe it is worth considering a future proofed mechanism within the scope of the Code to prevent major grocery retailers potentially gaining more power and further distorting power in their favour by implementing the Commerce Commission's requirement to open up their wholesale supply. With increased revenue for retailers through the future wholesale channel comes the parallel increase in buying power.</p> <p>Existing New Zealand fresh produce wholesalers who support smaller and local growers into retail channels sustainably are at risk of disruption and added costs if major retailers open their wholesale channels and request suppliers/growers to deal directly with them. New Zealand currently has a dynamic and competitive fresh produce wholesale market, which plays an important part in supporting the country's vibrant grower community by aggregating produce for retail channels. This delivers consistency and certainty for growers, enabling them to invest in their businesses, and by helping to balance supply and demand, it reduces food waste across the industry.</p>

4. Including a purpose statement within the Code and overarching obligations	
Q5	<p>In relation to 4.2 purpose of the Code, which of the three options do you agree with, and why?</p> <p>Option 2, this provides for a clear purpose and reinforces the key aspects of the proposed Code, notwithstanding creating the ability to apply the Code practically for both growers and retailers. Furthermore, the purpose provides a balanced pivot point for growers and retailers to have transparent and in good faith negotiations.</p>

Q6	<p>Do you see any risks if the purpose of the Code was to:</p> <ul style="list-style-type: none"> - address any impacts of the major grocery retailers’ trading relationship with the supplier on other grocery retailers, or - support any wholesale supply arrangements? <p>If yes, please explain the risks.</p>
	<p>The proposed Code makes good sense with major retailers acting in good faith, however there is an inherent risk with end consumers paying more for, and therefore consuming less, fresh fruit and vegetables in New Zealand. In the short to medium term, retailers can pass on increased costs from growers and reflect this in their retail pricing. The Code does not address retailers’ profitability and could not assume they will lower their profitability to subsidise greater grower returns, as such, consumers could end up paying more.</p> <p>Growers’ profitability is an absolute must for the long-term sustainable supply of fresh fruit and vegetables in New Zealand. Otherwise, the country risks becoming primarily an importer of fresh produce. If retailers do not act in good faith by accepting increased costs from growers, it will jeopardise the growers’ ability to invest in the long-term growth of their businesses, including efficiencies, productivity improvements, sustainability and innovation. With increased grower investment there will be a parallel benefit of long-term lower fruit and vegetable costs and consumer pricing.</p> <p>Supporting both growers and fresh produce wholesalers for the long-term, will ensure a sustainable and vibrant New Zealand horticulture sector. The risk is whether retailers could potentially divide and conquer within the scope of the Code by effectively forcing growers, fresh produce wholesalers and fresh produce markets to work against each other by price/supply mechanisms whilst still acting in good faith. Growers and fresh produce wholesalers need to work together, not apart, in order to help ensure a balance of power with the major retailers and in turn, long-term lower pricing for consumers.</p> <p>The supermarkets’ increasing focus on sourcing direct from large growers would, should they become major wholesalers to independent retailers, potentially leave smaller growers without the access to those customers they currently enjoy through the fresh produce wholesale markets, such as T&G Fresh, which currently serve these independent retailers.</p> <p>The Code should better support growers and fresh produce wholesalers who are investing for the long-term supply and provision of lower cost fruit and vegetables to New Zealand consumers. There is a risk that major retailers may have the data to support their decision making, of which is highly manipulable. Transparency of all sales data including variable weights sales that are not recorded with IRI (which is PLU - barcode only) would assist with understanding the decision making, and also better assist with long term planning. Due to the nature of fruit and vegetable growing cycles, we believe matching these together would ensure efficient and cost effective growing. If the true essence of the Code is to apply good faith relationships between growers and retailers, we see the long-term sharing and transparency of data (unedited) as being critical to the industry and grower sustainability.</p>
Q7	<p>In relation to 4.3 overarching obligations, which of the three options do you agree with, and why?</p> <p>Option 3, the combined good faith and fair dealing obligations is preferred due to its completeness with identifying any discrimination against growers and fresh produce wholesalers by major retailers, by distinction. Retailers’ ability to potentially favour growers or fresh produce wholesalers by leaning into one versus the other does disrupt and factionalise supply, which only leads to lower grower returns in the long term while increasing retailer profitability. Protection for the ecosystem between growers and fresh</p>

	produce wholesalers is essential for removing waste out of horticulture and providing for long term stability with the end-to-end supply of fruit and vegetables into major retailers.
Q8	<p>Do you have any views on how to incorporate tikanga Māori or Te Ao Māori in the Code?</p> <p>We embrace tikanga Māori throughout our organisation and industry. Kaitiakitanga is a value T&G Fresh demonstrates every day to protect our people, land, natural resources, produce and communities, as guardians for their future. It is a value which underpins our commitment to act in good faith in the way we ethically conduct business, the principles of which drive fair, honourable and robust decision making. With this in mind, it is pleasing to see all options within the proposed Code capture and drive the value of Kaitiakitanga.</p>
Q9	<p>How can the Code best incorporate economic development objectives, including those of Māori</p> <p>Further to Q8, the question of economic development is critical to the New Zealand horticulture industry, however economic development in this instance doesn't fit into the scope of the Code unless major retailers' conduct potentially puts New Zealand businesses at financial risk/failure due to unfair dealings.</p>
Q10	<p>Do you have any comments on the preliminary assessment of the options against the criteria in Chapter 4?</p> <p>In principle, we agree with the assessment of the preliminary options analysis and the application as outlined.</p>

5. Requirements for supply agreements	
Q11	<p>In relation to 5.2 Requirements for supply agreements to be written and contain minimum content, which of the options do you agree with, and why?</p> <p>Is there any content that you think should be required in grocery supply agreements but is not mentioned?</p> <p>Option 2/3 sufficiently covers the basis of transparent and in good faith dealings with major grocery retailers.</p>
Q12	<p>In relation to 5.3 limiting unilateral and retrospective variations, which of the options do you agree with, and why?</p> <p>Option 2. Eliminating retrospective variations is aligned with the Commerce Commission's sentiments around seeking retrospective payments et el within major grocery retailers.</p>
Q13	<p>Do you have any comments on the preliminary assessment of the options against the criteria in Chapter 5?</p> <p>As an add-on, the inclusion of 'trading terms' within the supply agreement and transparency of how each term mechanism works is important to understanding the true cost structures for growers. Major grocery retailers use multiple and different trading terms, such as volume rebates payable to the retailers, warehousing and ullage % costs to suppliers. Some of these terms are standalone and others cascade financially, which could be open for negotiating supply agreements to benefit the retailers at the supplier's expense. Transparency within the supply agreement for each trading term would be important.</p> <p>The criteria should also address key risk issues [who bears them and to what extent] as well as issues such as "best in market price" / "most favoured pricing", as they can be used to unfairly allocate ultimate risk to the grower / fresh produce wholesaler.</p>

6. Obligations in relation to product supply and placement	
Q14	<p>In relation to 6.2 Changes in supply chain processes, which option do you think is best, and why? Are suppliers being pressured to use a retailer’s own logistics services and if so, what is the impact?</p>
	<p>Option 3 would be the most effective in protecting the end-to-end ecosystem of growers and fresh produce wholesalers who provide a fully integrated transport service from farm to retailers. In this service, for example, T&G Fresh provides integrated transport for small, medium and large growers cost effectively through the timing of empty crate returns and pick up’s to optimise truck capacity carrying growers produce. This optimises the movement of grower’s stock to supply major retailers and sustainably reduces truck movements and respective costs. T&G Fresh also provides a market service to all growers to move any additional fresh produce by way of excess crops, which also creates synergies with the transporting of produce to major retailers. To move away from this model to instead a retailer’s logistics service would be detrimental to the synergistic nature of the fresh produce supply chain cycle. T&G Fresh is committed to delivering the most cost-effective transportation of fruit and vegetables to end consumers, and with this in mind, we welcome any discussions with retailers to work together to reduce costs to consumers per the stated obligations. Any deviation would need to be reciprocal and mutually beneficial. Additionally, transparency of all retailer’s transport requirements, including data and cost structures, would need to be inclusive within the supply agreement.</p>
Q15	<p>In relation to 6.3 fresh produce standards and quality specifications, do you think the Code should include specific provisions about fresh produce and if yes, please explain what you think it should include?</p>
	<p>Option 2, however, given the variability of New Zealand growing conditions it would be prudent to tighten up the timeframe for quality checks and rejection notice period to 12 hours, instead of the proposed 24 hours. Quality specifications are important but again are varied and sit within the product specifications set by retailers with suppliers, along with packaging specifications etc. Therefore, T&G Fresh does not see a need for specific provisions given the broadness of quality, Option 2 is sufficient.</p>
Q16	<p>In relation to 6.4 Obligations in relation to ranging, shelf allocation, and delisting, which option do you think is best, and why?</p>
	<p>Option 2, having advanced notice of range reviews is critical and should be time bound to at least three months in advance, as much of the range review work is done leading up to the category review period, therefore suppliers need to be in step. The review schedule is done well in advance subject to any changes and complete transparency should be provided.</p> <p>It would also be prudent to apply a timeframe to the ‘deletion notice’ period post category review. Fresh produce is a unique category, with protracted growing cycles. If produce is planted in the ground and committed to by a retailer only to be deleted, it can leave a glut of produce and create food waste, it also adds significant costs to growers. Certainty of supply and significant notice of deletion is critical and should require 6 months minimum notice, to enable growers to invest in the future rather than remain commercially at risk.</p>

Q17	In relation to 6.5 Other obligations , which option do you think is best, and why? Please comment on the range of different areas – confidential information, intellectual property, business disruption, freedom of association, whistle-blower protections, pressure to opt out of wholesale supply arrangements, exclusive supply clauses and ‘most favoured nation’ price clauses.
	Option 2, it relates to good business practice.
Q18	Do you have any other comments about issues relating to product supply and placement?
	Some major retailers sell space in store to suppliers for better shelf and floor locations, T&G Fresh believes this should be prohibited and aligned with Option 2’s approach. For example, it creates an unfair advantage for larger supplies and multinationals who have more discretionary marketing spend to buy space.
Q19	Do you have any comments on the preliminary assessment of the options against the criteria in Chapter 6 ?
	Regarding retailers and their future wholesale supply chains, the pressure could be flipped onto growers to bypass traditional fresh produce wholesalers and deal directly with the major retailers, potentially increasing the imbalance of power by giving retailers greater control of supply and demand with the increased volume through their future wholesale channels. In turn, this may further fractionalise the produce industry. Fresh produce wholesalers play an important part in providing small to medium growers with the ability to aggregate efficiently and provide certainty for their investment, without this, growers and fresh produce wholesalers ability to have sustainable businesses into the future would be weakened.

7. Obligations in relation to payment, price increases, and promotions	
Q20	In relation to 7.2 Payment terms and set-offs , which option do you think is best, and why?
	Option 2 sufficiently provides for clear and protected payment terms.
Q21	In relation to 7.3 Responses to price increases , which option do you think is best, and why?
	Option 2 is the preferred pricing mechanism. However due to the variability in fruit and vegetable pricing this can require daily action due to seasonality.
Q22	In relation to 7.4 Payments for shrinkage and wastage , which option do you think is best, and why?
	Option 2 aligns with Australia’s approach and is appropriately worded.
Q23	In relation to 7.5 Payments for retailer’s business activities, product placement, and as a condition of being a supplier , which option do you think is best, and why?
	Option 2.
Q24	In relation to 7.6 Payments for promotions and promotional buying , which option do you think is best, and why?
	Option 2.

Q25	Do you think requests from retailers for payments for data services is an issue and if so, why?
	Purchasing data is cost prohibitive for many small to medium suppliers and growers. T&G Fresh believes data should be provided to growers to assist with the long-term sustainability of growing programmes. The sharing of transparent data will assist the horticulture industry to keep in step with retailers and customer driven demand by better assisting in matching supply, as well as removing waste and cost out of the industry.
Q26	Are there any other instances where requests for payments should be limited? If so, what are the issues and how should they be addressed in a Code?
	T&G Fresh is not aware of any further instances.

8. Dispute resolutions	
Q28	Do you have any comments about the current state of dispute resolution (for example, the processes that are used or the nature of disputes)?
	Dispute resolution is conducted in good faith, with the longer-term relationships with major retailers and growers kept in mind.
Q29	Do you have any comments on the particular criteria in Chapter 8.5 used to undertake the preliminary assessment of options for dispute resolution?
	In general, any disputes are acted on quickly due to the perishable nature of fresh produce and for many growers would be resolved in good faith and not requiring escalation. It is pleasing to see this is within Option C.
Q30	In relation to Chapter 8.6 The options for New Zealand , which of the three options do you think will work best, and why?
	Option C.

9. Monitoring, compliance and enforcement	
Q32	Do you have any views on the Australian and UK approaches to monitoring, compliance obligations, and enforcement, and which might be most effective for New Zealand?
	In Australia, fresh produce for major retailers is managed more through fresh produce wholesalers who help negotiate on grower's behalf through aggregation to scale, which provides for increased negotiation power with major retailers and better returns for growers. New Zealand's fresh produce supply is more fragmented. Observationally, managing the complexity upstream through fresh produce wholesalers is perhaps easier to monitor obligations from retailers versus individual growers.
Q33	Do you have any comments on the potential compliance costs (for suppliers and designated retailers) from the proposed content of the Code of Conduct?
	In principle, good faith negotiations and acting according to the Code would benefit both parties through minimising drawn out negotiations and leaving issues unresolved. More seamless and transparent relationships would assist with offsetting compliance costs.

Q34	Do you have any views on how the Code should be implemented?
	For consistency of approach the major retailers should take the lead through communicating supplier agreements and allow for timely discussion and transition, perhaps within a 6 month timeframe.

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