

26 February 2019

## **MBIE Discussion Document – Protecting businesses and consumers from unfair commercial practices**

**Submitter:** Alan Pollard  
**Organisation:** NZ Apples & Pears Incorporated  
**Email:** alan@applesandpears.nz

### **Introduction**

- 1 Thank you for the opportunity to make this submission on the MBIE discussion document – protecting businesses and consumers from unfair commercial practices.
- 2 NZ Apples & Pears is the industry association representing all apple, pear and nashi growers in New Zealand. 350 members generate export revenue of approximately \$800m per annum, and domestic revenue in excess of \$100m per annum.
- 3 NZ Apples & Pears has reviewed the submission of Business NZ and agrees in principle the matters raised in that submission.
- 4 NZ Apples & Pears has reviewed the submission of Horticulture NZ and agrees in principle the matters raised in that submission.
- 5 Our submission is focused only on business to business commercial arrangements. It is our contention that business to consumer commercial arrangements offer more opportunities for the protection of consumer interests (i.e. the Consumer Guarantees Act) which could be strengthened (if necessary) through relatively minor amendments to existing laws and regulations, but which are not afforded to businesses.

### **Is there a problem?**

- 6 We agree with Business NZ's submission that it is important to first obtain a better understanding of the extent of any existing "inappropriate" commercial practices. The surveys already completed and referred to in the discussion document ask questions that, in our view, are most likely to attract a response from those who have been "harmed" or feel "aggrieved" in some way, rather than attract responses from those that have experienced both negative and positive practices. It would be easy to over react to unbalanced feedback.
- 7 Having said that, we are aware of exporters or retailers using their size, purchasing power and market penetration to unduly influence small independent growers to accept contracts for supply that are on terms significantly more favourable to the exporter/retailer than the grower.
- 8 This is particularly prevalent in New Zealand, where the number of supermarket retailers, for example, is significantly limited compared to overseas markets. And it is particularly prevalent for growers of relatively small product categories (Nashi pears for example) than for those of larger product categories (apples for example).

## What is the solution?

- 9 We agree that there needs to be some attempt to provide protection for those growers who do not have the size or scale and are therefore at risk of “exploitation”.
- 10 We agree with Business NZ that additional laws or regulations are not necessarily the answer nor are they desirable.
- 11 We therefore agree with Horticulture NZ that a model similar to Australia’s Competition and Consumer (Industry Codes – Horticulture) Regulations 2017, be explored as a means of providing a “behavioral” framework for New Zealand.
- 12 The purpose of the Australian Code is to ensure transparency and clarity of transactions, and to provide a fair and equitable dispute resolution procedure.
- 13 The Code addresses such matters as:
  - a. Obligations to deal in good faith
  - b. Terms of trade
  - c. Requirements to have a horticulture produce agreement, which sets out a number of aspects of the trading arrangement that must be agreed and recorded in writing
  - d. Establishing what constitutes acceptable levels of conduct for traders, merchants, agents and growers
  - e. Defines a dispute resolution procedure
  - f. Identifies record keeping requirements
- 14 The Code does have its limitations:
  - a. The Code applies to agents who sell horticulture products on behalf of a grower or merchants who buy horticulture products from a grower, or a grower who provides horticulture products to an agent or sells to a merchant. But the Code expressly excludes exporters or retailers from the definition of “merchant”.
  - b. The penalties afforded under the Code are demerit points, which appear cumbersome to apply, difficult and costly to monitor, and would introduce significant compliance costs to be effective.

## Recommendation

- 15 We do not support the introduction of extensive further laws or regulation to balance grower and exporter/retailer interests in commercial arrangements.
- 16 We do support, in principle, consideration of the introduction of a model that provides a framework for defining, agreeing and policing commercial arrangements between growers and exporters/retailers (along the lines of the Australian Code).
- 17 We recommend that a working group be established, comprising horticulture industry, exporter, retailer and government members, to explore this further and recommend a Code for New Zealand horticulture commercial arrangements.
- 18 We offer our participation in such a working group.

19 Thank you again for the opportunity to submit on this discussion document.

Kind regards

Alan Pollard  
Chief Executive  
NZ Apples & Pears Inc.  
[alan@applesandpears.nz](mailto:alan@applesandpears.nz)  
Mobile +64 21 576 109