

Submission on the Commerce Commission grower survey

Introduction

1. This document is a submission on the Commerce Commission's (**Commission's**) grower survey, conducted in relation to the Commission's assessment of J&P Turner Limited's (**JPT's**) application for clearance to acquire up to 100% of the shares of Turners & Growers Fresh Limited (**T&G Fresh**) (**Application**) (**Proposed Acquisition**). External counsel for JPT has been provided with an anonymised and aggregated version of the results, on a counsel-only basis.
2. The Commission twice opened the survey for grower responses. In the first round it sent a questionnaire to growers via Horticulture NZ (**HortNZ**). It is assumed that this went to HortNZ's entire grower database (over 4,200 growers). 49 growers responded, though not all responses were complete.¹
3. Subsequent to the release of the SOI, the Commission re-opened the survey and evidently engaged NZGAP² to send it to growers on its mailing list. In response, the Commission received responses from a further [] growers, resulting in a total of [] growers that responded to some or all of the survey questions.
4. The SOI noted that the survey is an additional channel for it to receive feedback from individual growers, and that the responses will be used, among other things, for the purpose of testing or corroborating other evidence.³ Nevertheless, the Commission has received feedback from almost [] growers via the survey, which accounts for just under []% of all growers in New Zealand.⁴

The survey results corroborate other evidence that supports clearance

5. In its Application, and information and documents subsequently provided to the Commission, JPT has provided significant information that supports the proposition that growers have significant outside options other than the merger parties. This includes not only other wholesalers such as MG Marketing (**MG**), Primor and Seeka, but also direct supply to customers such as supermarkets, cafes, restaurants and direct to consumers via farmers markets, farmgate sales and online. JPT's analysis of growers that have supplied it in the past 12 months indicates that **93% of growers** either have supplied ([]%)

¹ Statement of Issues (**SOI**) at [24].

² New Zealand Good Agricultural Practice.

³ SOI at [23-24].

⁴ Or over []% if no or few kiwifruit growers participated which, given the position of Zespri as a monopoly exporter, may be likely. However this information has not been released by the Commission.

or had the opportunity to supply ([]) other customers outside the merger parties and MG; that is, the “full service” wholesalers as defined by the Commission.

6. JPT has also provided significant information and evidence about the multihoming behaviour of growers, which gives them the ability to flex volumes across supply channels to achieve the maximum return for their produce, and which would allow them to effectively discipline any attempt by the merged entity to move price or quality away from competitive levels.
7. The results of the Commission’s grower survey are consistent with these submissions and support the case for clearance.

The survey results + JPT’s analysis of its grower base very strongly support clearance

8. In its cross-submission on the Commission’s Statement of Issues (**SOI**) JPT noted that the [] Question 5 of the survey (ie the question that asks what growers would do if the merged entity attempted to increase prices or reduce quality) indicated that [].⁵ [].
9. This position did not materially change after the second round of survey results. In response to the question central to the Commission’s analysis of the Proposed Acquisition – effectively, what would growers do in response to a SSNIP⁶ – [].⁷ [] JPT’s analysis of growers that currently supply to it, [] this is very strong evidence that the Proposed Acquisition would be unlikely to substantially lessen competition.

10. [].

Direct supply to customers is a significant constraint

11. The survey results [].⁸ [].⁹ [].
12. [] the information that has already been provided to the Commission, and JPT’s submission that it considers the [].

There are high levels of multi-homing among growers

13. The survey results [].¹⁰ [].¹¹

⁵ JPT cross-submission on submissions on the SOI at [7].

⁶ Small but Significant Non-transitory Increase In Price.

⁷ [].

⁸ Grower survey, question 8 responses.

⁹ Grower survey, question 10 responses.

¹⁰ [].

¹¹ [].

14. [] the evidence and submissions that have already been provided by JPT, and [] this is strong evidence that the vast majority of growers have choices and the ability to flex volumes in response to changes in market conditions. Any attempt by the merged entity to manoeuvre prices or service levels away from competitive levels would be rendered unprofitable as growers switch or flex volumes to other avenues to market. Growers could move volumes to the significantly larger MG, to other wholesalers or direct to customers.

Conclusion

15. The Commission has before it clear and direct evidence about the way that growers actually operate their businesses, the choices that they have and the choices that they make. The Commission has (rightly) asked growers the question central to the competition analysis of the Proposed Acquisition – what would you do if the merged entity decreased prices or quality levels? – and the [] the significant evidence and submissions that JPT has provided to the Commission, and strongly supports the case for clearance.