

## Statement of Preliminary Issues

### J&P Turner / T&G Fresh

6 July 2026

#### Introduction

1. On 30 June 2026, the Commerce Commission registered an application (the Application) from J&P Turner Limited (JPT) seeking clearance for it or any interconnected body corporate to acquire up to 100% of the shares of Turners & Growers Fresh Limited (T&G Fresh) (the Proposed Acquisition).<sup>1</sup>
2. As required by the Commerce Act 1986 (the Act), we assess mergers and acquisitions using the substantial lessening of competition test, which we describe further below.
3. The Commission will only give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
4. This statement of preliminary issues (SoPI) sets out the competition issues that we have identified to date and will consider during our assessment, and that we currently consider to be important in deciding whether or not to grant clearance.<sup>2</sup> Our assessment of the Proposed Acquisition is at an early stage and this SoPI is based primarily on the material provided by the parties in connection with the Application. Other issues may become apparent as we progress our assessment.
5. Through publishing this SoPI, we aim to:<sup>3</sup>
  - 5.1 increase the transparency of our process;
  - 5.2 provide interested parties with an opportunity to identify any further competition issues which they consider we should assess and also to consider and submit on the matters identified; and
  - 5.3 gather further information which might assist our assessment.
6. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by **21 July 2026**. Attachment A to this statement sets out the particular information that we are interested in the views of JPT and T&G Fresh (the Parties) and other interested parties on.

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<sup>1</sup> A public version of the Application is available on the [case register](#) on our website.

<sup>2</sup> The issues set out in this statement are based on the information available when it was published and may change as our assessment progresses. The issues in this statement are not binding on us.

<sup>3</sup> Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022) at [6.105]. Available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz).

7. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

## The Parties

### The applicant – JPT

8. JPT is part of the J&P Turner group of companies, a family-owned and managed fresh produce business. JPT wholesale supplies and exports fresh produce across New Zealand through its subsidiary, Fresh Direct.<sup>4</sup>
9. Fresh Direct wholesale supplies and distributes locally grown and imported fresh fruits and vegetables (fresh produce) throughout New Zealand from six locations in Auckland, Hamilton, Tauranga, Palmerston North, Wellington, and Christchurch.<sup>5</sup>
10. It also offers the following related services:<sup>6</sup>
- 10.1 packing in its Christchurch facility for supply to its retail customers;
  - 10.2 ripening at its Auckland and, to a lesser degree, Christchurch facilities;<sup>7</sup>
  - 10.3 temperature-controlled metro transport via its own local fleet (though it relies on third parties for long-haul transport); and
  - 10.4 processing of certain fruits (eg, sliced pineapple, mango, melon) into packs, typically sold by major supermarkets.
11. JPT does not grow its own produce supply, with the exception of cherries which it mainly grows for exports.<sup>8</sup>

### The target – T&G Fresh

12. T&G Fresh is a wholly owned subsidiary of T&G Global Limited. It grows, transports, imports and wholesale supplies fresh produce in New Zealand and exports locally grown fresh produce.<sup>9</sup>
13. T&G Fresh operates eight wholesale fresh produce markets (or trading floors) across New Zealand in Auckland, Christchurch, Hastings, Nelson, Palmerston North, New Plymouth, Tauranga, and Wellington. It also operates a produce distribution network and has nine depots throughout the country (some of which are located alongside its trading floors).<sup>10</sup>

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<sup>4</sup> The Application at [6] and [50].

<sup>5</sup> The Application at [51].

<sup>6</sup> The Application at [51].

<sup>7</sup> JPT does not provide ripening services outside of the wholesale supply of produce. The Application at FN26.

<sup>8</sup> The Application at [6].

<sup>9</sup> The Application at [57].

<sup>10</sup> The Application at [58] and FN25.

14. T&G Fresh grows a portion of its own supply – namely, tomatoes, cucumbers, citrus, berries, cherries, and other stone fruit.<sup>11</sup>
15. In addition to transporting T&G-owned fresh produce, it provides transportation services for third-party customers and growers. It also undertakes a small amount of contract ripening for New Zealand customers separate from the wholesale supply of fresh produce.<sup>12</sup>

## Our framework

16. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>13</sup> As required by the Act, we assess mergers and acquisitions using the substantial lessening of competition test.
17. We determine whether an acquisition is likely to substantially lessen competition in a market by comparing the likely state of competition if the acquisition proceeds (the scenario with the acquisition, often referred to as the factual), with the likely state of competition if the acquisition does not proceed (the scenario without the acquisition, often referred to as the counterfactual).<sup>14</sup> This allows us to assess the degree by which the Proposed Acquisition might lessen competition.
18. If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:
  - 18.1 constraint from existing competitors – the extent to which current competitors compete and the degree to which they would expand their sales if prices increased;<sup>15</sup>
  - 18.2 constraint from potential new entry – the extent to which new competitors would enter the market(s) and compete if prices increased;
  - 18.3 the countervailing power of customers in markets for the wholesale supply of fresh produce – the potential constraint on the merged entity from a wholesale customer’s ability to exert substantial influence on negotiations and whether any countervailing power of wholesale customers might increase or decrease with the Proposed Acquisition; and
  - 18.4 the countervailing power of suppliers of fresh produce in markets in which the Parties acquire fresh produce, compared to any buyer power of the Parties – the potential constraint on the merged entity from a supplier’s

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<sup>11</sup> The Application at [4].

<sup>12</sup> The Application at [58] and FN26.

<sup>13</sup> *Mergers and Acquisitions Guidelines* above n3.

<sup>14</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>15</sup> For ease of reference, we only refer to the ability of the merged entity to “raise prices” from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition, ie, it could increase quality-adjusted prices.

ability to exert substantial influence on negotiations and whether any supplier power might increase or decrease with the Proposed Acquisition, or whether the Proposed Acquisition would strengthen the buyer power of the Parties.

## Market definition

19. Market definition is a tool that helps identify and assess the competitive constraints a merged entity is likely to face. We define markets in a way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.<sup>16</sup>
20. The Parties wholesale supply and distribute fresh produce in New Zealand.
21. In the Application, JPT submits that the relevant market for assessing the competitive effects of the Proposed Acquisition is a single national market for the wholesale supply of fresh produce in New Zealand which includes domestic- and overseas-grown produce; various routes to market including via wholesalers and direct from growers; and all customer types (ie, consumers, retailers and secondary wholesalers).<sup>17</sup>
22. JPT submits that this definition is consistent with the Commission's previously expressed views in its Annual Grocery Reports, Wholesale Supply Inquiry Preliminary Findings Paper,<sup>18</sup> and the T&G Fresh/Freshmax clearance determination.<sup>19,20</sup>
23. JPT further submits that:
  - 23.1 regarding the product dimension, this definition reflects the high degree of demand- and supply-side substitutability for the supply of fresh produce. In JPT's view, on the demand side, retailers and end consumers vary the type of produce that they buy on any given day depending on the quality, price and availability of produce. On the supply side, the facilities, infrastructure, and machinery used for storing, processing, transporting, and selling fresh produce is virtually identical across all types of produce;<sup>21</sup>
  - 23.2 regarding the functional dimension, including growers, wholesalers, and retailers in a single market is appropriate given that:<sup>22</sup>

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<sup>16</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>17</sup> The Application at [65], [68]-[69], [73], and [81].

<sup>18</sup> Commerce Commission, Wholesale Supply Inquiry Preliminary Findings Paper (5 June 2025).

<sup>19</sup> Turners & Growers Fresh Limited and Freshmax NZ Limited [2020] NZCC 6.

<sup>20</sup> The Application at [65], [71] and [73]. We note that while the Commission holds concerns about the effectiveness of competition in the wholesale supply regime established under the Grocery Industry Competition Act, the issue for consideration with the Application is whether the removal of competition between the Parties would result in a substantial lessening of competition.

<sup>21</sup> The Application at [66].

<sup>22</sup> The Application at [68]-[72].

- 23.2.1 when sourcing fresh produce from growers, the Parties compete with other wholesalers and, increasingly, retail customers who can source direct from growers; and
- 23.2.2 when supplying fresh produce, the Parties compete with other wholesalers, as well as growers themselves who can supply direct to end consumers (eg, through farmers' markets);
- 23.3 regarding the geographic dimension, a national market is appropriate given that the Parties, and many of their competitors, supply fresh produce to customers throughout New Zealand, customers can and do procure on a national basis, and a substantial number of fresh products have the same shelf prices nationwide;<sup>23</sup> and
- 23.4 regarding the customer dimension, a single market comprising all customers (ie, consumers, retailers, and secondary wholesalers) is appropriate because it would be difficult for wholesalers to price discriminate against different customer types and offering favourable terms to certain customers (eg, large retailers) would counter the wholesalers' incentive to attract as broad of a customer base as possible.<sup>24</sup>
24. However, JPT submits that it is unnecessary to form a concluded view on the precise boundaries of the relevant market as no competition concerns would arise even if a narrower view of the relevant market(s) was to be adopted.<sup>25</sup>
25. We will consider whether the market submitted by JPT is the appropriate market for assessing the competitive effects of the Proposed Acquisition, or whether it might be appropriate to define additional, narrower or broader market(s) on the basis of product, function, geography, and/or customer type. We set out in Attachment A what we are particularly interested in the views of the Parties and other interested parties on to assist in our assessment of market definition.

### **Without the Proposed Acquisition**

26. We will consider what the Parties would do if the Proposed Acquisition did not go ahead. We will consider whether the without-the-acquisition scenario is best characterised by the status quo, or whether the parties would seek alternative options.

### **Preliminary issues**

27. We will assess whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant market (or markets) by assessing whether horizontal (unilateral), coordinated, or vertical effects might result from the Proposed Acquisition. The questions that we will be focusing on are:

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<sup>23</sup> The Application at [73].

<sup>24</sup> The Application at [75]-[81].

<sup>25</sup> The Application at [64], [67], [72], [74], and [113].

- 27.1 Unilateral effects: would the loss of competition between the parties enable the merged entity to profitably raise prices or reduce quality, service levels or innovation by itself where it is a supplier, or to lower prices paid to suppliers for goods?
- 27.2 Coordinated effects: would the Proposed Acquisition change the conditions in the relevant market(s) so that coordination is more likely, more complete or more sustainable?
- 27.3 Vertical effects: would the Proposed Acquisition increase the merged entity's ability and/or incentive to foreclose rivals?

**Unilateral effects: would the merged entity be able to profitably raise prices by itself?**

- 28. Unilateral effects arise when a firm merges with a competitor that would otherwise provide a significant competitive constraint (particularly relative to remaining competitors) such that the merged firm can profitably increase price for products sold or decrease the price paid for goods acquired above (or below) the level that would prevail without the acquisition.<sup>26</sup>
- 29. In the Application, JPT submits that the Proposed Acquisition would not be likely to substantially lessen competition in the market for the wholesale supply of fresh produce in New Zealand due to unilateral effects because:
  - 29.1 the perishable nature of fresh produce provides a natural constraint on the ability of growers, wholesalers, and retailers to move prices away from competitive levels as they are incentivised to sell fresh produce quickly before it spoils;<sup>27</sup>
  - 29.2 the merged entity would have a modest combined share, with a small increment resulting from the Proposed Acquisition;<sup>28</sup>
  - 29.3 the Parties are not each other's closest competitors and have different business models;<sup>29</sup>
  - 29.4 the merged entity would be constrained by multiple competitors (including other wholesalers), several of which are very well-resourced and have a national presence;<sup>30</sup>
  - 29.5 barriers to entry and expansion are low, with competing wholesalers easily able to expand their service offerings given that the requirements for wholesaling different types of fresh produce are very similar;<sup>31</sup> and
  - 29.6 the merged entity would face significant countervailing power from retailers and growers who have been increasingly bypassing wholesalers and

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<sup>26</sup> *Mergers and Acquisitions Guidelines* above n3 at [3.62].

<sup>27</sup> The Application at [86].

<sup>28</sup> The Application at [89]-[92].

<sup>29</sup> The Application at [93].

<sup>30</sup> The Application at [94]-[98].

<sup>31</sup> The Application at [99]-[100].

contracting directly. Similarly, the merged entity would be constrained by growers increasingly selling fresh produce direct to end consumers (eg, via farmer's markets and road-side stalls).<sup>32</sup>

30. We will consider:
- 30.1 closeness of competition: the degree of constraint that the Parties impose upon one another for the wholesale supply of fresh produce if the Proposed Acquisition does not go ahead. To the extent that any constraint is material, we will assess whether the lost competition (or potential competition) between the Parties could be replaced by rival competitors;
  - 30.2 remaining competitive constraints: the degree of constraint that existing competitors would impose on the merged entity;
  - 30.3 entry and expansion: how easily rivals could enter and/or expand; and
  - 30.4 countervailing power: whether growers and/or customers have special characteristics that would enable them to resist a price increase by the merged entity.
31. We set out in Attachment A what we are particularly interested in the views of the Parties and other interested parties on to assist in our assessment of unilateral effects.

**Coordinated effects: would the Proposed Acquisition make coordination more likely?**

32. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.<sup>33</sup>
33. In the Application, JPT submits that the Proposed Acquisition would not be likely to substantially lessen competition in any relevant market due to coordinated effects because.<sup>34</sup>
- 33.1 the Parties' combined share is not large enough to enable effective coordination;
  - 33.2 the relevant market is dynamic and characterised by many competitors of varying sizes and business models;
  - 33.3 barriers to entry and expansion are low and expansion occurs regularly; and

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<sup>32</sup> The Application at [101]-[109].

<sup>33</sup> *Mergers and Acquisitions Guidelines* above n13 at [3.84].

<sup>34</sup> The Application at [111].

- 33.4 retail customers have significant countervailing power and can bypass wholesalers (and, increasingly retailers) altogether.
34. We will assess whether any of the relevant market(s) are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant market(s) so that coordination is more likely, more complete or more sustainable. We invite submissions on why the Proposed Acquisition may, or may not, increase the risk of coordinated effects.

**Vertical effects: would the Proposed Acquisition result in an increase in the ability and/or incentive for the merged entity to foreclose rivals?**

35. A merger between suppliers (or buyers) who are not competitors but who operate in related markets can result in a substantial lessening of competition due to vertical effects. This can occur where a merger gives the merged firm a greater ability or incentive to engage in conduct that prevents or hinders rivals from competing effectively.<sup>35</sup>
36. We will assess whether the Proposed Acquisition could substantially lessen competition due to vertical effects, including the extent of vertical integration in the industry and whether the merged entity would have any market power in upstream or downstream markets. We invite any submissions on this point.

**Next steps in our assessment**

37. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **26 August 2026**. However, this date may be extended with the agreement of the applicant if the material before the Commission at that time does not allow it to be satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.<sup>36</sup> In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
38. As part of our assessment, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

**Making a submission**

39. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference "JPT/T&G Fresh" in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **21 July 2026**.
40. If you would like to make a submission but face difficulties in doing so within the timeframe, please ensure that you register your interest with the Commission at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) so that we can work with you to accommodate your needs where possible.

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<sup>35</sup> *Mergers and Acquisitions Guidelines* above n3 at [5.1]-[5.15].

<sup>36</sup> The Commission maintains a [case register](#) on our website where we update any changes to our deadlines and provide relevant documents.

41. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission's website. If you make a submission and we do not acknowledge receipt of that submission within two working days, you should resubmit your submission.
42. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.

### Attachment A: Matters which we are interested in receiving information on

Party	Matters/questions
Growers	<p>From growers, we are particularly interested in hearing about:</p> <ul style="list-style-type: none"> <li>• how you view the competition between JPT and T&amp;G Fresh for the sale of your fresh produce, including: <ul style="list-style-type: none"> <li>○ the extent to which you have observed them competitively reacting to each other;</li> <li>○ the extent to which you can play them off against each other to get a better price or service;</li> <li>○ any differences in your commercial experiences in dealing with each of them, including in relation to price, service, order requirements, or other factors that are important to you as growers; and</li> <li>○ examples of times where you have switched your supply between JPT, T&amp;G Fresh and other wholesalers and retailers, and reasons for doing so (for example, price differences);</li> </ul> </li> <li>• who you view as the major competitors to JPT and T&amp;G Fresh for the sale of your produce, how this competition occurs and whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> <li>• the degree of competitive constraint from alternative sales channels (eg, direct supply to retailers and/or end consumers), including: <ul style="list-style-type: none"> <li>○ whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> <li>○ whether your size or scale as a grower impacts on your ability to supply alternative sales channels;</li> <li>○ the role of transport options and costs; and</li> <li>○ the role of ancillary service offerings (eg, packing or ripening services);</li> </ul> </li> <li>• the extent to which you are able to readily switch between sales channels (eg, via wholesaler, direct to retailer, direct to end customer) and any implications for price and other important aspects of the commercial arrangements; and</li> <li>• the impact that the Proposed Acquisition may have on your business in terms of your ability to sell produce and/or on the state of competition in the relevant market(s).</li> </ul>
Wholesalers	<p>From wholesalers, we are particularly interested in hearing about:</p> <ul style="list-style-type: none"> <li>• to what extent you see yourself competing closely with JPT and T&amp;G Fresh, how this competition occurs, and whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> <li>• who else you see yourself competing closely with other than JPT and T&amp;G Fresh, how this competition occurs and whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> </ul>

Party	Matters/questions
	<ul style="list-style-type: none"> <li>• how you view the competition between JPT and T&amp;G Fresh, including: <ul style="list-style-type: none"> <li>○ the extent to which you have observed them competitively reacting to each other; and</li> <li>○ the extent to which this varies by produce type or category of produce, geographic area, or customer type/size;</li> </ul> </li> <li>• whether the facilities and/or infrastructure used for wholesaling produce are homogenous or vary by produce type or category of produce and the extent to which you are able to readily switch between wholesaling different types or categories of produce;</li> <li>• how easily you could expand the scale or scope of your operations in the future (eg, to supply greater volumes, to supply different types of customers, or to supply into new geographic areas) and the conditions in which you would consider expanding;</li> <li>• the importance of physical trading floors or wholesale produce markets to how you supply produce, and whether this impacts on your ability to supply produce in any particular geographic areas;</li> <li>• the degree of competitive constraint from alternative supply channels (eg, direct supply from growers), including: <ul style="list-style-type: none"> <li>○ whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> <li>○ the role of transport options and costs; and</li> <li>○ the role of ancillary service offerings (eg, packing or ripening services that may be offered by wholesalers); and</li> </ul> </li> <li>• the impact that the Proposed Acquisition may have on the state of competition in the relevant market(s).</li> </ul>
Secondary wholesalers and retailers	<p>From secondary wholesalers and retailers, we are particularly interested in hearing about:</p> <ul style="list-style-type: none"> <li>• how you view the competition between JPT and T&amp;G Fresh, including the extent to which: <ul style="list-style-type: none"> <li>○ you have observed them competitively reacting to each other;</li> <li>○ you can play them off against each other to get a better price or service;</li> <li>○ there are differences in their offerings, such as in relation to price and service;</li> <li>○ you can share examples of times where you have switched to other purchasers (wholly or partially) to obtain a better deal; and</li> <li>○ this varies by produce type or category of produce, or by geographic area;</li> </ul> </li> <li>• who the major competitors are to JPT and T&amp;G Fresh, how this competition occurs and whether this varies by produce type or category of produce, geographic area, or customer type/size;</li> </ul>

Party	Matters/questions
	<ul style="list-style-type: none"> <li>• the importance of physical trading floors or wholesale produce markets to your decisions on who you acquire produce from nationally or in any particular geographic areas;</li> <li>• the degree of competitive constraint from alternative supply channels (eg, direct supply from growers), including: <ul style="list-style-type: none"> <li>○ whether this varies by produce type or category of produce;</li> <li>○ whether your size or scale as a secondary wholesaler or customer impacts on your ability to acquire produce through alternative sales channels;</li> <li>○ the role of transport options and costs; and</li> <li>○ the role of ancillary service offerings (eg, packing or ripening services);</li> </ul> </li> <li>• the extent to which you are able to readily switch between sales channels (eg, purchasing produce via wholesaler or direct from growers); and</li> <li>• the impact that the Proposed Acquisition may have on your business in terms of your ability to acquire fresh produce and/or on the state of competition in the relevant market(s).</li> </ul>